

## Supplementary statement to the Yoorrook Justice Commission

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**Position:** Commissioner for Aboriginal Children and Young People in Victoria  
**Organisation:** Commission for Children and Young People  
**Date** 10 May 2023

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### Introduction

1. I, Meena Singh, Commissioner for Aboriginal Children and Young People (**Commissioner**), have been issued with a Notice to Attend dated 10 May 2023 to appear before the Yoorrook Justice Commission (**Commission**) on 12 May 2023. I have also been issued with a Notice to Produce dated 10 May 2023 to address questions nominated by the Commission. Both Notices are issued pursuant to section 17 of the *Inquiries Act 2014* (Vic).
2. I make this supplementary 'balert keetyarra' ('strong talk' in Wathaurong language) or statement in preparation for oral evidence I will give on 12 May 2023.
3. My first witness statement dated 2 December 2022 (**First Statement**) was provided to the Commission in preparation for oral evidence which I gave before the Commission on 5 December 2022.
4. This statement is true and correct to the best of my knowledge and belief. I make this statement based on matters within my knowledge, and documents, records and data possessed by or accessible to the Commission for Children and Young People (**CCYP**) which I have reviewed in my role as the Commissioner for Aboriginal Children and Young People .
5. Despite the sheer volume of the documents and their length (some of which exceed 500 pages), I have endeavoured to document in this supplementary statement all of the matters to which the Notice to Produce is directed. My supplementary statement represents my best efforts to respond to the questions in the time available. There may, however, be other systemic issue and areas of concern that could be borne out of the material.

6. I recognise that the views expressed in this supplementary statement are my own, drawn from my work as the Commissioner and my interpretation of the material described in this statement and that others may not share my views.

### Language used

7. The Commission uses the term 'First Peoples' to include people described as Aboriginal, Indigenous, Aboriginal and Torres Strait Islander, First Nations and Koori/e (however described). This term is used in the Notice to Appear and Notice to Produce.
8. My role is as Commissioner, and I identify as a Yorta Yorta and Indian woman. I also identify with the terms referred to at paragraph 7.
9. In this supplementary statement, I use the term 'Aboriginal' like 'First Nations' to include all of the terms in paragraph 7. This is a term that is used in our daily practice at the CCYP and in performance of my role as Commissioner.

### Functions of the CCYP

10. While paragraphs 10 to 12 of my First Statement provide some background to the role of the CCYP (including some of its powers and responsibilities) in order to assist the Commission, I have set out by way of summary below, some further details on the functions of the CCYP.
11. The functions of the CCYP are described in section 8 of the *Commission for Children and Young People Act 2012* (Vic) (**CCYP Act**).
12. The CCYP is required to act independently and impartially when performing its functions: section 8(2) of the *CCYP Act*. Moreover, when exercising its functions in relation to a vulnerable child or person the CCYP must 'perform the function for the purpose of promoting the best interests of the child or person': section 8(3) of the *CCYP Act*.
13. As set out in paragraph 13 of my First Statement, the CCYP is also responsible for administering, overseeing and monitoring the Reportable Conduct Scheme (**Scheme**): section 16D of the *Child Wellbeing and Safety Act 2005* (Vic) (**CWS Act**).

### Vulnerable children and young persons

14. The CCYP has a range of functions, that relate specifically to ‘vulnerable children and young persons’, namely:

- to provide advice ... about policies, practices and the provision of services relating to the safety or wellbeing of vulnerable children and young persons’ to ‘Ministers, Government Departments, health and human services’: section 8(1)(a) of the *CCYP Act*; and
- to promote their interests within the Victorian community: section 8(1)(b) of the *CCYP Act*; and
- to monitor and report on the implementation and effectiveness of safety and wellbeing strategies which impact them: section 8(1)(c) of the *CCYP Act*.

15. A ‘vulnerable child or young person’ is defined under section 5 of the *CCYP Act* to include:

- a child or young person that is or has been a Child Protection client: section 5(a) *CCYP Act*.
- a youth justice client; section 5(b) of the *CCYP Act*.
- a person ‘attending a youth justice unit in accordance with an order of the Children’s Court’: section 5(c) of the *CCYP Act*.
- a child who has or is receiving services from a registered community service: section 5(d) of the *CCYP Act*.
- ‘a child whose primary family carer is receiving or has received services from a registered community service.’: section 5(e) of the *CCYP Act*.
- a child has died from abuse or neglect’: section 5(f) of the *CCYP Act*.

16. Under section 5(c) of the *CCYP Act*, a vulnerable child also includes ‘a person under the age of 21 who is leaving, or who has left, the care of the Secretary to live independently.’

### Child safety

17. The CCYP is also empowered to provide advice and recommendations to the Minister, at their request, on matters relating to child safety: section 8(1)(d) of the *CCYP Act*.

### Child-friendly and child safe practices

18. The CCYP has an important function of promoting child-friendly and child-safe practices within the community: section 8(1)(e) of the *CCYP Act*.
19. The CCYP also has specific functions under the *CCYP Act*, including: include:
- out-of-home care (Part 4): section 8(1)(g) of the *CCYP Act*, and
  - inquiries (Part 5): section 8(1)(h) of the *CCYP Act*.

### Out-of-home care

20. Under section 8(1)(g) of the *CCYP Act*, the CCYP has functions in relation to out-of-home care conferred under Part 4 of that Act. These functions include: promoting the active participation of children and young people in decisions that affect them (section 28(a) of the *CCYP Act*); advising the Minister and the Secretary as to the performance of the out-of-home care system (section 28(b) of the *CCYP Act*); and, as requested by the Minister, investigating and reporting on an out-of-home care provider (section 28(c) of the *CCYP Act*).

### Inquiries

21. Further to paragraph 58 of my First Statement (which sets out the powers of CCYP to conduct certain inquiries), the CCYP is obliged to conduct an inquiry under Part 5 of the *CCYP Act* into the death of a child who was a Child Protection client at the time of or within 12 months before their death which focuses on the services provided and/or not provided to them: section 34 of the *CCYP Act*.
22. A 'Child Protection client' is defined in section 4 as a person who 'is the subject of a report under sections 28, 33(2), 183 or 184 of the *Children, Youth and Families Act 2005* (Vic) (**CYF Act**) where the case about that child has not been recorded as closed by the Secretary: section 4(a) and (b) of the *CCYP Act*.

23. Under section 39(1)(a) of the *CCYP Act*, the CCYP may conduct an inquiry in relation to the provision of services concerning children and young people listed under section 39(2)(c) to (h) of the *CCYP Act*, if the CCYP identifies persistent or recurring systemic issues in the provision of those services or omission of those services. These can be services provided by a community service, health service, human service, or school (section 39(2)(a) of the *CCYP Act*) or Child Protection services or youth justice services (section 39(2)(b) of the *CCYP Act*).

#### Functions relating to the Scheme

24. As stated in paragraph 16 of my First Statement, the Scheme has been in place since July 2017. Under Part 5A of the *CWS Act*, the CCYP's key functions in relation to the Scheme include:

- educating and providing advice to entities to assist them to identify reportable conduct and to report and investigate reportable allegations, and to regulators promote compliance with the Scheme;
- overseeing the investigation of reportable allegations;
- in certain circumstances, investigating reportable allegations and making recommendations;
- investigating whether reportable allegations have been inappropriately handled or responded to by an entity and making recommendations;
- monitoring the compliance of entities with the Scheme;
- receiving disclosures about reportable allegation from members of the public and others; and
- exchanging information (including the findings of investigations into reportable allegations and the reasons for those findings) with Victoria Police, regulators, organisations and the Secretary to the Department of Justice and Community Safety (**DJCS**).

25. In limited circumstances, the CCYP itself may conduct an investigation on its own motion into allegations of child abuse or child-related misconduct where it is in the public interest, or an organisation is unwilling or unable to investigate. The CCYP can also investigate the handling of an allegation by an organisation where the

organisation in question did not do so appropriately. The *CWS Act* does not provide the CCYP with the following in respect of the Scheme:

- the ability to give directions to the head of an organisation about the conduct of their investigation into reportable allegations or their findings following an investigation;
- a role to act as a point of appeal for subjects of allegation, alleged victims or parents and carers; and
- the ability to substitute findings where the CCYP believes the head of the organisation has reached the incorrect finding on the evidence.

**Question 1: In your view, what are the key systemic issues or areas of concern for First Peoples children or young people who are in, are at risk of entering, or have been in the Child Protection system (including out-of-home care) and/or the youth justice systems as identified in Completed Reports?**

26. I confirm that 'Completed Reports' is defined in the Notice to Produce as follows:

- reports that relate to First Peoples children and young people and have been given by CCYP to the Minister and the Secretary in accordance with section 46 of the *CCYP Act*:
  1. Inquiries conducted under section 34 of the Act between 1 July 2017 and 30 June 2022, other than inquiries that remain open before a Coroners Court;
  2. Inquiries conducted under sections 37 and 38 of the Act between 1 July 2017 and 30 June 2022; and
  3. Inquiries conducted under sections 39 and 40 of the Act between 1 October 2016 and 30 June 2022.

27. The content of the Completed Reports and the information received by the CCYP is highly sensitive and includes distressing information about individual experiences and systemic issues affecting Aboriginal children and young people.

28. I recognise that the Completed Reports collectively represent a point in time from 2016-2022 (the timeframe sought by the Commission).

29. At Annexure 1 to this statement, I set out a high-level summary of the inquiries which have been conducted under sections 39 and 40 of the *CCYP Act* that are included in

the Completed Reports. As I identify in paragraph 31 of my First Statement, these inquiries are referred to as 'systemic inquiries'.

30. At Annexure 2 to this statement, the CCYP has prepared a high-level thematic analysis of the findings of the Child Death Inquiries conducted by the CCYP between 2017 and 2022 under section 34 of the *CCYP Act*. This analysis concerns the 22 reports completed in this period which do not relate to inquests that remain open before a Coroners Court.

31. By way of summary, based on my review of the Completed Reports, in my view, those reports identify the following systemic issues and areas of concern for Aboriginal children and young people during the period of 2016 to June 2022:

- i. Aboriginal children and young people are over-represented in the Child Protection system (including out-of-home care);
- ii. Some services do not do enough to prevent the need for Child Protection intervention, and responses by Child Protection to the evidence of harm experienced by Aboriginal children and young people are insufficient;
- iii. Many Aboriginal children and young people experience further trauma and harm in out-of-home care settings;
- iv. Many Aboriginal children and young people who are entering the Child Protection system (including out-of-home care) have experienced family violence and the response to these experiences is poor;
- v. Many Aboriginal children and young people's right to Aboriginal culture is not being upheld when they are removed from their families;
- vi. There are insufficient culturally safe and developmentally appropriate services for Aboriginal children and young people;
- vii. Many Aboriginal children and young people are not properly and fully heard when decisions are made around them about issues which impact them, for example their care;
- viii. Kinship carers for Aboriginal children and young people are not adequately supported;

- ix. There are high rates of crossover children, and Aboriginal children and young people in out-of-home care are over-represented in the youth justice system, and at times the care system's response to children results directly in those children's contact with police and Youth Justice;
- x. Aboriginal children and young people are over-represented in the youth justice system;
- xi. Aboriginal children and young people disproportionately experience specific types of harm in youth justice detention; and
- xii. Across the Child Protection and youth justice systems, there is a lack of appropriate data collection and record keeping which impacts the care for many Aboriginal children and young people.

*i. Aboriginal children and young people are over-represented in the Child Protection system (including out-of-home care);*

32. In my First Statement at paragraphs 33 to 41, and in my oral evidence given on 5 December 2022, I presented publicly available data to show the over-representation of Aboriginal children and young people in the Child Protection system in Victoria. This data included:

- Aboriginal children and young people are increasingly over-represented at every stage of the Child Protection process in Victoria (First Statement [35], Figure 3);
- in 2019-2020, Aboriginal children were 16.4 times more likely to be admitted into out-of-home care than non-Indigenous children, and in 2020-2021 this number went up to 17.6 (First Statement [37]);
- Aboriginal children and young people in Victoria are admitted into out-of-home care at far greater rates than any other state or territory in Australia (First Statement [37], Figures 4 and 5); and
- the rate of Aboriginal children and young people in out-of-home care in Victoria in 2020-2021 is 2,572. This has increased from 1,759 in 2016-2017 (First Statement [38], Figure 7).



33. The systemic inquiries conducted by the CCYP between 2016 and June 2022 demonstrate that the number and rate of over-representation of Aboriginal children and young people in the Child Protection system (including out-of-home care) has been rising since at least 2016.
34. In the inquiry *Always was, always will be Koori children* (2016), the CCYP found that Aboriginal children and young people were 12.9 times more likely to be in out-of-home care than non-Aboriginal children and young people.
35. In the inquiry *In our own words* (2019), the CCYP found that:
- between the years of 2008-2009 and 2017-2018, the number of Aboriginal children removed from their parents and living in out-of-home care had tripled from 687 to 2,027 (a 195 per cent increase);
  - the figure of 2,027 Aboriginal children and young people being in out-of-home care as at 31 December 2018 represented 26 per cent of all children and young people in out-of-home care at that time; and
  - as raised in Figure 8 of my First Statement, in 2017–2018, approximately nine in every 100 Aboriginal children and young people in Victoria were in care. In 2021-2022, this number increased to approximately 10 in every 100 Aboriginal children and young people in Victoria being in care.
36. The rates of over-representation for Aboriginal children and young people in the Child Protection system (including out-of-home care) means many of the issues affecting the Child Protection and youth justice systems have a disproportionate impact on them.
- ii. Some services do not do enough to prevent the need for Child Protection intervention, and responses by Child Protection to the evidence of harm experienced by Aboriginal children and young people are insufficient*
37. Before any child or young person comes into contact with the Child Protection system, that child or young person and their family is likely to have had a number of interactions with various government funded services, including, but not limited to, maternal and child health and wellbeing services, education, and family services. Each of these interactions represents an opportunity to identify and act upon any concerns regarding a child or young person has experienced, or is at risk of

experiencing, harm. For example, several of the CDIs referred to in Annexure 2 found there was a lack of early supports.

38. Further, whenever reports to Child Protection are needed, each interaction should result in positive lasting change for Aboriginal families, children, and young people. At CCYP, we too often see short engagements with a family, or the closure of cases at the intake or investigation stage when risk or actual harm is still continuing, resulting in inappropriate and/or unchecked referrals.

39. In the inquiry *In our own words* (2019), the CCYP found that:

- there was disproportionate government expenditure on out-of-home care services. For every dollar spent on out-of-home care services, only 55 cents was spent on intensive family support and family support services combined;
- the funding of the Child Protection system has not kept pace with demand. Despite a 170 per cent increase in notifications, more than a tripling of investigations and a 189 per cent increase in substantiations, between 2008-2009 and 2017-2018, there was only a 73 per cent increase in funding; and
- high caseloads and lack of sufficient investment limited the ability of case workers to establish relationships with children and families and therefore limited the numbers of successful interventions.

40. In the inquiry *Lost not forgotten* (2019), the CCYP considered the experience of 35 children who died by suicide and were known to Child Protection. The inquiry identified that these children needed the system to provide effective and timely early intervention. Instead, they received a service response characterised by delays, fragmentation and shallow focus. For these children, an ineffective early intervention system meant that protective concerns, such as exposure to family violence and parental substance misuse, became an entrenched feature of their lives, despite multiple reports to Child Protection.

