

**Witness Statement of the Hon. Anthony Carbines – Yoorrook Justice Commission 31
March 2023**

I, Anthony Richard Carbines, Minister for Police, Minister for Crime Prevention and Minister for Racing, of 121 Exhibition Street, Melbourne, say as follows:

Acknowledgment

1. I acknowledge the Traditional Owners of the Country on which I live and work and pay my respects to their Elders past and present.
2. I accept that sovereignty was never ceded.
3. I acknowledge that the Yoorrook Justice Commission was established to recognise the dark legacy left by colonisation. A legacy which has long-lasting, far-reaching impacts spanning generations for Aboriginal people.
4. I know that the majority of Aboriginal people have no direct involvement with the criminal justice system, but despite that, many Aboriginal people are adversely affected by the systemic injustices within the criminal justice system.
5. I acknowledge that Aboriginal people are represented disproportionately in the Victorian criminal justice system and that in many circumstances this is due to the impacts of ongoing systemic injustices. This fact is unacceptable and troubles me.
6. I am saddened and regret that Aboriginal people have died in the custody or care of police. As Minister for Police it is a clear first order priority for me that there must not be any such deaths.
7. I would also like to warn Aboriginal readers of this statement that it contains the names of deceased persons.
8. This Commission serves an important role in completing the record of our shared history, facing up to the systemic injustice faced by Aboriginal people in that history, which in significant respects persists today, and making recommendations that will assist in creating a new relationship between Aboriginal people and the State of Victoria – one that is based on equity, truth and self-determination.
9. I have read all available transcripts of the evidence of the lived experience witnesses given during Hearing Block 4. I would like to acknowledge the extraordinary strength and bravery these witnesses have shown in sharing their stories with the Commission. I acknowledge that in my role as the Minister for Police it is important that I listen to these experiences openly and think about the lessons that can be learned and the action that needs to be taken to try to improve the relationship between Aboriginal people and Victoria Police. It is unacceptable to me that for many Aboriginal people, Victoria Police is viewed with fear, rather than as an institution of safety.
10. In particular I would like to draw out the evidence of Uncle Ross Morgan. I acknowledge Uncle Ross' evidence that his repeated violent experiences inflicted by police left him with medical complications including tinnitus and addiction issues as a result of trans-generational trauma and a deep rooted distrust of police. I also

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acknowledge Uncle Ross' evidence that he was not afforded the same opportunities whether it be through education or in prison as his non-Aboriginal counterparts. In my view this is too often the story of Aboriginal people and is a clear example of the systemic injustice experienced by Aboriginal people.

11. Since my appointment as the Minister for Police, it has been my practice to meet with organisations who can offer broad reflections on policing including listening to the lived experience of individuals who have had negative and often traumatic experiences with Victoria Police. I believe it is important to understand the impacts decisions of police officers may have on Aboriginal people and other members of the community. I commit to the Commission that I will continue to do this.
12. I have been disturbed by the experiences that have been heard by the Commission and I accept that these examples are indicative of the experiences of many Aboriginal people. I do not doubt that too many Aboriginal people can empathise with the experiences bravely told by the lived experience witnesses.
13. I acknowledge real efforts Victoria Police has made to try and address some of the issues that were raised through the evidence of the lived experience witnesses and I welcome this continued work. However, I accept that there continue to be significant and current issues within Victoria Police and the criminal justice system more broadly, including as a result of enduring systemic injustice, that must be addressed.
14. I am supportive of the Commission's important work both personally and as a member of the Government of Victoria. I look forward to the Commission's reports and recommendations and, ultimately, to much better outcomes for Aboriginal people, and the broader Victorian community.

Formal matters

15. I provide this statement in response to a Notice to Produce (NTP-002-021) from the Commission and in it I respond to the specific questions that have been allocated to me following consultation between the State and the Commission. This statement will be supplemented by my oral evidence and should be read with the Department of Justice and Community Safety's (DJCS) Agency Response lodged with the Commission on 15 March 2023, the Whole of Victorian Government (WoVG) Submission on the Justice System lodged with the Commission on 20 March 2023 and the statement of the Chief Commissioner of Police (CCP), which I understand has been, or will be, lodged today. I have read each of these documents for the purpose of preparing my statement.
16. I make this statement on the basis of my own knowledge and in my capacity as the Victorian Government Minister for Police, except where otherwise stated.
17. The opinions I express in this statement are informed by my own professional experience, and my observations as Minister for Police. In preparing this statement, I have consulted with subject matter experts within the Department of Premier and Cabinet, the DJCS and other relevant portfolios within the Victorian Government. Where I make statements based on information provided by others, I believe this information to be true.

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18. I have responded to the questions I have been asked to address by reference to the key themes raised in those questions: namely, deaths in custody, and the introduction of a public health response to public intoxication.
19. Throughout this statement, I use the term Aboriginal to respectfully refer to Aboriginal and Torres Strait Islander people. This is in accordance with the preference of the Aboriginal Justice Caucus, a key Aboriginal community partner of the DJCS.