41. Six of the children (representing 17 per cent of the group), were Aboriginal. This is an over-representation of Aboriginal children and young people against general population data.

42. For these six Aboriginal children and young people:

- Each of them had experienced four forms of child abuse or maltreatment;

- All of them grew up with intergenerational trauma as a feature in their lives;
- Five of the children had their first contact with Child Protection by five years of age;
- Forty-one reports had been made to Child Protection in relation to the six Aboriginal children and of these reports:
  - 85 per cent of cases (N = 35) had been closed at intake or investigation; and
  - 29 per cent of the reports (N = 12) made to Child Protection were substantiated, which was double the rate of substantiation for non-Aboriginal children.

43. The six Aboriginal children included in the *Lost not forgotten* (2019) inquiry represented 33 per cent of all substantiated reports that resulted in initiation of protective proceedings. The much higher substantiation rate of reports for Aboriginal children and young people suggests that the Child Protection system failed to provide the relevant family supports to Aboriginal families prior to investigation. Each notification provides an opportunity for preventative intervention and the fact that Aboriginal children have a higher rate of substantiation compared to non-Aboriginal children suggests that the interventions are less successful for Aboriginal children.

44. In the inquiry *Lost not forgotten* (2019), the CCYP found that the service response was not adequate for all 35 children. In many cases, reports were closed without further action (e.g. by referring the child or family to a family support services). Where families were referred to other services, not one referral resulted in effective engagement with the family. The CCYP found that successful engagement of families with Child FIRST was impeded by a range of factors, including:

- delays in family service commencement represented a significant barrier to the successful engagement of families in one-quarter of cases reviewed;
- in almost half (48 per cent) of the cases referred to Child FIRST, services provided by community-based child and family services appeared inadequate to meet the complex and frequently chronic protective concerns that families required help to address; and

- only 10 per cent of families recommended to contact Child FIRST via letter subsequently initiated contact.

45. Further, unsuccessful engagement with families did not result in the adoption of a different approach to re-reports or re-referrals. Over half (56 per cent) of the families referred to Child FIRST were referred more than once. None of the referrals resulted in successful engagement with a family service.

*iii. Many Aboriginal children and young people experience further trauma and harm in out-of-home care settings*

46. As the Commissioner, in my view, Aboriginal children and young people experience further harm in the very systems that are meant to protect them (i.e. out-of-home care settings). The adverse experiences of Aboriginal children in care are demonstrated in the systemic inquiries conducted by the CCYP between 2016 and 2021.

47. In relation to out-of-home care generally, the inquiry *Always was, always will be Koori children* (2016) highlighted that Aboriginal children experience further harm while in such settings including:

- Trauma and loss of identity;
- Inappropriate placements;
- Lack of cultural support; and
- Systemic racism.

48. Residential care settings are a last-resort option for children and young people who require out-of-home care but are unable to live in other out-of-home care settings such as kinship care or foster care. In the inquiry *In our own words* (2019) report, the CCYP found that children entering residential care have often experienced the greatest levels of trauma and require the most expert therapeutic care and support. Aboriginal children and young people also face the added impact of intergenerational trauma and disconnection from culture. Unfortunately, children told the CCYP that residential care settings made them feel unsafe, and exposed them to violence, drug use and other criminal activity. They felt they were placed in residential care because they had 'nowhere else to go'. These issues only compound the trauma experienced

by children and young people placed in these settings. The CCYP ultimately found that:

*Based on available data and advice from children and young people, residential care in its current form is unsafe for children and young people and currently places them at an unacceptable risk of harm (Finding 24).*

49. In the inquiry *Out of sight* (2021), the CCYP found that children and young people are absent or missing from residential care at an alarming rate. The CCYP found that the current model of residential care is not meeting children and young people's fundamental need for human connection or, in many cases, safety. Consequently, many children and young people leave residential care to find connection elsewhere. This may be with family or friends. It may also be through people who expose children to sexually or criminally exploitative relationships.

50. Further, in the inquiry *Out of sight* (2021) the CCYP also found that reporting of children going missing from care is inconsistent and, as a result, the full extent of the problem is not known. The CCYP found that children that go missing are vulnerable to sexual exploitation and abuse. Consultations for the inquiry suggested that a lack of support to maintain Aboriginal children and young people's connection to their community, Country and culture was one of the reasons children may go absent or missing to reconnect. One Aboriginal child told the CCYP during the *Out of sight* (2021) inquiry:

*I have tried getting things done – confirmation of Aboriginality – they won't do that. I tried to do a return to Country. They have not done that. The only thing they have done is ordered me stuff that is made on my land. They have not even assigned me to an Aboriginal lawyer. - Rohan, residential care, 17, Aboriginal*

51. In the *Out of sight* (2021) inquiry the CCYP also found than an overreliance on warrants to find and return children who are absent or missing from residential care has the potential to criminalise children and cause further trauma.

*iv. Many Aboriginal children and young people who are entering the Child Protection system (including out-of-home care) have experienced family violence and response to these experiences is poor*

52. A review of various systemic inquiries and Child Death Inquiries indicates that many children entering Child Protection, including out-of-home care, have experienced family violence. Despite this, the CCYP has found that responses to these experiences have often been poor.
53. In the inquiry *Always was, always will be Koori children* (2016), the CCYP found that 868 of the 980 Aboriginal children and young people whose Child Protection files were reviewed had experienced family violence, usually where the victims were their mothers and/or the children or young people themselves.
54. In the inquiry *Neither seen nor heard* (2016), the CCYP considered the issue of family violence in the deaths of children and young people. Between 1 March 2013 and 30 June 2016, the CCYP conducted 127 Child Death Inquiries, including 11 for Aboriginal children and young people. Eight of the Aboriginal children and young people had family violence as a characteristic in their lives. The experiences of these eight Aboriginal children and young people were included in *Neither seen nor heard* (2016).
55. In the majority of Child Death Inquiry reports referred to in Annexure 2, the Aboriginal child or young person had experienced family violence. In many cases, Child Protection did not properly assess the child or young person's experiences, or risk of experiencing, family violence.

56. By way of example, and as referred to in Annexure 2:

- the report of one Child Death Inquiry documented that a report was made to Child Protection of the child having been assaulted again by a step-parent. This report was classified as a child wellbeing report and closed without requiring further action because the child was considered old enough to 'self-protect'; and
- in the same Child Death Inquiry, multiple incidents of harm were treated in isolation rather than considered as a pattern of cumulative harm of family violence and other concerns.

*v. Many Aboriginal children and young people's right to Aboriginal culture is not being upheld when they are removed from their families*

57. Connection to culture can be supported in many ways in the life of an Aboriginal child or young person. It can be through connection to Aboriginal family and community,

participation in cultural events, and learning language, culture and history — all of which reinforce a strong Aboriginal identity. The removal of Aboriginal children and young people from their families is often the first step in disconnection from culture. Delays in the development and implementation of cultural support plans means an Aboriginal child or young person could be missing out on crucial cultural connection and supports.

58. In the inquiry *Always was, always will be Koori children* (2016), the CCYP found that of the 980 Aboriginal children and young people in out-of-home care whose cases were reviewed:

- 42 per cent were placed away from extended family;
- 86 per cent were managed by a non-Aboriginal agency; and
- over 60 per cent were placed with a non-Aboriginal carer.

59. In the inquiry *In our own words* (2019), which dealt with the experiences of Aboriginal children and young people in out-of-home care, the CCYP found that:

- Aboriginal children and young people often enter the out-of-home care system at an earlier age, and are more likely to spend more time in care, than non-Aboriginal children and young people. This means their disconnection from family and culture is happening at a younger age;
- only one in four Aboriginal children and young people were with an Aboriginal carer, meaning there was no day-to-day connection with culture from another Aboriginal person;
- when surveyed by the Department of Health and Human Services (**DHHS**) (now the Department of Families Fairness and Housing (**DFFH**)), only 54 per cent of Aboriginal children and young people in Victoria said they knew about their family background. While 63 per cent of the children said they could follow their culture where they lived, some children indicated that they did not understand the relevance of culture to them; and
- at 31 December 2018, 61 per cent of Aboriginal children and young people did not have a cultural support plan despite such plans being required for every Aboriginal child and young person in out-of-home care under the *CYF Act*.

60. In the report of the inquiry *Always was, always will be Koori children* (2016), one young Aboriginal person who had been in out-of-home care explained:

*A lot of kids come in [to care] not knowing where they are from, their group or clan. I know mine and my clan names. I can say them. I can't speak language. I know where I am from and who I am.*

61. Further, Finding 3 of *In our own words* (2019) was in the following terms:

*Despite significant effort and investment in recent years, poor compliance with legislated processes and principles to support Aboriginal children and young people in care – such as cultural support planning, Aboriginal family-led decision making and the Aboriginal Child Placement Principle – continues to undermine their right to culture. The CCYP also notes that there is considerable variation between departmental divisions and areas regarding compliance with these requirements.*

62. In the inquiry *Keep caring* (2020), the CCYP found that one quarter of Aboriginal young people lacked the opportunity to receive culturally-safe leaving-care support from an Aboriginal community-controlled organisation in the years prior to or following their exit from care. Moreover, the inquiry also found that the Better Futures program run by these organisations was under significant stress to support these Aboriginal young people.

63. In the inquiry *Out of sight* (2021), the CCYP found that Aboriginal children and young people often went missing from residential care to maintain connection with family, community, and culture, as it was absent from their day-to-day lives in care. This meant that these children and young people were potentially exposed to situations in which they were vulnerable and open to exploitation and abuse because of the inadequacy of culturally-appropriate services being provided.

64. In some Child Death Inquiries, the CCYP found that what may be gaps in practices acted as a barrier to children and young people being able to access their right to culture. I outline these barriers in greater detail in Annexure 2.

*vi. There are insufficient culturally safe and developmentally appropriate services for Aboriginal children and young people*



65. Based on my review of the Completed Reports, in my view, there are limited referrals of Aboriginal children and young people to culturally safe and developmentally appropriate services.
66. The limitations in the ability for Aboriginal children and young people to be referred to and to access culturally safe and developmentally appropriate services flow from:
- insufficient funding for the establishment of a sufficient number of culturally safe organisations for Aboriginal children and young people; and
  - insufficient follow up support for a child or young person's engagement with culturally and developmentally appropriate services.
67. In the inquiry *Neither seen nor heard* (2016), the CCYP found that there is a critical need for improving responses to Aboriginal children and young people who experience family violence, which included giving Aboriginal service providers greater control over services that meet the needs of their communities and improved cultural competence for non-Aboriginal agencies.
68. The CCYP heard during the inquiry *Our youth, our way* (2021) that there was an overall lack of culturally appropriate programs for Aboriginal children and young people across the state. This includes a lack of culturally appropriate:
- Housing and accommodation services;
  - Health and specifically mental health services;
  - Alcohol and other drug rehabilitation and healing services;
  - Education and educational support services; and
  - Youth justice diversionary programs.
69. During this inquiry, the CCYP found that the absence of programs on Country and close to family, or inadequate access due to waiting lists, are barriers to children and young people being able to access needed support. The CCYP also found that despite the deep commitment, passion and expertise of existing Aboriginal-led programs in responding to the needs of children and young people, there was often a gap in ongoing funding or monitoring and evaluation of programs to reflect their impact.

70. Further, in the *Our youth, our way* (2021) inquiry, the CCYP found that there is a specific and severe lack of culturally safe and appropriate programs to respond to the needs of Aboriginal children and young people in contact, or at risk of coming into contact, with the youth justice system in Victoria. In addition, the CCYP found that there is scope to strengthen formal referral pathways to programs led by Aboriginal organisations in order to increase protective factors for children and young people at risk of becoming involved in the youth justice system.

*vii. Many Aboriginal children and young people are not properly and fully heard when decisions are made around them about issues which impact them, for example their care*

71. In paragraphs 30-32 of my First Statement, I refer to article 12 of the *United Nations Convention of the Rights of the Child*, which states that all children and young people have the right to participate in decisions affecting their lives. I also refer to the ways that the CCYP helps children and young people exercise this right as part of its work.

72. In my view, the Completed Reports reveal that there is a failure to incorporate the voices of Aboriginal children and young people in the decisions that impact their daily lives and long-term development and planning.

73. In the inquiry *Neither seen nor heard* (2016), the CCYP found that services rarely engaged children and young people who experienced family violence. Instead, services focus on their parents' needs.

74. In the inquiry *In our own words* (2019), the CCYP found that children and young people wanted to participate in decisions affecting their lives in care (Finding 6). For example, some children were not consulted about which school to attend or whether they engaged in cultural activities. This inquiry also identified the barriers to this participation, including the high number of children and young people who did not have an allocated case worker, the lack of direct, face-to-face contact with an allocated case worker, and staffing concerns such as high turnover of Child Protection workers and high caseloads (Finding 7).

75. In the *Our youth, our way* (2021) inquiry, the CCYP found that meaningful participation by Aboriginal children and young people in the youth justice system is limited (Finding 9). Some Child Death Inquiries also found that the voices of children and young people were either not sought or were ignored. In my view, this demonstrates that the services did not understand the challenges experienced by the Aboriginal children and young people experienced, or what they wanted to happen in

their lives. Some of the challenges or wishes of these children and young people included:

- where and with whom they wanted to live;
- wanting to commence and/or maintain connection with their siblings;
- the desire to stay connected with culture and community;
- mental health challenges and learning difficulties they experienced; and
- not wanting to continue working with a particular service provider because they didn't feel safe or supported.

*viii. Kinship carers for Aboriginal children and young people are not adequately supported*

76. At 31 December 2018, there were 5,812 children and young people living in kinship care in Victoria. Of this number, approximately 1,548 were Aboriginal children and young people. In the *In our own words* (2019) inquiry the CCYP found that only 27 per cent of Aboriginal children and young people in kinship care had an Aboriginal carer in their placement.

77. Data from the *Always was, always will be Koori children* (2016) inquiry demonstrates that the Child Protection system provides insufficient support for Aboriginal kinship carers, did not adequately consider Aboriginal culture and values in service delivery and was failing to preserve, promote and develop cultural safety and connection for Aboriginal children in out-of-home care. In this inquiry, the CCYP found that:

- over 60 per cent of the children reviewed during Taskforce 1000 were placed with a non-Aboriginal carer;
- 41 per cent were placed away from their extended family;
- over 40 per cent of children with siblings were separated from their brother or sister; and
- almost half of the non-Aboriginal carers had not been provided with essential cultural awareness training (further contributing to the disconnect of Aboriginal children and young people from culture when they are removed from their families).

78. Further, in the same inquiry, the CCYP found that kinship carers required increased advocacy, support, assistance, training and education to provide culturally safe and trauma-informed care to Aboriginal children requiring out-of-home care.

79. However, despite the changes following the inquiry *Always was, always will be Koori children* (2016), in the inquiry *In our own words* (2019), the CCYP found that although kinship care was the fastest growing type of out-of-home care placement in Victoria (having almost tripled between 2007–2008 and 2017–2018), many kinship carers reported that they do not receive adequate levels of support, including timely access to financial support, ongoing placement support, supervision, monitoring and respite (Finding 31). There was concern from stakeholders consulted during the inquiry about the ability of improvements to keep up with demand, and the need for kinship carers to have training in trauma informed care (Finding 32).