Professional background and positions

20. I was born and raised on Wurundjeri Country in West Preston, in Melbourne's northern suburbs. In my professional life I have worked as a journalist in regional Victoria and a ministerial policy adviser. I represented the West Heidelberg community as a local councillor at the City of Banyule for five years from November 2005 to December 2010. In 2010, I was elected as the State Member for Ivanhoe.
21. Between December 2021 and June 2022, I was the Minister for Child Protection and Family Services and the Minister for Disability, Ageing and Carers. Even in the limited time I was in those roles I had insights to the critical work of our child protection workers including Aboriginal Community Controlled Organisations (**ACCOs**). A key priority of mine as the Minister for Child Protection and Family Services was to implement the Aboriginal Children in Aboriginal Care (ACAC) initiative. This program authorises ACCOs to have legal responsibility for Aboriginal children in care, improving their connection to culture, Country and family.
22. In June 2022, I was appointed the Minister for Police, Minister for Crime Prevention and Minister for Racing.
23. Since entering politics, I have also held the following Parliamentary Secretary roles:
 - 23.1 Parliamentary Secretary for the Environment (December 2014 – July 2016);
 - 23.2 Parliamentary Secretary for Energy, Environment and Climate Change, and Parliamentary Secretary for Water (July 2016 – December 2018);
 - 23.3 Parliamentary Secretary for Health (December 2018 – December 2021); and
 - 23.4 Parliamentary Secretary for Carers and Volunteers (June 2019 – December 2021).
24. In my positions I have had the opportunity of working on initiatives with Aboriginal people, such as:
 - 24.1 co-chairing the Aboriginal Children's Forum in my capacity as the Minister for Child Protection and Family Services as part of Wungurilwil Gagapduir, a partnership between the Aboriginal community, Government and community services organisations;
 - 24.2 development of the *Water for Victoria* initiative which recognised the cultural importance and traditional rights to water for Aboriginal people and the

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importance of self-determination, when I was Parliamentary Secretary for Water between July 2016 and December 2018; and,

- 24.3 development and implementation of the Wannik Learning Together – Journey to Our Future strategy which established culturally appropriate local initiatives aimed at improving education outcomes for First Peoples’ children when I was the Chief of Staff to the then Minister for Education, the Hon. Bronwyn Pike between 2008 and 2009.

Police portfolio

- 25. As stated above, in June 2022, I was appointed the Minister of Police. Annexed to my statement and marked **AC-1** is a copy of the letter from the Victorian Premier dated 30 December 2022 confirming my current appointment and portfolio responsibilities.
- 26. As Minister for Police, my portfolio responsibilities include:
 - 26.1 overseeing police policy, including in respect of police capacity and capability, police equipment and infrastructure, police workforce and police performance and keeping Victoria Police accountable for the delivery of its functions;
 - 26.2 working with Victoria Police to identify priority areas to improve community safety and reduce the impacts of crime including through the implementation of strategies and policies such as previous Community Safety Statements, the Crime Prevention Strategy and the Youth Justice Strategic Plan.
 - 26.3 policy work in relation to administering the Acts of Parliament I have responsibility for under the General Order, including the *Victoria Police Act 2013* (**Police Act**), the *Firearms Act 1996*, the *Control of Weapons Act 1990*, the *Private Security Act 2004* and the *Sex Offenders Registration Act 2004*;
 - 26.4 monitoring trends in crime statistics as reported by the Crime Statistics Agency, for example which crime types have a high volume of incidents; and
 - 26.5 delivering whole of Government responses to various Commissions, inquiries and reviews which identify opportunities for justice system reform with other Ministerial colleagues including coordinating key countering violent extremism policies with the Attorney-General.
 - 26.6 engagement with Ministerial colleagues across jurisdictions on matters of national importance through forums such as the newly established Police Ministers’ Council
- 27. In summary, I would explain my role in this way:
 - 27.1 As the Minister for Police, I am responsible for ensuring that the Victorian community, is safe and feels safe, and that the community has confidence in the police service that serves it including the Aboriginal community. Like

many other Ministers, this means that I am responsible for setting some of the policy and legislative priorities of the executive branch I oversee, Victoria Police.