*ix. There are high rates of crossover children, and Aboriginal children and young people in out-of-home care are over-represented in the youth justice system, and at times the care system's response to children results directly in those children's contact with police and Youth Justice*

80. In *Our youth, our way* (2021), the CCYP inquired into experiences of Aboriginal children and young people in Victoria's youth justice system, some who were as young as 10 years old due to the low age of criminal responsibility in Victoria. This inquiry revealed that most Aboriginal children and young people under Youth Justice supervision had also been involved with the Child Protection system. Many of these 'crossover children' had experienced out-of-home care.

81. In the inquiry *Our youth, our way* (2021), the CCYP considered that the specific over-representation of the youngest cohort of Aboriginal 'crossover' children aged 10 to 13 years in the youth justice system indicated that a special focus is required for children known to Child Protection.

82. Further, the CCYP noted at Finding 19 of the inquiry that, in respect of 'crossover children', the Child Protection system was failing to act 'as a good parent would' and that the system was too often abdicating its responsibilities for children and young people when they come into contact with the youth justice system.

83. In the *Our youth, our way* (2021) inquiry, the CCYP found that, in some cases, the experience of out-of-home care and, in particular, residential care, contributes to offending behaviour, police contact, and involvement in the youth justice system for

Aboriginal children and young people (Finding 17). This results in adverse outcomes that might have been avoided had these children and young people not been in out of home care.

*x. Aboriginal children and young people are over-represented in the youth justice system*

84. Data obtained for the *Our youth, our way* (2021) inquiry showed that in 2019-2020 Aboriginal children and young people:

- accounted for 15 per cent of children and young people aged 10 to 17 years under youth justice supervision in Victoria (in the community and in custody), despite making up only 1.5 per cent of Victorian children and young people aged 10 to 23 years;
- were 10 times more likely than non-Aboriginal children and young people to be subject to community-based supervision; and
- were nine times more likely than non-Aboriginal children and young people to be in youth justice custody.

85. Data received for *Our youth, our way* (2021) showed that the rate of over-representation among the youngest age group in the youth justice system was substantially worse. From 2010 to 2019, Aboriginal children made up 30 per cent of children aged 10 to 13 years who received a court order that placed them under the supervision of Youth Justice (169 out of 568 children aged 10 to 13 years). In contrast, Aboriginal children made up only two per cent of children in Victoria aged zero to 14 years.

86. Data obtained by the DJCS from 2010 to 2019 for the *Our youth, our way* (2021) inquiry indicated that:

- raising the minimum age of criminal responsibility in Victoria would remove 21 Aboriginal and 48 non-Aboriginal children aged 10 to 13 years from the youth justice system each year; and
- increasing the minimum age at which a child can be remanded or sentenced to youth justice custody in Victoria to 16 years would have the effect of removing an average of approximately 32 Aboriginal and 150 non-Aboriginal children aged 14 and 15 years from the youth justice custodial system each year.

*xi. Aboriginal children and young people disproportionately experience specific types of harm in youth justice detention*

87. At paragraph 46 of my First Statement and illustrated in Figure 12, I presented evidence that the daily rate of Aboriginal children in detention was 9.6 per 10,000, compared to 1.5 per 10,000 for non-Aboriginal children and young people.

88. The *Our youth, our way* (2021) inquiry report reveals a co-occurrence between higher rates of detention of Aboriginal children and young people with the higher rates of Aboriginal children and young people experiencing issues in detention such as distress, attempted suicide and self-harm.

89. In the inquiry *Our youth, our way* (2021), the CCYP found that:

- Aboriginal children and young people were involved in 42 per cent of all reported suicide attempts and 34 per cent of all reported self-harm incidents in custody in 2018 and 2019; and
- Aboriginal children and young people, when already disconnected from culture, felt that the practice of isolation and lockdowns (increased during the response to COVID-19) was particularly distressing and difficult to deal with.

*xii. Across the Child Protection and youth justice systems, there is a lack of appropriate data collection and record keeping which impacts the care for many Aboriginal children and young people.*

90. To carry out the CCYP's functions, the CCYP needs a complete picture of the profile of an at-risk young person. If the CCYP does not have timely and accurate information about the circumstances affecting an Aboriginal child or young person, its ability to monitor and ensure support is provided to the young person is hindered.

91. A review of the Completed Reports has revealed there are gaps in data collection (e.g. data recorded in relation to a young person only reflecting one of various incidents that have been experienced) and inconsistent data keeping (e.g. use of different incident classification within a database which explain the same kind of incident).

92. In the inquiry *Always was, always will be Koori children* (2016), the CCYP found that there were difficulties in obtaining data about Aboriginal children and young people in

out-of-home care, which impacted on understanding the experiences of these children and young people.

93. In the inquiry *Our youth, our way* (2021), the CCYP found that the current collection and reporting of data on the experiences of, and outcomes for, Aboriginal children and young people in the youth justice system was inadequate (Finding 2). The inquiry also identified that where data is captured in government departments and agencies, it is often deficit-based with little reporting on strengths-based achievements.

94. In the same inquiry, the CCYP found that in many instances important data about children and young people was not captured, was unable to be provided to the CCYP for the inquiry, or was unusable for the inquiry because of gaps and inconsistencies in data collection.

**Question 2: In your view, what are the key systemic issues or areas of concern regarding First Peoples children and young people as alleged victims identified in quantitative statistical data from 1 July 2017 to 30 June 2022 derived from mandatory and public notifications made to the CCYP under the Victorian Reportable Conduct Scheme?**

95. At paragraphs 16 and 17 of my First Statement I provided some background information regarding the Scheme. Further detail about the quantitative statistical data is provided in Annexure 3 attached to my statement. Set out below is further information taken from mandatory and public notifications made to the CCYP from 1 July 2017 to 30 June 2022 regarding Aboriginal children and young people as alleged victims under the Scheme.

96. The Scheme seeks to improve the responses of entities to allegations of child abuse and neglect by their workers and volunteers. As I explain at paragraph 24 above, the Scheme is established by the *CWS Act*.

97. The Scheme has been designed to ensure that the CCYP is aware of every allegation of certain types of misconduct involving children in relevant entities that exercise care, supervision, and authority over children. This allows for independent oversight of organisational responses to allegations of child abuse.

**Summary of the Scheme's operation**

98. When interpreting the data derived from the Scheme, it is helpful to bear in mind

how the Scheme operates and its growth since its commencement in July 2017.

99. Mandatory notifications are required by heads of 'entities' governed by the Scheme (entities are defined at 104 below). These entities must notify the CCYP within three days of becoming aware of 'reportable allegations' against their employees. An 'employee' includes volunteers, entity leaders (e.g. church leaders), and certain people who provide care or supervision. Failure to notify the CCYP of a reportable allegation is a criminal offence.
100. While there is no obligation to do so, any person – such as young people, parents, carers or other members of the public – may also disclose allegations directly to the CCYP via a 'public notification'.
101. 'Reportable allegations' are any information that leads a person to form a reasonable belief that an employee has committed either 'reportable conduct' or misconduct that may involve reportable conduct, whether or not the conduct or misconduct is alleged to have occurred within the course of the person's employment.
102. There are five types of 'reportable conduct' as defined under section 3 of the *CWS Act*. They are:
- sexual offences committed against, with or in the presence of a child (defined as an offence under clause 1 of Schedule 1 of the *Sentencing Act 1991* (Vic));
  - sexual misconduct committed against, with or in the presence of a child (defined as behaviour, physical contact or speech or other communication of a sexual nature, inappropriate touching, grooming behaviour, and voyeurism);
  - physical violence against, with or in the presence of a child;
  - any behaviour that causes significant emotional or psychological harm to a child; and
  - significant neglect of a child.
103. A finding that a person has engaged in reportable conduct can trigger an assessment of whether that person is suitable to continue to work or volunteer with children.
104. Since its commencement on 1 July 2017, the Scheme has grown in four phases to cover 12,000 entities. The entities subject to each phase were:



- Phase 1 (from 1 July 2017) covering an estimated 3,000–3,500 entities, namely registered schools, senior secondary courses and qualifications, operators of student exchange programs, providers of residential services for children with disability, in-patient mental health service providers, in-patient drug and alcohol treatment services, providers of housing and homelessness services that provide overnight beds, Child Protection services, out-of-home care services and Victorian government departments;
- Phase 2 (from 1 January 2018) covering an estimated 4,000 entities, namely religious bodies, residential boarding schools, overnight camps, hospitals, public health services and disability services;
- Phase 3 (from 1 January 2019) covering an estimated 5,000 entities, namely early childhood education providers and a small number of Victorian statutory entities including arts centres, libraries, museums, gardens and zoos; and
- Phase 4 (from 1 May 2020) covering an estimated 10 entities, namely youth organisations such as the Girl Guides and the Scouts.

105. Finally, entities are required to conduct their own investigation into a reportable allegation. Entities must then make findings about whether or not the reportable allegation happened and report them to the CCYP.

#### Data received by the CCYP under the Scheme

106. Between 1 July 2017 and 30 June 2022, the CCYP received:

- 4,774 mandatory notifications; and
- 772 public notifications.

107. These notifications may include multiple reportable allegations because they may relate to more than one reportable allegation, more than one alleged victim, and/or more than one subject of allegation (i.e. the person who is alleged to have engaged in reportable conduct). In total, there were 10,832 reportable allegations contained within these notifications.

108. From a review of the quantitative statistical data from July 2017 to 30 June 2022 derived from notifications made under the Scheme, the key systemic issues and areas of concern regarding Aboriginal children and young people as alleged victims are, in my view, the following:

- i. Aboriginal children and young people are over-represented as alleged victims of child abuse;
- ii. Aboriginal children and young people continue to experience trauma and harm in out-of-home care and youth justice settings;
- iii. there are different outcomes for reportable conduct allegations where the alleged victim is Aboriginal and where the alleged victim is non-Aboriginal; and
- iv. Aboriginal children and young people experience different types of harm to non-Aboriginal children and young people.

*i. Aboriginal children and young people are over-represented as alleged victims of child abuse*

109.Despite representing only two per cent of the population in Victoria, 11 per cent of alleged victims in the notifications received by the CCYP under the Scheme were identified as Aboriginal in the period 1 July 2017 to 30 June 2022. This amounts to 1,241 allegations relating to Aboriginal children and young people.

110.This number may be even higher because across the five-year reporting period for the Scheme, 20 per cent of alleged victims' cultural identity are recorded as 'unknown' or 'not stated'.

*ii. Aboriginal children and young people continue to experience trauma and harm in out-of-home care and youth justice settings*

111.The notifications made to the CCYP under the Scheme illustrate that Aboriginal children and young people continue to experience trauma and harm in out-of-home care and youth justice settings.

112.In the period from 1 July 2017 to 30 June 2022, the three sectors with the highest proportion of reportable allegations overall were out-of-home care, education and early childhood sectors. However, for Aboriginal children and young people, the three sectors with the highest proportion of reportable allegations came from the out-of-home care (26 per cent), Child Protection (16 per cent) and youth justice (15 per cent) sectors.

113.In this same period, the CCYP has observed notable variances in the proportion of reportable allegations made under the Scheme, across a number of sectors,

where the alleged victims are identified as Aboriginal. In my view, the variance suggests under-reporting. For example:

- Aboriginal children and young people made up 2.5 per cent of all students in government schools, up from 2.1 per cent in 2017. However, only one per cent of allegations of reportable conduct in the education sector have involved an alleged victim who identifies as Aboriginal; and
- while Aboriginal children make up 22 per cent of children in the Child Protection system, only 16 per cent of alleged victims involving the Child Protection sector were identified as Aboriginal.

*iii. there are different outcomes for reportable conduct allegations where the alleged victim is Aboriginal and where the alleged victim is non-Aboriginal*

114. Annexure 3 outlines that the data received by the CCYP from entities who have conducted investigations into reportable allegations. Annexure 3 sets out the different outcomes for reportable conduct allegations for alleged Aboriginal victims and non-Aboriginal victims.

115. It is notable that, between 1 July 2017 and 30 June 2022, the proportion of findings of 'unsubstantiated – lack of evidence of weight' were higher where the alleged victim identifies as Aboriginal (27 per cent) compared to the general population (22 per cent). The reasons for this difference are not clear, but this is a concerning factor.

*iv. Aboriginal children and young people experience different types of harm to non-Aboriginal children and young people*

116. Annexure 3 also shows the category of conduct involved in the reportable allegations over the period 1 July 2017 and 30 June 2022.

117. For alleged Aboriginal victims, the highest conduct categories were physical violence (45 per cent); emotional or psychological harm (24 per cent); and significant neglect of child (22 per cent). In contrast, for alleged non-Aboriginal victims, the highest conduct categories were physical violence (43 per cent); emotional or psychological harm (19 per cent); and sexual misconduct (18 per cent).

118. In certain conduct categories, there are also notable statistical differences in the proportion of alleged victims who are known to be Aboriginal compared to non-

Aboriginal children and young people:

- While sexual misconduct accounted for 20 per cent of reportable allegations for all alleged victims, the rate of allegations involving sexual misconduct drops to six per cent where the identity of the alleged victim was known to be Aboriginal; and
- Allegations of significant neglect of a child were substantially higher as a proportion where the alleged victim is Aboriginal (22 per cent) compared to the total population (13 per cent).

**Question 3: In your view, to the extent that it is not covered in Questions 1 and 2, are there any other systemic issues or areas of concern for First Peoples children and young people who are in, are at risk of entering, or have been in the Child Protection system (including out-of-home care) and/or the youth justice systems derived from your role as Commissioner for Aboriginal Children and Young People (including your attendance, as the Commissioner, at meetings of the Aboriginal Justice Forum, Aboriginal Children's Forum and other stakeholder meetings).**

119. At paragraphs 18 to 22 of my First Statement, I set out my role and the key differences between my role and the Principal Commissioner. I wish to highlight some specific aspects of my work from where I have drawn systemic issues and areas of concern that I believe are useful for the Commission to consider.

Areas of my role that inform my identification of systemic issues or areas of concern not raised in Question 1

*Listening to and talking with Aboriginal children and young people*

120. A cornerstone of the work we do at the CCYP is engaging with children and young people to ensure their voices are heard in our work, and in system change. In my role, I have the privilege of meeting directly with Aboriginal children and young people in Victoria. These discussions can involve:

- Aboriginal children and young people sharing with me their experiences receiving Child Protection services, being in out-of-home care and/or the youth justice system;
- Seeking change for Aboriginal children and young people receiving Child Protection services, in out-of-home care and/or in the youth justice system (including youth justice detention), on both an individual and a systemic level.

- my participation in group activities and engagement with Aboriginal Community-Controlled Organisations (**ACCOs**) and other services to hear the experiences of Aboriginal children and young people growing up in Victoria (i.e. children who may or may not be involved in or have been involved in Child Protection or youth justice systems); and
- consultation sessions for specific purposes (i.e. the CCYP's current systemic inquiry into educational experiences of children and young people in the out-of-home care system, borne out of the experiences heard in the *In our own words* (2019) inquiry).

### *Engagement with the Aboriginal community*

121. In my role as the Commissioner, I engage in regular and informal stakeholder meetings with members of the Aboriginal community who are concerned about Aboriginal children and young people. Such people include:

- parents and families of Aboriginal children and young people who have been removed from them through the Child Protection system or who have been engaged in the youth justice system;
- Aboriginal kinship carers who are caring for Aboriginal children and young people in formal or non-formal care arrangements;
- Aboriginal people leading and working in Aboriginal community-controlled services delivering Child Protection and youth justice services; and
- Aboriginal people working in governmental and non-Aboriginal organisations who are delivering Child Protection and youth justice services.

### *Engagement with non-Aboriginal stakeholders*

122. I also speak with many non-Aboriginal people who work in these systems, non-Aboriginal people who have Aboriginal children and young people, and non-Aboriginal people who provide out-of-home care for Aboriginal children and young people.

### *Systemic advocacy for Aboriginal children and young people*

123. A key aspect of my role as the Commissioner is promoting the rights of Aboriginal children and young people in forums which bring together ACCOs, non-Aboriginal

organisations, and government departments in formal partnership arrangements to make systemic change in their lives. These are the Aboriginal Children's Forum, Aboriginal Justice Forum, Dhelk Dja Indigenous Family Violence Forum, and Marrung Governance Forum relating to Aboriginal students and education.

124. I also meet regularly with the relevant Ministers and Secretaries for the DFFH and the DJCS to discuss systemic issues.

*Monitoring of the experiences of Aboriginal children and young people in out-of-home care and youth justice.*

125. In my role as Commissioner, I see information from both the DFFH and the DJCS concerning adverse events relating to a child or young person in out-of-home care or a person detained in a youth justice centre or a youth residential centre that is relevant to the Commission's function. The disclosure of this information is required by section 60A of the *CCYP Act*.

126. The Client Incident Management System (**CIMS**) is the reporting system that the DFFH uses to capture client incidents that occur during service delivery and result in harm, and the responses to those incidents. It is maintained by the DFFH. It covers incidents in all forms of out-of-home care – residential care, kinship and foster care, and secure welfare facilities. The CIMS provides the CCYP with timely access to information about an adverse event relating to a child in out-of-home care incidents. This information is necessary to enable the CCYP to perform its monitoring functions.

127. In accordance with its obligations under section 60A of the *CCYP Act*, the Performance and Evaluation Team of the DJCS provides the CCYP with monthly data about Category One and Category Two incidents relating to a child detained in a youth justice centre or a youth residential centre. Category One incidents are the most serious incidents and include incidents such as the death of a young person, allegations of physical or sexual assault, and serious behavioural issues that impact on young people or staff safety. This could include: serious assaults (including children and young people against staff and against other children and young people); riotous behaviour; and serious injury or illness requiring medical treatment and/or hospitalisation. Category Two incidents relate to events that threaten the health, safety and/or wellbeing of children, young people and others.

128. As part of its monitoring role, the CCYP also receives a variety of approaches and complaints from the community, mostly about the safety and wellbeing of children

and young people known to Child Protection. As published in our 2021-2022 Annual Report, the CCYP responded to a total of 378 approaches, of which 118 (31 per cent) related to Aboriginal families and/or children and young people. Approaches relating to Aboriginal families and/or children and young people are brought to my attention to consider how the CCYP can respond. As the CCYP does not have legislative authority to investigate these matters, the CCYP usually provides information and referrals as appropriate. In some circumstances, depending on what has been brought to the CCYP's attention, the CCYP can request further information about an adverse incident from the DFFH or the DJCS under section 60A of the *CCYP Act*.

*Consideration of requests to de-identify incorrectly identified Aboriginal children and young people*

129. In the inquiry *Always was, always will be Koori children* (2016), the CCYP found that there had been incidents of Aboriginal children and young people being de-identified in Child Protection records, which led to Aboriginal children and young people becoming disconnected from culture and appropriate culturally safe services.
130. Recommendation 6.14 of that inquiry required the then DHHS (now the DFFH) to consult with and seek approval from the Commissioner for Aboriginal Children and Young People and the proposed Chief Practitioner for Aboriginal Children in relation to any decision to change the identification of an Aboriginal child to 'non-Aboriginal'.
131. Current practice is now for the Statewide Principal Practitioner – Aboriginal Children and Families, Office of Professional Practice to bring every request for de-identification to me as the Commissioner for consultation and approval. Each request for deidentifying a child or young person requires the appropriate and sensitive consideration, particularly if a child or young person is of an age where they themselves understand their identify as Aboriginal, or they have been receiving cultural supports and culturally sensitive services on the basis of that identification.
132. Each request must include information about how the child or young person came to be identified as Aboriginal initially; the information that has since come to light to warrant changing that identity; what services the child or young person and their family are receiving (particularly if cultural supports or from an Aboriginal service

provider); and, if appropriate and necessary, what are the supports for the child or young person in being told they are going to be de-identified.

*Review of inquiries for individual Aboriginal children and young people*

133. Under section 34 of the *CCYP Act*, the CCYP must conduct an inquiry in relation to a child who has died and who was a Child Protection client at the time of their death or in within 12 months before their death. This inquiry must be related to the services provided, or omitted to be provided, to other child before their death.
134. Under section 37 of the *CCYP Act*, the CCYP may conduct an inquiry concerning a child or young person if it considers it appropriate to do so in relation to the safety or wellbeing of a vulnerable child or young person, or a group of vulnerable children or young people. Under section 38, the Minister may recommend such an inquiry. These inquiries must relate to the services provided, or omitted to be provided, to the subject of the inquiry.
135. Along with our Principal Commissioner, I review all of these inquiries when they involve an Aboriginal child or young person and offer advice to the CCYP team which conducts these inquiries. These inquiries are very detailed and often contain very sad information about Aboriginal children and young people who have lived lives of harm and trauma. The CCYP uses their stories, and the stories of all children and young people for whom the CCYP conducts such an inquiry, to make findings and recommendations for improvement of the Child Protection system.

Systemic issues or areas of concern

136. Based on what I observe in my role as the Commissioner, I have identified the following additional systemic issues and areas of concern for Aboriginal children and young people who are in, are at risk of entering, or have been in the Child Protection system (including out-of-home care) and/or the youth justice systems.
- i. Experiences of racism have a negative impact on Aboriginal children and young people, leaving them feeling disconnected, disengaged, and disempowered.*
137. As a child and young person, I experienced much racism. It is a horrible experience that you hope no other child or young person goes through.
138. I have been told by Aboriginal children and young people that they experience racism in educational settings from their peers at school, as well as from teachers and other school staff. I have seen Aboriginal children and young people in tears — but also angry — about these experiences. Their parents have also spoken of



frustration about how schools respond to claims of racism, including not taking the issue of racism seriously, taking too long to deal with claims, or dealing with claims inadequately so the issue continues. These types of experiences make it difficult for Aboriginal children and young people to engage with education.

139. For Aboriginal children and young people in out-of-home care in particular, education can provide consistency of routine and connection with peers that is vital to their wellbeing. However, if their experiences in the education system are tainted with racism and cultural insensitivity, these children and young people begin to disengage with education.

140. Further, when Aboriginal children and young people — like any child or young person — becomes disengaged from education without something else occupying their time, they are at the risk of becoming engaged with the youth justice system.

*ii. Lack of support for kinship carers*

141. In addition to the systemic issues raised in response to Question 1 regarding supports for kinship carers, I have heard directly from Aboriginal people providing kinship care that there are often many Aboriginal children and young people in a single kinship care placement. In turn, this sees an overreliance on a kinship carer's own resources, and delays in responding to a child or young person's need from kinship carers. Children may come to new care settings with different concerns — often including trauma from their past experiences. Depending on the nature of these concerns, that child or young person's behaviour can sometimes have a negative impact on other children and young people cared for by the same kinship carer.

142. Most children and young people, including Aboriginal children and young people, are placed in kinship care when they are placed in out-of-home care. This is despite kinship carers being the most under-resourced provider of out-of-home care.

*iii. Quality of cultural support plans for Aboriginal children and young people in out of home care.*

143. In my role, I see some cultural support plans for Aboriginal children and young people. In my view, best practice cultural support plans contain information about the child or young person's family structure and culture (including country), include the voice of the child or young person, are living documents that are continually updated and assist carers to maintain a child or young person's connection to

culture, country and community.

144. However, several cultural support plans that I have observed for Aboriginal children and young people contained recurring issues, including:

- Being out of date by sometimes up to 12 months;
- Failing to reflect the current circumstances of the child or young person (e.g. where a child has moved from kinship care to residential care, the cultural support plan had not been updated even months after the move);
- Lacking input from the child or young person themselves as to what they wanted; and
- Not providing much guidance for a carer on how to carry out cultural support.

145. The lack of quality in many cultural support plans means that far too many Aboriginal children and young people in out-of-home care are at risk of not having their cultural needs met.

*iv. Incorrect identification of children and young people as Aboriginal*

146. In considering requests to deidentify a child or young person in Child Protection record keeping systems who has been incorrectly identified as Aboriginal, I see evidence of Child Protection practitioners who are not appropriately asking about Aboriginal identity for Aboriginal children and young people and their families. This is demonstrated by the following observations in requests for deidentification of a child or young person who has been incorrectly identified as Aboriginal:

- The majority of requests appear to involve practitioners who have made an assumption about a child or young person's Aboriginal identity based on their physical appearance. Later in engagement with the child or young person's family, when a parent or relative has been asked about Aboriginal identity, they have identified themselves as often being from a community of colour;
- There have been instances where a child or young person of an 'Islander' background has been incorrectly assumed to be Torres Strait Islander, rather than inquiring further. Some of these children and young people were in fact Maori, Samoan, Fijian or from another Pacific nation; and

- Children and young people have been incorrectly identified as Aboriginal because assumptions have been made about parentage, especially when there are Aboriginal siblings from either biological or stepparents and other relatives.

*v. Challenges for Aboriginal people working in non-Aboriginal organisations, such as government*

147. Aboriginal people working in non-Aboriginal systems and organisations, including government, have spoken to me about feeling culturally unsafe and unsupported in the work they want to do for Aboriginal children and young people and their families. Often, these Aboriginal people are wanting to try to create change within the system, and are often in roles designated to improve service practice and engagement with Aboriginal community. This often leads to Aboriginal workers leaving the workforce, which in turn impacts Aboriginal children and young people because there are fewer Aboriginal workers.

*vi. Negative interactions with police*

148. I have spoken with Aboriginal children and young people about feeling targeted by the police, especially in residential care settings. When their behaviour becomes 'too much' for a residential care worker, who may not be appropriately skilled to deal with a child or young person's behaviour (often stemming from unaddressed cumulative trauma), the police will be called to respond. This can often lead to the escalation of situations, and sometimes to the Aboriginal child or young person facing criminal charges based on their interactions with police.

149. When a child or young person is missing from out-of-home care, and when Child Protection workers have exhausted all options for finding that person, and where police involvement is the only viable option, a 'safe custody warrant' or 'emergency care search warrant', is issued by the Children's Court pursuant to section 598 of the *CYF Act*. The warrant authorises police to enter and search any place where the child or young person named in the warrant is suspected to be, to place the child in emergency care, and to take the child to the place specified in the warrant or nominated by Child Protection. A warrant may direct police to hold a child or young person pending assessment by Child Protection.

150. Aboriginal children and young people have spoken to me about being 'picked up by the police' on such warrants, and feeling like they were criminals. As mentioned in response to Question 1, Aboriginal children and young people are sometimes away from their placements because they are seeking connection to family and

culture. Such interactions further contribute to the distrust of police by Aboriginal children and young people and the broader community. In turn, when Aboriginal children and young people are the victim of a criminal offence, it can be difficult for them to view the police as a safe place for them to make a complaint.

*vii. Challenges and concerns for Aboriginal community-controlled organisations*

151. Aboriginal leaders and employees in ACCOs have spoken to me of the frustrations caused by funding arrangements that do not allow them to work with Aboriginal children and young people and their families in ways that respond to their needs. There is simply not enough funding to deal with the ever growing need that is presented in their communities.

152. ACCOs often grapple with funding for shorter periods, which can make it difficult for them to recruit employees who are looking for stability in a role. A contract or non-ongoing role can be a deterrent for suitably skilled and experienced Aboriginal people. This challenge is particularly pronounced in regional and rural areas.

*viii. A focus on tertiary systems in both Child Protection and youth justice*

153. At forums such as the Aboriginal Children's Forum, I hear language that sadly seems to suggest an inevitability of Aboriginal children and young people being removed from their families by Child Protection or becoming involved in the youth justice system. I see far greater investment in ACCOs to provide tertiary end services and not enough for early intervention.

154. Data shared by the DFFH at Aboriginal Children's Forums shows that non-Aboriginal organisations are funded for a far wider range of what are considered 'prevention and early intervention services'. Within these services, the only ACCOs that receive this type of funding from the DFFH appear to be kindergarten play groups. Low participation numbers for Aboriginal families in non-Aboriginal organisations in these prevention and early intervention programs indicate that they are not being taken up in ways that might be if they were offered at Aboriginal organisations.

155. I have heard from ACCOs who want to work to keep Aboriginal children and young people safe with their families. They want to deliver family strengthening programs that address intergenerational traumas of Aboriginal parents and break the cycle of intervention by Child Protection services and youth justice involvement. They also want to work in ways that keep Child Protection services out of the lives of Aboriginal families, and do not want to be seen as being part of

the process of child removal. However, there is limited funding that goes to Aboriginal organisations specifically for prevention and early intervention.

*ix. Over-representation and institutionalisation of Aboriginal children and young people in secure welfare.*

156. In my role as the Commissioner, I have seen an over-representation of Aboriginal children and young people having extended and repeated placements in secure welfare. I have seen this in the context of an Aboriginal child or young person becoming 'too difficult' in their out-of-home care setting, usually residential care.

157. On a visit to the secure welfare unit in Maribyrnong on 6 September 2022, there were four Aboriginal children and young people in six of the available beds (the unit has capacity for eight, and my understanding from my visit was that two additional beds were out of use for COVID-19 reasons). My concern is that such experiences compound the institutionalisation of these Aboriginal children and young people, undermining their ability to make decisions for themselves or cope with change.

158. It also raises the concern that there are staff in residential care units do not have the appropriate skills to be able to deal with the behaviours of traumatised Aboriginal children and young people, and there becomes an overreliance on secure welfare.

*x. Specific experiences of harm and trauma in out-of-home care.*

159. As noted above in response to Question 1, Aboriginal children and young people are over-represented in out-of-home care when compared to the general population. Accordingly, for this reason alone, Aboriginal children and young people are disproportionately affected by adverse incidents which occur in out-of-home care.

160. Despite higher levels of Aboriginal children and young people in out-of-home care (28 per cent), reports between 1 July 2019 and 30 June 2022 indicate that these children were, by proportion, under-represented in incidents occurring in out-of-home care at a much lower levels (20 per cent of all incidents). It may be that some incidents are being under-reported or not being recorded in the appropriate way.

161. Of the reported incidents, data shows Aboriginal children and young people experience certain types of harm in out-of-home care settings at proportionately

greater levels when compared with the general population. Data from CIMS indicates:

- between 2019 and 2022, the top five incident types for Aboriginal children and young people in out-of-home care by number were: absent client (missing from placement); dangerous actions of the child or young person; self-harm or attempted suicide; inappropriate physical treatment of the child or young person; and physical abuse;
- in the 2021-2022 financial year, Aboriginal children and young people were involved in five incidents categorized as 'death' out of a total of 16 deaths in this time period. This is the equivalent to 31 per cent of all 'death' incidents, which is higher than the population of the Aboriginal children and young people in out-of-home care for the same year (28 per cent); and
- in the 2021-2022 financial year, there were 104 sexual exploitation incidents involving Aboriginal children and young people in out-of-home care. This is equivalent to 34 per cent of the incidents, which is higher than the population of Aboriginal children and young people in out-of-home care for the same year (29 per cent).

162. In our 2021-2022 Annual Report, the CCYP reported on systemic issues in out-of-home care and identified that the number of self-harm/attempted suicides reported in out-of-home care has increased by almost 70 per cent since 2019. Of the 3,293 self-harm and attempted suicide incidents in out-of-home care reported in the past three financial years, 18 per cent of the incidents involved Aboriginal and Torres Strait Islander children. 81 per cent of the incidents took place in residential care settings. Almost five per cent (4.6 per cent) involved children aged 5 to 11 years, and 64 per cent of these incidents took place in residential care settings.

*xi. High rates of attempted suicide and self-harm for Aboriginal children and young people in youth justice detention*

163. As also noted under Question 1 at paragraph 84, Aboriginal children and young people are over-represented in the youth justice system. When it comes to Category One incidents, Aboriginal children and young people are further over-represented. Between 1 July 2019 and 30 June 2022, they were involved in 19 per cent of all Category One incidents, despite accounting for 15 per cent of those within the youth justice system.

164. Suicide amongst Aboriginal children and young people is a specific and significant concern for the Aboriginal community. From 1 July 2019 to 30 June 2022, the data that the CCYP has received from the DJCS under section 60A of the *CCYP Act* demonstrates that Aboriginal children and young people are over-represented in self-harm and attempted suicide incidents. During this period, there were 193 incidents, and of these 90 attempts related to one child. Excluding incidents which relate to this particular child's incidents from the data set, Aboriginal children and young people were involved in over one third (36 per cent) of incidents involving self-harm and suicide attempts. This represents a substantial over-representation when compared to the average of 12 per cent for the general population. Further detail about the quantitative statistical data is provided in Annexure 4 attached to my statement.

*xii. Other harms experienced in youth justice settings*

165. The data shows that Aboriginal children and young people are the subject of incidents involving the problematic use of force (such as oleoresin capicum (OC) spray and periods in isolation) or police assaults at levels roughly equal to the rate of incidents affecting the general population within the youth justice system. However, as noted above under Question 1, Aboriginal children and young people remain over-represented within the youth justice system (15 per cent of those under youth justice supervision). This means they are affected by these issues at disproportionately higher rates when compared to all children within Victoria generally.

**Question 4: Do you consider systemic issues or areas of concern to be different between First Peoples children and young people and non-First Peoples children and young people? If so, describe how.**

166. At paragraphs 32 to 36 above, I describe the over-representation of Aboriginal children and young people in the out-of-home care and youth justice systems. While these systems have systemic flaws impacting all children, as the data shows, their failings have a disproportionate impact on Aboriginal children and their families.

167. As was recently noted in the report of the *Our youth, our way* (2021) inquiry that 'the drivers of challenging and problematic behaviours in children often lie in issues related to welfare, health and wellbeing, education and poverty'. The financial burden, insecurity and stress associated with poverty and socio-

economic disadvantage stifle families' abilities to provide a safe and nurturing environment for their children to thrive.

168. These issues are particularly acute for Aboriginal families, many of which have experiences of intergenerational trauma stemming from the impacts of colonisation, dispossession of land and various iterations of interventionist, coercive and harmful policies. This has resulted in Aboriginal children and families experiencing worse outcomes compared with non-Aboriginal children and families, including shorter life expectancy, poorer health, higher rates of mental health issues, poverty and housing insecurity.

169. Aboriginal children and their families have been and continue to be excluded from participating in decision making relating to Australia's political and governmental institutions. They have been subject to systems that are culturally unsafe and institutionally racist. Despite numerous inquiries and royal commissions into systems that disproportionately adversely impact Aboriginal and Torres Strait Islander people and subsequent recommendations to address institutionalised racism, it continues to this day in Victoria. As was highlighted in the CCYP's recent report *Our youth, our way* (2021):

*Over-representation does not reflect the criminality of Aboriginal children and young people in the youth justice system. Rather, it is the result of structural racism produced by the structures, policies and practices that underpin our social institutions and determine how they operate. This applies not only to the youth justice system, but also to its interrelationship with other systems, including the Child Protection, health, housing and education systems.*

170. These issues are also illustrated in the inquiry *Always was, always will be Koori children* (2016), which undertook detailed surveys of 980 Aboriginal children and young people in the out-of-home care system, creating a genogram of their families' experiences. The CCYP found that these surveys:

*...painted a picture of the impact of invasion and colonization, of intergenerational disengagement and disempowerment. They were critical in understanding how past government policies have impacted on Aboriginal children, their families and community today. Through the genograms, we saw generations of connection with the criminal justice and Child Protection systems, unemployment, poverty, poor education, high rates of suicide and the over-riding impact of the past impacting on the present.*



171. Addressing the systemic drivers of over-representation of Aboriginal children and young people in the Child Protection and youth justice systems is therefore critical.

**Question 5: From your review of CCYP reports of inquiries conducted under sections 39 and 40 of the CCYP Act and given by CCYP to the Minister and the Secretary under section 46 of that Act, what is the status of the recommendations concerning First Peoples children and young people?**

172. By way of background, the CCYP makes recommendations based on the findings of the systemic inquiries undertaken under sections 39 and 40 of the *CCYP Act*. These recommendations are included in the reports delivered to the Minister and the Secretary under section 46 of the *CCYP Act*.

173. Implementing recommendations, whilst making some improvements, may not completely address the systemic issues identified by an inquiry. Some of the CCYP's findings in systemic inquiries capture the systemic issues of the Child Protection and youth justice systems that are borne out of decades of embedded practice, policy and attitudes about Aboriginal children and young people and their families. There are instances where, although an inquiry's recommendation is implemented, the systemic issues persist and continue to impact on Aboriginal children and young people. Systemic changes require sustained attention with appropriate resourcing to ensure the issues identified are dealt with.

174. Further, in my view, the process of monitoring recommendations against systemic inquiries is a complex one. Older systemic inquiries are often superseded by new systemic inquiries which seek to address the same persisting systemic issues. In the 2020-2021 Annual Report, the CCYP began to publish additional detail about action taken in response to our recommendations and have committed to this on an annual basis. In the 2021-2022 Annual Report, the CCYP requested an update from the DFFH in relation to the inquiries *Lost not forgotten* (2019), *In our own words* (2019), *Keep caring* (2020) and *Out of sight* (2021). For the 2022-2023 Annual Report, we will include the status of recommendations for *Our youth, our way* (2021).

175. In the time available, I have reviewed the CCYP reports of inquiries conducted under sections 39 and 40 of the *CCYP Act* and given by the CCYP to the Minister and Secretary under section 46 of that Act (as described in Annexure 1 to this statement), and can provide the Commission with a general overview of the status of the recommendations concerning First Peoples children and young people

arising from each of the relevant reports.

*Always was, always will be Koori children: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria (2016)*

176. The report of this systemic inquiry contained 79 recommendations. Fifty-seven recommendations have been implemented (e.g. funding ACCOs to provide 'one stop shops' for Aboriginal families to get support) and 11 have been retired for reasons such as the passage of time or self-determination perspectives of Aboriginal community.

177. In my view, there are still 10 recommendations from this inquiry that are in the process of implementation, particularly in relation to the appropriate resourcing of the ACSASS and the continuing promotion of the Aboriginal Child Placement Principle.

178. Finally, there is one recommendation for which evidence of its commencement remains outstanding. This recommendation is for collaboration between the DFFH and the Department of Education to improve the capacity of staff working with Aboriginal children and young people in out-of-home care to work with Aboriginal services.

179. While one recommendation remains outstanding from this inquiry, I note that the CCYP is separately undertaking an inquiry into the educational experiences of children and young people in out-of-home care, which is due for tabling in Parliament later this year.

*In the child's best interests: Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria (2016)*

180. The report of this systemic inquiry contained 54 recommendations, three of which have since been retired. Whilst 42 recommendations have been implemented, (e.g. recommendations relating to improved practices of Child Protection staff when working with the ACSASS), in my view, there are still nine recommendations which are still in the process of implementation.

181. Many of these remaining recommendations relate to the improved implementation of all five of the Aboriginal Child Placement Principles. At the time of writing this statement, the *Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Bill 2023* is before the Legislative Council and will enshrine all five parts of the Aboriginal Child

Placement Principle.

182. Past experience suggests that significant effort will be required to bring effect to these changes. For example, it should be noted that Cultural Support Plans were made mandatory in March 2016 for all Aboriginal children and young people in out of home care, yet in my role as Commissioner I do not see full compliance with Cultural Support Plan requirements.

*Neither seen nor heard: Inquiry into issues of family violence in child deaths (2016)*

183. The report of this systemic inquiry contained 13 recommendations. These recommendations have been subsumed by subsequent inquiries, such as *Lost not forgotten (2019)*. Recommendations were made to address cumulative harm in 2016. These recommendations remain 'in progress' and the CCYP continues to identify poor assessment of, and response to, cumulative harm in many child death inquiries.

*Safe and wanted: Inquiry into the implementation of the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014 (2017)*

184. The report of this systemic inquiry contained 40 recommendations. Since the inquiry was published less than a year after *Always was, always will be Koori children (2016)* and *In the child's best interests (2016)*, there are recommendations in *Safe and wanted (2017)* that call for implementation of recommendations from those two inquiries.

185. Based on my review of CCYP's records for the monitoring of these recommendations, in my view:

- Ten recommendations have been implemented;
- Five recommendations have been retired because they have been superseded by later systemic inquiries, such as *In our own words* and *Lost not forgotten*;
- Five have been retired to be follow up by the Aboriginal Children's Forum;
- Eight recommendations are being monitored by the CCYP as they are in the process of implementation; and
- Twelve recommendations have not been progressed by the relevant government department.

*The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system (2017)*

186. The report of this systemic inquiry contained 21 recommendations. In my view, there are four recommendations which the CCYP are monitoring, particularly in relation to amendments to legislation which will come with a new Youth Justice Act which is yet to be introduced into the Victorian Parliament.

*Lost not forgotten: Inquiry into children who died by suicide and were known to Child Protection (2019)*

187. The report of this systemic inquiry contained six recommendations. The Victorian Government accepted three recommendations in full and three in principle.

188. In the CCYP's 2021-2022 Annual Report, the CCYP assessed the status of these recommendations as:

- One recommendation was 'completed', being the Victorian Government's commitment to implemented the Child Link Register, with a view to the commencement of its operation by December 2021;
- Four recommendations were 'in progress', including the development of a child suicide prevention strategy and a mechanism for DFFH to track and report on the effectiveness of referrals by Child Protection to family services; and
- One recommendation was 'planned for implementation', being the development, modelling and implementation of an integrated and whole-of-system investment model and strategy for the child and family system. This system is focussed on earlier intervention and prevention services to reduce risks to children and build child and family wellbeing. The aim is to reduce the rate of entry into care; meeting the distinct needs of children who need to live away from the family home.

*In our own words: Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system (2019)*

189. The report of this systemic inquiry contained 17 'head' recommendations, some with multiple sub-recommendations. The Victorian Government accepted six recommendations in full and 11 in principle. In my view, because there are some sub-recommendations within a head recommendation that are at differing stages of completion, I cannot say that any recommendations have been fully

implemented although I acknowledge that parts of them have.

190. This report contained 11 recommendations that are in progress, including the embedding of processes to allow children and young people's voices to be heard in all stages of decision making in out-of-home care. A further six recommendations are planned for implementation, including those relating to a specialised complaint function for children and young people in care, whether about their immediate safety or their ongoing care.

*Keep caring: Systemic inquiry into services for young people transitioning from out-of-home care (2020)*

191. The report of this systemic inquiry contained 15 recommendations. One recommendation has been implemented, being increased investment to Home Stretch by the Victorian Government to support young people in kinship or foster care to stay with their carers until the age of 21, if so desired.

192. DFFH's initial response to the CCYP in 2020-2021 indicated acceptance of six of the inquiry's recommendation in full and nine in principle.

193. Nine recommendations are in progress for implementation, including early supports for young people leaving care, with a focus on key living skills and other supports. Five recommendations are planned for implementation. These relate to developing a mechanism to track the life outcomes of young people leaving out-of-home care.

*Out of sight: Systemic inquiry into children and young people who are absent or missing from residential care (2021)*

194. The report of this systemic inquiry contained 18 recommendations representing 34 proposed actions. The CCYP received the DFFH's first action plan to *Out of sight (2021)* in November 2021, accepting 15 recommendations in full and 19 in principle. In the CCYP's 2021-2022 Annual Report, the CCYP assessed the status of these recommendations as:

- Ten recommendations were 'in progress', including models of residential care that promote trust for children and young people;
- Seven recommendations were 'planned for implementation', including coordinated and collaborative trauma informed responses from a range of

agencies (e.g. Victoria Police) to support the needs of children and young people who go missing from out- of-home care; and

- One recommendation was 'not progressed', being the CCYP's recommendation for an improved understanding of child sexual exploitation and response across many agencies.

*Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system (2021)*

195. The report of this systemic inquiry contained 75 recommendations. In February 2022, the Victorian Government released its response to *Our youth, our way* and launched Victoria's first Aboriginal Justice Strategy, *Wirkara Kulpa*, which will implement some of these recommendations. As the Victorian Government response was released in February 2022, the CCYP is yet to have a full financial year to assess the implementation of the recommendations.

196. In assessing the response and planned actions to implement, in my view:

- 48 recommendations have planned actions that demonstrate full or part acceptance of the recommendation. However, in order to be deemed as acquitted, many of these require the introduction into Parliament of the Youth Justice Act, which has been delayed for nearly one year; and
- 27 recommendations have planned actions that do not demonstrate acceptance of the recommendation. This includes recommendations relating to bail reform and raising the age of criminal responsibility.

197. The Aboriginal Youth Justice Working Group (of the Aboriginal Justice Forum) monitors the recommendations of the *Our youth our way* (2021) inquiry. The working group is a collaborative process of discussion and input from Aboriginal community organisations and representatives involved in the working group.

**Question 6: In your view, what are the steps that can be taken to prevent or mitigate the systemic issues or areas of concern identified in Questions 1 to 4 above?**

198. It must always be remembered that despite the over-representation of Aboriginal children and young people engaged with Child Protection services, in out-of-home care and the youth justice system, the majority of Aboriginal children and young people in Victoria are safe and well with their families, and strong in culture and identity. The protective factors that support this include:

- Strength of culture and identity;
- Stability of home life, including access to safe housing and reliability of income for care providers;
- Good health and wellbeing, in all its forms, of family and the individual child or young person;
- Access to services for families and children or young people when needed;
- Connection with and support from kinship ties, such as grandparents, parental siblings, cousins, and extended family; and
- Positive engagement with education systems.

199. With the ongoing impact of colonisation, entrenched disadvantage, and poverty that too many Aboriginal people experience, the Victorian Government must ensure that all Aboriginal children and young people — as for all Victorian children and young people — have the opportunity to flourish and reach their full potential. In my view, this requires recognition of and redress for historical injustices as well as a whole-of-government approach that addresses the various domains of wellbeing, including social, economic and cultural factors. Only through comprehensive and collaborative action driven by self-determination can these systems begin to improve and facilitate better outcomes for Aboriginal children and their families.

200. As summarised in response to Question 5, the CCYP has made hundreds of recommendations to improve the Child Protection system and youth justice systems in its systemic inquiries. Many of these are specifically in relation to Aboriginal children and young people. In my view there are some key outstanding recommendations from these systemic inquiries which remain relevant steps that

can be taken to prevent or mitigate the systemic issues and areas of concern that I have identified in answer to Questions 1 to 4 above. I set out a list of these key recommendations at Annexure 5 to this statement.

201. In addition to implementing the recommendations made following the CCYP's systemic inquiries, the measures which I consider would prevent or mitigate the systemic issues or areas of concern that have been identified in response to Questions 1 to 4 above can be grouped into the following broad areas:

- i. Providing assistance to strengthen families to prevent harm.
- ii. Providing more early intervention responses.
- iii. Improving tertiary responses to be more therapeutic and culturally sensitive.
- iv. Ensuring the voices of Aboriginal children and young people are at the centre of all decisions that affect them.
- v. Providing consistent and adequate resourcing to ACCOs to deliver services and facilities to Aboriginal children and young people and their families.
- vi. Reforming data collection practices and systems.
- vii. Redesigning residential care homes.
- viii. Clarifying and legislating for the role of the Commissioner for Aboriginal Children and Young People.
- ix. Expansion of the CCYP's role.

*i. Providing assistance to strengthen families to prevent harm*

202. Strengthening families so that harm can be prevented at the outset ensures Aboriginal children and young people grow up safe and strong — in their families and community, connected to culture and identity.

203. Decision makers cannot and must not continue to think that the way to avoid Aboriginal children and young people requiring the intervention of Child Protection or the engagement with youth justice is solely the responsibility of Child Protection in the DFFH, or Youth Justice in the DJCS. Efforts cannot continue to be focused



on the tertiary end of the system. As identified in response to Question 1 above, these systems often add to the harm and trauma already experienced by Aboriginal children and young people, and disempower parents who want to address issues that impact on the safety and wellbeing of their children.

204. To ensure Aboriginal children and young people can continue to grow up with their families and to prevent their contact with the Child Protection and youth justice systems, there must be consistent and coordinated efforts across the whole of the Victorian Government to ensure that systems — universally — are appropriately resourced and expertly skilled to achieve this goal. In particular, within the health and education systems — as the systems with which Aboriginal children and young people and their families have the greatest engagement — these supports must be:

- *Aboriginal child and young person focused:* There must be greater resourcing of services that directly appeal to and engage with Aboriginal children and young people and their specific needs. Too often, the CCYP sees that Aboriginal children and young people only receive services — particularly in regard to family violence services — as a consequence or side-effect of their parent or parents receiving services. Direct services for children and young people ensure their needs can be addressed as and when required, before intervention or engagement with the Child Protection or youth justice systems may be required. Educational settings offer an ideal place to provide such services. The services should aim to build relationships with children and young people in advance of any need arising to promote engagement should that occur.
- *Culturally sensitive and anti-racist:* Non-Aboriginal people must be appropriately skilled to deliver services to the Aboriginal community. Too often as the Commissioner, I hear stories from Aboriginal children and young people and their families having to deal with cultural insensitivity and racism when they seek out assistance from non-Aboriginal services. Such experiences inhibit their engagement and willingness to seek assistance in the future. This can mean they continue to be exposed to actual and ongoing harm, or they only seek help in moments of acute crisis, but not continue with supports.
- *Trauma-informed:* The Aboriginal community lives with intergenerational trauma as an outcome of colonisation, and other traumas specific to personal or community experiences. All services must understand this and be equipped to

deal with behaviours that can come from such experiences, including a deep mistrust of non-Aboriginal services because of the removal of children.

- *Strengths-based:* There is much strength in the Aboriginal community, and services must understand this strength. This requires a greater respect for, and use of Aboriginal culture and values when engaging with children and young people and their families.
- *Responsive to the needs of the family:* Families need services that understand the importance of healing adults in order to help children and young people. Every family is different. Many parents of Aboriginal children and young people have themselves been through the Child Protection or youth justice systems, and sometimes the adult justice system. When these experiences of childhood harm and other trauma with families go unaddressed and untreated, the CCYP sees the resulting intergenerational trauma that it can cause.

*ii. Providing more early intervention responses*

205. Early intervention responses ensure that the experience, or risk of experiencing, harm by Aboriginal children and young people in their families or other places is addressed appropriately at the first indication of any such experience or risk. This includes support for the individual child or young person as well as their family. Any early intervention response must:

- Promote self-determination, including by enabling Aboriginal children and young people and their families to choose from where they receive services;
- Be evidence-based;
- Be intensive and culturally appropriate to work with families, particularly those with significant needs; and
- Ultimately leave the child or young person and their family better off overall.

206. In my view, more funding from numerous government departments, and not only DFFH, should be directed to these early intervention programs that are delivered by ACCOs to assist to drive down over-representation of Aboriginal children and young people engaging with Child Protection and entering out-of-home care.

207. Further, ACCOs must be well resourced to provide the holistic suite of resources

needed to keep Aboriginal children and young people strong.

208. There must also be greater investment in maternal and child health and welfare services to build trust with Aboriginal women and community. Creating these relationships early on encourages engagement with support services later if a need arises or if a parent is ready to seek assistance for an issue,, such a family violence, drug and alcohol use, or another issue causing harm to a mother and/or child.

*iii. Improving tertiary responses to be more therapeutic and culturally sensitive*

209. Therapeutic and culturally sensitive tertiary responses ensure that if an Aboriginal child or young person must be removed from their family, they are safe in out-of-home care, their connection to culture is maintained, any previous trauma experienced is addressed, and they are connected with education. The ultimate aim of any tertiary response should also be to maintain a relationship between children and their parents and, wherever possible and appropriate for the child or young person's wellbeing, to safely return them to the care of their parents.

210. Where statutory intervention is required, either through the Child Protection system or the youth justice system, it should not inflict greater trauma on an Aboriginal child or young person, or their family. In my view, the following steps can be taken to reduce the trauma of statutory intervention.

Culturally sensitive court environments

211. Court systems must be responsive to each Aboriginal child and young person, and their family's needs and experienced trauma. Maram Ngala Ganbu, the Koori hearing day in the Family Division of the Children's Court in Broadmeadows and Shepparton, is an example of how Aboriginal culture and values can improve court proceedings to provide better engagement with, and greater outcomes for Aboriginal children and young people and their families.

212. In my view, Maram Ngala Ganbu should be implemented in Family Divisions of the Children's Court across the whole of Victoria. It must be appropriately resourced to deliver its services and it should ultimately become the model for the conduct of all matters in the Family Division of the Children's Court. It is an example of Aboriginal practice excellence which places Aboriginal families at the centre of the court proceedings, not as passive participants, that all families can benefit from.

213. There should also be greater exploration of how the learnings of the Koori Court of the Criminal Division of the Children's Court can be utilised in ways that do not require a guilty plea to be entered. There must be greater consideration for how Koori Courts can play a role in diversion of criminal matters for Aboriginal children and young people.

#### Greater supports for kinship carers

214. A cornerstone of Aboriginal cultural practice for raising children is the support of kin. Whether it be grandparents, parental siblings, cousins and other important people, Aboriginal community has always drawn on extended family members to provide essential support and modelling of parenting practices to ensure Aboriginal children and young people are safe, connected to culture and grow up strong in identity. This is a child-raising model that is common to many other cultures.

215. Kinship carers need access to wrap-around supports to ensure that children in their care remain connected to family and thrive in a home like environment. In my view, these supports must include (but not be limited to):

- Housing, travel, clothing, education, health, and other supports as necessary.
- Cultural awareness and cultural care training to be able to adequately care for an Aboriginal child or young person in their care. This training should be provided to all kinship carers, whether they are Aboriginal or not.
- Training to respond to trauma experienced by children and young people in their care.
- Access to respite opportunities to support the longevity of placements and the resilience of carers.
- Access to key contact points within, and regular visits from, the organisation with legislative responsibility for the kinship care arrangement to respond to needs as they emerge.

#### Consistent training about Aboriginal people, culture and identity to ensure cultural safety for Aboriginal children and young people and their families

216. Under Question 3, I made observations about the lack of knowledge about Aboriginal people, culture and identity has negatively impacted Aboriginal children

and young people. All these observations show that there must be ongoing training and reinforcement for Child Protection practitioners in understanding Aboriginal identity and culture, why it is important for Aboriginal children and young people to have connection to culture, how to appropriately ask questions about Aboriginal identity, and to not rely on assumptions in decision making. This is not only important for Aboriginal children, but for any child or young person from a community of colour whose connection to culture is also essential.

*iv. Ensuring the voices of Aboriginal children and young people are at the centre of all decisions that affect them*

217. The voices of Aboriginal children and young people must be centred in all decisions which affect them to ensure that their rights are upheld, and they are enabled to exercise self-determination in their lives. This means actively seeking, listening to and, wherever possible, acting on their wishes. Ensuring the effective participation of Aboriginal children and young people in all decision-making processes about their lives respects their rights, including to self-determination.

*v. Providing consistent and adequate resourcing to ACCOs to deliver services and facilities to Aboriginal children and young people and their families*

218. ACCOs provide an important service to Aboriginal children and young people and their families. Consistent and adequate resourcing strengthens these organisations in many ways. This includes the following:

- By creating certainty of funding, ACCOs can place greater efforts on forward strategic planning, on recruitment and retention of staff, and on the provision of a diversity of services ranging from family strengthening and prevention, early intervention, and/or tertiary responses.
- ACCOs spend less time and resources are spent on constantly reapplying for funding. These savings can be redirected into actual service delivery.
- When ACCOs are able to function at their best, they can set the required standards for non-Aboriginal organisations to engage in culturally responsive ways to Aboriginal children and young people, recognising intergenerational trauma and experiences of racism.
- By retaining staff on a longer term basis, ACCOs can solidify their expertise and experience when delivering an Aboriginal child and young person with services

throughout their life, and to deliver services to their community as the need arises.

*vi. Reforming data collection practices and systems*

219. The importance of accurate data collection practices and systems cannot be understated. In my view, the following recommendation within the inquiry *Our youth, our way* (2021) report should be actioned in relation to the youth justice system:

*Reform is needed to capture and regularly publish accurate, up-to-date information on the ways in which Aboriginal children and young people enter the youth justice system, what happens to them once they do, and the extent to which identification as Aboriginal or not influences their trajectory through the system. Improving data collection and analysis has the potential to increase transparency and accountability within the youth justice system. However, indicators must be determined by Aboriginal stakeholders to guide effective reform, and to move beyond a primarily deficits-based narrative (p. 23, and Recommendation 3).*

220. These same recommendations should be applied to data collection practices and systems relating to Child Protection.

*vii. Redesigning residential care homes*

221. As noted above at paragraph 48, the residential care system currently can be an unsafe environment for children and young people in need of care, many of whom require expert therapeutic interventions to address their complex needs. This system is in particular need of reform. As is recommended in the inquiry *In our own words* (2019) report, we must see stable, safe, homelike and therapeutic care. For Aboriginal children and young people in residential care in particular, this looks like:

- Residential care workers who are:
- Caring and genuinely engage with each child and young person.
- Therapeutically trained to identify and manage complex behaviours and reduce the need for involvement from police to de-escalate behaviours.
- Responsive to the cultural needs of Aboriginal children and young people

- High ratio of workers to children and young people.
- Placement of children and young people with consideration of the individual experiences and needs, ages and other characteristics.
- Physical environments that provide a sense of home and connection, of safety and wellbeing, including the voices of children and young people in what would make their homes feel more like theirs. For Aboriginal children and young people, this might include cultural features like artwork and a smoking ceremony to signify their arrival and promote spiritual safety.
- Improved access to pets and other therapeutic responses.
- Facilitate connections with education.
- Support participation in recreational activities.

*viii. Clarifying and legislating for the role of the Commissioner for Aboriginal Children and Young People.*

222. The role of the Commissioner for Aboriginal Children and Young People should be expressly provided for in the *CCYP Act* with clear reference to the powers that should specifically sit with the Commissioner for Aboriginal Children and Young People regarding:

- Aboriginal children and young people in the Child Protection system and youth justice system.
- Vulnerable Aboriginal children and young people.
- ACCOs who are specifically delivering Child Protection services.
- ACCOs that fall within the Reportable Conduct Scheme and the regulation sphere of the CCYP for Child Safe Standards.

*Expansion of the CCYP's role*

223. Finally, in my view the expansion of the CCYP's role is another step that can be taken to address the systemic issues and areas of concern that I have identified in this statement. This expansion should include powers and resourcing for the CCYP to:

- oversee and investigate police complaints by all children and young people.
- monitor the Victorian government's compliance with Australia's obligations under the *Optional Protocol for the Convention against Torture* ( as a National Preventative Mechanism nominated by the Victorian government in respect to all places of youth detention.
- perform the additional functions set out under the *Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Bill 2023* under Part 6 – Amendment of the Commission for Children and Young People 2012, which when enacted would empower the CCYP to advise, provide information to, support and advocate for a protected child and young person.



**Meena Singh**

**Commissioner for Aboriginal Children and Young People**



**Annexure 1 – High level summaries of systemic inquiries completed by the Commission for Children and Young People (CCYP) completed under sections 38 and 39 of the *Commission for Children and Young People Act 2012* (Vic) since 1 January 2016 – 30 June 2022**

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*Always was, always will be Koori Children: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria (October 2016)*

This inquiry was initiated to enable the CCYP to effectively fulfil its role in co-chairing Taskforce 1000. Taskforce 1000 was an 18-month project, co-chaired by the CCYP and the Department of Health and Human Services (**DHHS**), which commenced in mid-2014 and concluded in early 2016. Through collaboration with Aboriginal Community Controlled Organisations (**ACCOs**), Community Service Organisations (**CSOs**), government departments and the Aboriginal community, Taskforce 1000 critically reviewed the case plans and circumstances of 980 Aboriginal children in out-of-home care in Victoria.

Through this review, the inquiry considered the causes of Aboriginal children's entry to care, finding that family violence, in combination with parental alcohol and/or drug abuse, was the leading cause. This inquiry also identified issues regarding Aboriginal children's ability to connect with their culture whilst in out-of-home care.

For a full list of findings and recommendations, please refer to the complete report.<sup>1</sup>

*In the child's best interests: Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria (October 2016)*

This inquiry involved a systemic review of the Victorian Child Protection service (**Child Protection**) and its compliance with the Aboriginal Child Placement Principle. The Aboriginal Child Placement Principle was first articulated in the 1980s and applies whenever there has been a decision made to place an Aboriginal child in out-of-home care.

The inquiry reviewed the case files of 65 Aboriginal children placed in care between January 2013 and December 2014, and rated how effectively agencies complied with the principle. Despite it being a legislative requirement, the inquiry ultimately found significant issues with compliance.

For a full list of findings and recommendations, please refer to the complete report.<sup>2</sup>

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<sup>1</sup> <https://ccyp.vic.gov.au/assets/Publications-inquiries/always-was-always-will-be-koori-children-inquiry-report-oct16.pdf>

<sup>2</sup> <https://ccyp.vic.gov.au/assets/Publications-inquiries/In-the-childs-best-interests-inquiry-report.pdf>

*Neither seen nor heard: Inquiry into issues of family violence in child deaths (December 2016)*

This inquiry was a review of a sample of child death inquiries (**DCIs**) completed by the CCYP between 2013 and 2016. The sample included 20 children, including eight Aboriginal children, who died during the review period, who were known to Child Protection, and who had experienced family violence during their lives. By analysing this sample, the inquiry aimed to identify systemic concerns regarding the services provided to young people affected by family violence, and make recommendations to improve them.

The inquiry identified findings that echoed the Royal Commission into Family Violence, including inadequate risk assessments, a failure of services to engage children directly, and limited early intervention.

For a full list of findings and recommendations, please refer to the complete report.<sup>3</sup>

*The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system (March 2017)*

This inquiry examined the use of isolation, separation and lockdown practices in Victorian youth justice facilities, primarily between February 2015 and July 2016. The review focused on whether the DHHS had complied with legislation and policies that regulate the use of these practices. The CCYP also reviewed data about isolation, separation and lockdown practices between 1 and 14 December 2016, following the riot at Parkville in mid-November 2016, to assess the use of these practices during times of particular pressure.

In conducting the review, the CCYP analysed data provided by the DHHS, reviewed CCTV footage, examined literature on isolation practices and impacts, made several site visits and inspections, and reviewed reports from its Independent Visitor Program. The CCYP also conducted wide-ranging consultation with youth justice staff, union delegates, support workers, DHHS management and children and young people.

The inquiry found widespread use of restrictive practices that led to the confinement and isolation of young people, and that decisions to isolate, separate, or lockdown were frequently not made or recorded in accordance with relevant legislative and policy requirements.

For a full list of findings and recommendations, please refer to the complete report.<sup>4</sup>

<sup>3</sup> <https://ccyp.vic.gov.au/assets/Publications-inquiries/Neither-seen-nor-heard-Inquiry-into-issues-of-family-violence-in-child-deaths.pdf>

<sup>4</sup> <https://ccyp.vic.gov.au/assets/Publications-inquiries/The-Same-Four-Walls1.pdf>

*Safe and wanted: Inquiry into the implementation of the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014 (June 2017)*

In August 2014, the Victorian Government passed the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014 (Vic)* (**permanency amendments**). The permanency amendments made significant changes to the Victorian *Children, Youth and Families Act 2005*. The changes sought to ensure that decisions about the care of vulnerable children are made in a timely way and to promote permanency of care arrangements.

In this inquiry, the CCYP was asked to review early evidence to determine whether the permanency amendments were achieving their objectives to promote more timely, permanent outcomes for children, either with their birth family or with an alternative permanent carer, to strengthen cultural support for Aboriginal children in out-of-home care, and to address barriers to permanent care orders being made.

The CCYP reviewed 522 children's Child Protection files (126 were Aboriginal children) and consulted 193 stakeholders across Victoria in order to assess the permanency amendments.

For a full list of findings and recommendations, please refer to the complete report.<sup>5</sup>

*Lost not forgotten: Inquiry into children who died by suicide and were known to Child Protection (October 2019)*

This inquiry focussed on the stories of 35 children and young people, including six Aboriginal children, who committed suicide within a year of their last involvement with Child Protection between 2007 and 2019, in order to examine service provision in the context of a child taking their life.

The inquiry built upon an analysis completed by a previous, untabled systemic inquiry completed by the CCYP; the Inquiry into issues of cumulative harm and suicide in child deaths (**Cumulative harm inquiry**), completed in June 2018. The Cumulative harm inquiry examined the provision or omission of services to 26 children who died from suicide between 1 April 2007 and 22 December 2015.

The inquiry particularly focussed on the quality and effectiveness of Child Protection and child and family services delivered to the 35 children. The inquiry revealed systemic flaws, particularly with regards to early intervention and risk assessment.

For a full list of findings and recommendations, please refer to the complete report.<sup>6</sup>

<sup>5</sup><https://www.dhhs.vic.gov.au/sites/default/files/documents/201712/Safe%20and%20wanted%20inquiry%20into%20permanency%20arrangements%20report%20June%202017.pdf>

<sup>6</sup><https://ccyp.vic.gov.au/assets/Publications-inquiries/CCYP-Lost-not-forgotten-web-final.PDF>

***In our own words: Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system (November 2019)***

This inquiry examined the lived experiences of children and young people in out-of-home care. As part of the inquiry, the CCYP spoke with a total of 204 children and young people, including 82 Aboriginal children, from rural, regional and metropolitan Victoria who were either living in or had recently left out-of-home care about their experiences in the out-of-home care system, including what works well and what needs to change.

The inquiry focussed on key themes including voice, home, safety, family, friends and community, carers, and workers. Although many of the Aboriginal young people expressed positive feelings about their time in out-of-home care, the inquiry revealed that many felt lost, unsafe, or stressed.

For a full list of findings and recommendations, please refer to the complete report.<sup>7</sup>

***Keep caring: Systemic inquiry into services for young people transitioning from out-of-home care (December 2020)***

This inquiry focussed on services available to young people transitioning from out-of-home care into adult life. As part of the inquiry, the CCYP spoke to over 100 young people and reviewed over 160 Child Protection files, including 64 files for Aboriginal young people. The CCYP also conducted in-depth file reviews for 30 young people who were about to transition from care or who had already transitioned from care.

The inquiry found that the out-of-home care system provides insufficient help to prepare young people for their adult lives, that there are issues with support available to young people upon leaving care, and that there are particular problems facing Aboriginal care leavers.

For a full list of findings and recommendations, please refer to the complete report.<sup>8</sup>

***Our youth our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system (May 2021)***

This inquiry examined the lived experiences of Aboriginal children and young people in Victoria, the factors contributing to their over-representation in the youth justice system, and assessed the policies and practices of youth justice services. The report combined the findings of the Koori Youth Justice Taskforce with the CCYP's systemic inquiry.

The CCYP interviewed 93 Aboriginal children and young people aged 11 to 25 years, including children and young people identified through the Taskforce, about their experiences with youth

<sup>7</sup> <https://ccyp.vic.gov.au/assets/Publications-inquiries/CCYP-In-Our-Own-Words.pdf>

<sup>8</sup> <https://ccyp.vic.gov.au/assets/Uploads/CCYP-Keep-caring.pdf>

justice. The CCYP also met with 15 Aboriginal youth groups throughout Victoria, spoke to families of Aboriginal children involved in the youth justice system, and consulted with Aboriginal organisations, in addition to analysing data from Youth Justice and other relevant agencies.

The inquiry focussed on topics including systemic inequality, the challenges facing Aboriginal children and young people in Victoria, and the self-determination of Aboriginal people in the youth justice system.

For a full list of findings and recommendations, please refer to the complete report.<sup>9</sup>

***Out of sight: Systemic inquiry into children and young people who are absent or missing from residential care (June 2021)***

This inquiry examined issues facing children and young people who had gone missing from residential care.

The inquiry conducted consultations with children and young people in residential care who were frequently reported 'absent', review their files, and consulted a range of stakeholders.

The inquiry looked at issues such as inconsistencies in the reporting of children as absent, risks that children face when they go missing, the reliance on warrants to find missing children, and the reasons why children may go missing.

For a full list of findings and recommendations, please refer to the complete report.<sup>10</sup>

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<sup>9</sup> <https://ccyp.vic.gov.au/assets/Publications-inquiries/CCYP-OYOW-Final-090621.pdf>

<sup>10</sup> <https://ccyp.vic.gov.au/assets/Publications-inquiries/Out-of-sight-inquiry-report-Web.pdf>

## **Annexure 2 – Thematic Analysis of Child Death Inquiries (CDIs) completed for Aboriginal Children and Young people between 2017 and 2022**

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Between 2017 and 2022, 29 Child Death Inquiries (**CDIs**) were completed by the Commission for Children and Young People (**CCYP**) relating to Aboriginal children and young people, seven of which are still open proceedings in a Coroners Court. The CDIs cover a wide range of circumstances:

- In some of the CDIs, the child was in out-of-home care when they passed;
- In several CDIs, the child was subject to an unborn report;<sup>1</sup>
- In several CDIs, the child had complex medical needs;
- In many CDIs, the child died before reaching their first birthday.

The CCYP's file review identified a range of harms that had been experienced by the children and young people including:

- Personal exposure to family violence, or their siblings experienced family violence
- Histories of cumulative harm
- Experiences of poor mental health or a diagnosed disorder
- Suicidal ideation and engagement in self-harm
- Sexually assaults from an early age
- At risk of contact with a registered sex offender

In addition, the CCYP identified common challenges experienced by the children's parents and step-parents, including:

- Being a victim/survivor of family violence
- Substance use
- Poor mental health
- Housing instability and homelessness
- Intergenerational disadvantage and trauma
- Criminal offending/incarceration

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<sup>1</sup> Unborn reports refer to reports where, before the birth of a child, a person has a significant concern for the wellbeing of the child after their birth.

- Intellectual disability

While the CCYP's inquiries focus on services provided to children who have died, rather than on details of their parents, in some cases information was indicative of a parental history of involvement in child protection and out-of-home care.

### *Findings about safety*

The CCYP identified the following barriers to the safety and wellbeing of the children and young people:

- *Family violence* – the Victorian Child Protection service (**Child Protection**) often did not properly assess risk of family violence.

For example, in one case, a report regarding a child being bashed again by a parent was classified as a child wellbeing report and closed, because the child was by that stage considered old enough to 'self-protect.' In another case, multiple incidents of harm were treated in isolation rather than considered as a pattern of cumulative harm.

- *A lack of early supports and intervention* – Many of the CDIs identified that multiple opportunities were missed to link children and their families to early supports following reports to Child Protection.

For example, in one instance, Child Protection did not seek to understand why a parent had not engaged with services, despite there being a child at significant risk of ongoing family violence and a prior history of disengaging from support services.

- *Parenting capacity* – Child Protection closed multiple reports at intake without fully assessing concerns related to parenting capacity. This was often a lost opportunity to put in place early supports to avoid the need for further contact with Child Protection.
- *Cumulative harm* – Child Protection failed to assess (and therefore respond to) cumulative harm typically related to ongoing exposure to family violence, sexual abuse and parental drug use. This again represented a lost opportunity to link a child and their family to support to disrupt the child's exposure to future harm.

### *Findings concerning a child's right to culture*

The CCYP found that in some cases poor practice acted as a barrier to children and young people being able to access their right to culture in the following ways:

- *Identification of Aboriginality* – the delay in or failure to identify a child or young person as Aboriginal resulted in a denial of their right to culture.
- *Lack of attempts to connect to culture* – In some cases, Child Protection did not connect Aboriginal children or their families to culturally safe supports.

- *More work could have been done by Aboriginal community-controlled organisations (ACCOs)* – In some cases, the inquiries noted that the ACCO working with a child or young person could have done more to connect the child to culture or to advocate for their right to culture, including to Child Protection.
- *Poor consultation with Aboriginal child specialist advice and support services (ACSASS)* – in some cases, despite a requirement to consult ACSASS, Child Protection did not do so.
- *Lack of cultural planning* – In some cases, cultural planning was either absent or of a poor quality as a result of other factors such as:
  - A failure to consult with the young person or their family about their cultural needs
  - Aboriginal Family Led Decision Making (**AFLDM**) conferences not considering how best to promote the child's connection to culture or the input of Aboriginal family and community
  - ACSASS not attending case planning meetings when invited.
- *Poor record keeping* – In some cases, poor record keeping meant that services were unable to respond to or support Aboriginal children and young people.



**Annexure 3 - Quantitative Statistical Data from 1 July 2017 to 30 June 2022 drawn from mandatory and public notifications made to the Commission for Children and Young People under the Reportable Conduct Scheme regarding Aboriginal children and young people as alleged victims**

**Table 1: Number of reportable allegations by alleged victim Aboriginal identified<sup>1</sup> - 2017-22**

Aboriginal identified	Not Aboriginal identified	Unknown or not stated	Total reportable allegations	
11%	69%	20%	10,832	100%

**Table 2: Proportion of finalised allegations by alleged victim Aboriginal identified and conduct category - 2017-22<sup>2</sup>**

	Aboriginal identified	Not Aboriginal identified	Unknown or not stated	Total finalised reportable allegations	
Finding type	% (Prop.)	% (Prop.)	% (Prop.)	No. allegations	% (Prop.)
Substantiated	28%	29%	29%	2,346	29%
Unsubstantiated - insufficient evidence	28%	29%	27%	2,356	29%
Unsubstantiated - lack of evidence of weight	27%	22%	20%	1,824	22%
Conduct outside scheme	8%	11%	14%	913	11%
Unfounded	9%	8%	10%	722	9%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>8,161</b>	<b>100%</b>

**Table 3: Proportion of reportable allegations by alleged victim Aboriginal identified and conduct category - 2017-22**

	Aboriginal identified	Not Aboriginal identified	Unknown or not stated	Total reportable allegations	
Conduct category	% (Prop.)	% (Prop.)	% (Prop.)	No. allegations	% (Prop.)
Physical violence	45%	43%	32%	4,465	41%
Sexual misconduct	6%	18%	31%	2,116	20%
Emotional or psychological harm	24%	19%	15%	2,051	19%
Significant neglect of a child	22%	14%	7%	1,445	13%
Sexual offences	4%	5%	15%	755	7%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>10,832</b>	<b>100%</b>

<sup>1</sup> The CCYP was not provided with details of characteristics of the alleged victim in a high number of matters. The CCYP continues to increase efforts to require organisations to turn their minds to these characteristics. Organisations provide this data, not the alleged victim or their family, and the CCYP does not verify it.

<sup>2</sup> Only includes allegations from cases closed by the CCYP between 1 July 2017 and 30 June 2022.

**Annexure 4 - Quantitative Statistical Data referring to section 60A *Commission for Children and Young People Act 2012* (Vic) incident monitoring functions from 1 July 2019 to 30 June 2022**

***Incident Monitoring***

Section 60A of the *Commission for Children and Young People Act 2012* (Vic) states “The Secretary must disclose to the Commission for Children and Young People (**CCYP**) any information about an adverse event relating to a child in out-of-home care or a person detained in a youth justice centre or a youth residential centre if the information is relevant to the CCYP's functions.”

Set out below are tables containing quantitative statistical data for the financial years of 2019 to 2022 drawn from information obtained by the CCYP about an adverse event relating to an Aboriginal child or young person in out-of-home care or a youth justice detention centre or a youth residential centre.

Out-of-home care incident monitoring covers all contexts of out-of-home care, being residential care, kinship and foster care, and secure welfare facilities.

The data has been captured from 2019 to represent the first full year of monitoring data for both youth justice and out-of-home care systems. In some instances, the number of incidents are low, making it difficult to draw statistical conclusions with respect to patterns and categories of incident.

***Incident Monitoring – Out of Home Care***

**Table 1: Number of incidents by Aboriginal status of children and young people in out-of-home care - 2019-22**

	2019-20		2020-21		2021-22		Average Prop. (%)
	No.	Prop. (%)	No.	Prop. (%)	No.	Prop. (%)	
Aboriginal or Torres Strait Islander	1,456	20%	1,680	19%	2,234	21%	28%
Neither Aboriginal or Torres Strait Islander	5,761	79%	6,917	80%	8,524	78%	72%
Not stated/ inadequately described	114	2%	101	1%	130	1%	100%
<b>Total</b>	<b>7,331</b>	<b>100%</b>	<b>8,698</b>	<b>100%</b>	<b>10,888</b>	<b>100%</b>	

**Table 2: Number of incident types by Aboriginal status of children and young people in out-of-home care - 2019-22**

	Aboriginal or Torres Strait Islander		Neither Aboriginal or Torres Strait Islander		Not stated/ inadequately described		Total	
	No.	Prop. (%)	No.	Prop. (%)	No.	Prop. (%)	No.	Prop. (%)
Absent client	1,512	18%	6,783	81%	91	1%	8,386	100%
Dangerous actions - client	685	19%	2916	80%	64	2%	3,665	100%
Death	10	24%	28	68%	3	7%	41	100%
Emotional/ psychological abuse	167	21%	608	78%	8	1%	783	100%
Emotional/ psychological trauma	184	21%	699	78%	8	1%	891	100%
Escape from a secure facility	1	33%	2	67%		0%	3	100%
Financial abuse	5	22%	15	65%	3	13%	23	100%
Inappropriate physical treatment	439	23%	1,480	76%	28	1%	1,947	100%
Inappropriate sexual behaviour	95	20%	376	78%	8	2%	479	100%
Injury	331	22%	1,121	76%	28	2%	1,480	100%
Medication error	364	20%	1,441	79%	12	1%	1,817	100%
Physical abuse	400	23%	1,301	76%	15	1%	1,716	100%
Poor quality of Care	194	29%	465	70%	5	1%	664	100%
Self-harm/ attempted suicide	578	18%	2,661	81%	55	2%	3,294	100%
Sexual abuse	232	24%	710	75%	7	1%	949	100%
Sexual exploitation	173	22%	596	77%	10	1%	779	100%
<b>Total</b>	<b>5,370</b>	<b>20%</b>	<b>21,202</b>	<b>79%</b>	<b>345</b>	<b>1%</b>	<b>26,917</b>	<b>100%</b>

### Incident Monitoring – Youth Justice

**Table 3: Number of young people in youth justice by Indigenous status as at 30 June - 2019-22**

	2019-20		2020-21		2021-22		Average Prop. (%)
	No.	Prop. (%)	No.	Prop. (%)	No.	Prop. (%)	
Aboriginal	21	11%	14	10%	16	15%	12%
Non-Aboriginal	164	89%	126	90%	94	85%	88%
<b>Total</b>	<b>185</b>	<b>100%</b>	<b>140</b>	<b>100%</b>	<b>110</b>	<b>100%</b>	<b>100%</b>

**Table 4: Number of self-harm and attempted suicide incidents in youth justice by Aboriginal status of client 1 and year - 2019-22 (including both Category 1 and 2 incidents and excluding one young person involved in 90 incidents in 2022).<sup>1</sup>**

	2019-20		2020-21		2021-22		Total	
	No.	Prop. (%)	No.	Prop. (%)	No.	Prop. (%)	No.	Prop. (%)
Aboriginal	50	48%	17	20%	34	37%	101	36%
Non-Aboriginal	55	52%	67	80%	58	63%	180	64%
<b>Total</b>	<b>105</b>	<b>100%</b>	<b>84</b>	<b>100%</b>	<b>92</b>	<b>100%</b>	<b>281</b>	<b>100%</b>

**Table 5: Number of Category 1 incidents in youth justice by Aboriginal status of client 1 and year - 2019-22**

	2019-20		2020-21		2021-22		Total	
	No.	Prop. (%)	No.	Prop. (%)	No.	Prop. (%)	No.	Prop. (%)
Aboriginal	15	20%	10	14%	25	20%	50	19%
Non-Aboriginal	61	80%	60	86%	98	80%	219	81%
<b>Total</b>	<b>76</b>	<b>100%</b>	<b>70</b>	<b>100%</b>	<b>123</b>	<b>100%</b>	<b>269</b>	<b>100%</b>

**Table 6: Number of episodes of use of force involving both handcuffs and physical force - 2019-22<sup>2</sup>**

	2019-20		2020-21		2021-22		Total	
	No.	Prop. (%)	No.	No.	No.	Prop. (%)	No.	Prop. (%)
Aboriginal	29	14%	7	6%	33	20%	69	14%
Non-Aboriginal	183	86%	118	94%	135	80%	436	86%
<b>Total</b>	<b>212</b>	<b>100%</b>	<b>125</b>	<b>100%</b>	<b>168</b>	<b>100%</b>	<b>505</b>	<b>100%</b>

<sup>1</sup> Category 1 incidents are the most serious incidents and include incidents such as death of a young person, allegations of physical or sexual assault and serious behavioural issues that impact on young people or staff safety (e.g. serious assaults, riotous behaviour, serious injury or illness requiring medical treatment and/or hospitalisation). Category 2 incidents relate to events that threaten the health, safety and/or wellbeing of children, young people and others.

<sup>2</sup> Note: Excludes handcuffs for precinct movements, external escorts and medical escorts.

**Table 7: Number of young people involved in instances of use of force involving OC Spray - 2019-22**

	2019-20		2020-21		2021-22		Total	
	No.	Prop. (%)	No.	Prop. (%)	No.	Prop. (%)	No.	Prop. (%)
Aboriginal		0%	1	7%	3	7%	4	6%
Non-Aboriginal	7	100%	13	93%	39	93%	59	94%
<b>Total</b>	<b>7</b>	<b>100%</b>	<b>14</b>	<b>100%</b>	<b>42</b>	<b>100%</b>	<b>63</b>	<b>100%</b>

**Table 8: Number of isolations in Youth Justice by Indigenous status - 2019-22<sup>3</sup>**

	2019-20		2020-21		2021-22		Total	
	No.	Prop. (%)	No.	Prop. (%)	No.	Prop. (%)	No.	Prop. (%)
<b>600M COVID-19</b>	<b>98</b>	<b>100%</b>	<b>7488</b>	<b>100%</b>	<b>7,354</b>	<b>100%</b>	<b>14,940</b>	<b>100%</b>
Aboriginal	5	5%	831	11%	1,100	15%	1,936	13%
Non-Aboriginal	93	95%	6,657	89%	6,254	85%	13,004	87%
<b>s488(2)</b>	<b>3,030</b>	<b>100%</b>	<b>1,677</b>	<b>100%</b>	<b>1,486</b>	<b>100%</b>	<b>6,193</b>	<b>100%</b>
Aboriginal	330	11%	207	12%	239	16%	776	13%
Non-Aboriginal	2,700	89%	1,470	88%	1,247	84%	5,417	87%
<b>s488(7)</b>	<b>56,890</b>	<b>100%</b>	<b>26,873</b>	<b>100%</b>	<b>23,848</b>	<b>100%</b>	<b>10,7611</b>	<b>100%</b>
Aboriginal	7,991	14%	2,418	9%	3,187	13%	13,596	13%
Non-Aboriginal	48,899	86%	24,455	91%	20,661	87%	94,015	87%

**Table 9: Number of young people involved in incident queries in youth justice by Aboriginal status and financial year - 1 July 2019 to 30 June 2022**

	2019-20		2020-21		2021-22		Total	
	No.	Prop. (%)	No.	Prop. (%)	No.	Prop. (%)	No.	Prop. (%)
Aboriginal	16	16%	11	17%	19	12%	46	14%
Non-Aboriginal	81	84%	55	83%	142	88%	278	86%
<b>Total</b>	<b>97</b>	<b>100%</b>	<b>66</b>	<b>100%</b>	<b>161</b>	<b>100%</b>	<b>324</b>	<b>100%</b>

**Table 10: Number of young people involved in alleged police assault by Aboriginal status and financial year - 1 July 2019 to 30 June 2022**

	2019-20		2020-21		2021-22		Total	
	No.	Prop. (%)	No.	Prop. (%)	No.	Prop. (%)	No.	Prop. (%)
Aboriginal	8	17%		0%	4	31%	12	15%
Non-Aboriginal	39	83%	18	100%	9	69%	66	85%
<b>Total</b>	<b>47</b>	<b>100%</b>	<b>18</b>	<b>100%</b>	<b>13</b>	<b>100%</b>	<b>78</b>	<b>100%</b>

<sup>3</sup> Isolation includes a COVID-19 related isolation of a child or young person and isolation authorised under subsection 488(2) (i.e. the young person's behaviour presents an immediate threat to safety) or subsection 488(7) (i.e. isolation is in the interests of the security of the remand, youth residential or youth justice centre, including due to staff shortages) of the *Children Youth and Families Act 2005* (Vic).

## **Annexure 5 – Key outstanding recommendations from systemic inquiries**

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### *In our own words: Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system (November 2019)*

- **Recommendation 1:** Measures to ensure children and young people are provided with appropriate and supported opportunities to participate in decision-making processes that impact on them.
- **Recommendation 4:** Listening and responding to the voice of children and young people. Including recommendations that:
  - The Department of Health and Human Services (**DHHS**) establish mechanisms to ensure that workers are allocated caseloads which allow them regular face-to-face contact with children and young people in order to build trust and rapport and to facilitate genuine opportunities for children and young people to participate in decision-making about them.
  - The DHHS amend relevant program requirements and guidelines relating to the placement of children and young people in care to ensure that, unless exceptional circumstances exist, children and young people are informed about the proposed placement prior to the placement and where possible, provided with the reason for any decision made by the Victorian Child Protection service (**Child Protection**) or contracted agencies to place them in or remove them from a placement against their expressed wishes.
- **Recommendation 5:** That the DHHS ensure that there is a single point of contact or 'key worker' for all children and young people in care, with authority and access to resources to make day-to-day decisions related to implementing the child or young person's case plan and helping to navigate the system.
- **Recommendation 6:** That the Victorian Government establish an independent, specialised child and young person-centred complaints function to receive complaints from children and young people in care, including concerns about their immediate safety or ongoing concerns about their wellbeing while in care.
- **Recommendation 15:** Provide staff and carers with appropriate supports to respond to trauma., including:
  - All contracted agency staff should be required to undertake training in regard to trauma informed care
  - Learning and development for Child Protection staff that provides regular updates on evidence-based approaches to children and young people living with trauma.

*Keep caring: Systemic inquiry into services for young people transitioning from out-of-home care (December 2020)*

- **Recommendation 1:** That the Victorian Government, in its implementation of the recommendations of 2019's *In our own words* inquiry, develop and resource a model of care that embeds a young person's life aspirations, talents and goals into everyday case management and their time in placement. This model, founded on a continuum of supports which begins early, should include a focus on supporting young people to:
  - Be active participants in future-focused planning and preparing for their own future, with the support of a key worker (this lead worker should play a key role in facilitating leaving care planning and supports in partnership with the young person)
  - Develop their independent living skills according to their developmental needs
  - Remain engaged or re-engage with education or vocational pathways
  - Build or heal positive connections with family and with the wider community
  - Develop enduring connections with the services they may need to address mental health, trauma or substance use.

The Commission for Children and Young People (**CCYP**) noted that the success of this model of care is contingent on the implementation of the recommendations contained in the *In our own words* inquiry, which called for the out-of-home care system to be redesigned to be safe, stable, and caring, where young people are empowered to have a voice in decisions about them.

- **Recommendation 2.2:** Combine cultural support and leaving care planning for Aboriginal young people transitioning from care: That the DHHS in consultation with Aboriginal Community Controlled Organisations (**ACCOS**) create a combined cultural support and leaving care plan for Aboriginal young people to ensure that planning for their transition from care is informed by Aboriginal young people's right to build and maintain a connection to culture, community and culturally safe services.
- **Recommendation 2.3:** Monitoring and oversight of leaving care planning: That the DHHS monitor the extent to which leaving care planning is upholding the right of Aboriginal young people in care to continue to build a connection to culture and community.
- **Recommendation 12:** Increased investment in post-care housing: That the Victorian Government:
  - Increase investment in post-care housing options for care leavers to a level sufficient to guarantee a secure, stable and safe home for all young people upon leaving care
  - Ensure housing investment for Aboriginal care leavers is proportionate to their overrepresentation among young people leaving care

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- Report annually through the Aboriginal Children's Forum on housing investment for Aboriginal care leavers as a proportion of funding allocated to all care leavers.

***Out of sight: Systemic inquiry into children and young people who are absent or missing from residential care (June 2021)***

- **Recommendation 1:** That the Department of Families, Fairness and Housing (DFFH) lead cultural change to challenge the continuing perception among some stakeholders, including departmental staff, residential care staff and police, that children and young people who are absent or missing from residential care are less at risk or less deserving of a timely, care-based response than other children and young people.
- **Recommendation 10:** That the DFFH review policies, procedures, training and service expectations to ensure that, when a child or young person is absent or missing from residential care, child protection and residential care staff:
  - Consistently apply a strengths-based response to express care and concern when contacting the child or young person
  - Do not respond in a way that is punitive, criminalising, threatening or that otherwise suggests a lack of care for the child or young person's safety and wellbeing.
- **Recommendation 15.2:** That, when implementing the recommendation from 2019's *In our own words* inquiry to establish a child and young person centred complaints function, the DFFH require that children and young people are offered the opportunity to speak to an independent person either to conduct the return to care conversation or following the return to care conversation (within 48 hours).

***Our youth our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system (May 2021)***

- **Recommendation 8:** That the *Children, Youth and Families Act 2005* be amended to increase the minimum age of criminal responsibility in Victoria to 14 years. This should not be subject to any exceptions.
- **Recommendation 10:** That the *Children, Youth and Families Act 2005*, the *Sentencing Act 1991* and the *Bail Act 1977* be amended to prohibit:
  - Children under the age of 16 years being sentenced to, or remanded in, youth justice custody
  - Children under the age of 18 years being sentenced to adult imprisonment
  - The transfer of children under the age of 18 years from youth justice custody to an adult prison.
- **Recommendation 54:** That the Victorian Government commission an independent and properly mandated body with specialist knowledge and expertise in relation to children



and young people to undertake an urgent review of the experiences of Aboriginal children and young people with Victoria Police. This review should:

- Include an examination of police powers and the exercise of discretion in the investigation and processing of Aboriginal children and young people suspected of offending, including cautioning, diversion, arrest, summons, custody and complaints processes
- Be empowered to make recommendations for improved police practice and policy in relation to Aboriginal children and young people.
- **Recommendation 57:** That the *Bail Act 1977* be amended to exclude children and young people from the operation of the 2017 and 2018 amendments, including the requirement to show exceptional circumstances or compelling reasons
- **Recommendation 58:** That the *Bail Act 1977* be amended to expand sections 3A and 3B to require decision-makers, in making determinations under the Act, to take into account:
  - The systemic racism, increased disadvantage and postcolonial and intergenerational trauma experienced by Aboriginal children and young people, including any culturally inappropriate responses that may have worsened the effects of trauma
  - Any experience of trauma, including the effect of that trauma on the child or young person's development and capacity to avoid problematic behaviour, and the relationship between trauma and any mental illness, neurological difficulties or developmental issues
  - Removal from family, home, community or school, or other disruption to the child or young person's living situation or education
  - Any experience of out-of-home care, particularly foster care and residential care, including the number of placements and carers, and the need for the child or young person to have safe, stable and secure living arrangements
  - The child or young person's age, including developmental age, at the time of the alleged offence.