- 27.2 However, my relationship with Victoria Police is different to the relationship between other Ministers and their 'departments'. Section 10 of the *Police Act* limits the extent to which I can direct the CCP about operational matters. I cannot, and do not, direct the CCP as to policy or procedures in respect of operational matters such as: who Victoria Police should investigate or prosecute;¹ how it should enforce the law;² decisions about individual police officers;³ the organisational structure of Victoria Police;⁴ the allocation or deployment of police officers to particular locations⁵ and the training, education and professional development programs within Victoria Police.⁶ The purpose of s 10 of the *Police Act* is to maintain the independence of Victoria Police, in order to ensure, for example, that it has the capacity to investigate other branches of Government.
- 27.3 I recognise that the relationship between Government and Victoria Police must continue to be adaptive and responsive to change. The work of the Commission provides an opportunity to consider new ways of engagement specifically in relation to the experiences of Aboriginal people, including how to collect, utilise, communicate and improve police data in relation to the exercise of police power and discretion.
- 27.4 An exception to this delineation of responsibilities is that I am permitted to give the CCP directions about operational matters where an oversight body like the Independent Broad-based Anti-corruption Commission or a coroner has made a report or recommendation about an operational matter and where, in my opinion, the CCP has not responded adequately to that report or recommendation.⁷ I have not utilized this power in my responsibilities during my tenure as the Minister for Police to date. It is my practice to work collaboratively with the CCP to resolve outstanding matters. I would carefully consider the merits of issuing directions to the CCP on a case by case basis prior to making any determination to utilise this power under the *Police Act*.
28. Victoria has a model of police oversight which involves the internal investigation of some complaints against police officers by the Victoria Police Professional Standards Command, and the independent investigation of some complaints by Victoria's integrity agencies such as the IBAC. The Attorney-General has responsibility for the oversight of complaints investigated by integrity agencies as these agencies report to the Attorney-General. I have responsibility for the legislative policy settings for Victoria Police's discipline system, including the structure and governance of the

¹ *Victoria Police Act 2013*, s 10(2)(c).

² *Victoria Police Act 2013*, s 10(2)(b).

³ *Victoria Police Act 2013*, s 10(2)(d).

⁴ *Victoria Police Act 2013*, s 10(2)(e).

⁵ *Victoria Police Act 2013*, s 10(2)(f).

⁶ *Victoria Police Act 2013*, s 10(2)(g).

⁷ *Victoria Police Act 2013*, s 10(3) and (4).

Professional Standards Command, which is established by the *Police Act*. Complaints about the conduct of police officers of a less serious nature are commonly investigated by Victoria Police, however where the complaint meets the threshold of 'misconduct' Victoria Police is required to refer the complaint to IBAC. While I do not have the authority to intervene in any complaints made to Victoria Police or IBAC, I do oversee Victoria Police's work performance, for example where IBAC makes recommendations to Victoria Police in relation to systemic issues, I actively monitor through regular briefings, Victoria Police's progress in implementing these recommendations. These regular briefings allow me to monitor the outcomes of implementation to determine whether ongoing change has resulted from the implementation, or further work is required to give effect to the recommendations.

29. Complaints made directly to Victoria Police or to oversight bodies may lead to disciplinary action by Victoria Police, following the process established by the *Police Act*. The Act sets out what constitutes a breach of discipline, the process for investigating a breach of discipline, and the actions that Victoria Police can take where an officer is found to have committed a breach of discipline. For example, an officer's rank could be reduced, they could be transferred to other duties or dismissed. While I have responsibility for the legislation which establishes that process, I cannot intervene in any disciplinary investigations or decisions in the discipline process.
30. I acknowledge that many in the Aboriginal community mistrust Victoria Police. The findings of the recent IBAC report *Victoria Police handling of complaints made by Aboriginal people* were unacceptable and I believe that the Victoria Police complaints system, including independent police oversight, is not meeting community expectations. I acknowledge that mistrust in the police complaints system contributes to the Aboriginal community's mistrust in Victoria Police, and has significantly contributed to the underreporting of complaints by Aboriginal people. It is critical for Aboriginal people and the non-Aboriginal community, that the Victoria Police complaints system is strengthened. I acknowledge the advocacy of organisations such as the Victorian Aboriginal Legal Service (**VALS**) that part of the reform needed is to place victims at the centre of the complaints process and be independent of Victoria Police.
31. It is my opinion that further consideration should be given to options such as referring all police complaints made directly to Victoria Police by an Aboriginal person or their advocate to IBAC for investigation or to another entity that is independent of Victoria Police.
32. I welcome Victoria Police's commitment to implement all recommendations from the *Victoria Police handling of complaints made by Aboriginal people* report.⁸ I will continue to work with Victoria Police on practical reforms to the police complaints system.
33. While I also do not have portfolio responsibility for Victoria Police powers to investigate and respond to crime more generally, I work closely with my colleagues,

⁸ See Statement of Shane Patton, Chief Commissioner of Victoria Police, dated 31 March 2023, [133.1].

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such as the Attorney-General, to ensure the impacts of law reform proposals on the police portfolio are considered. I support Victoria Police to implement the Government's agenda, by seeking advice from Victoria Police and DJCS about the likely impacts of Government decisions on community safety and how a Government policy or commitment could be operationalised.

34. I am responsible for any amendments to the Acts of Parliament for which I have portfolio responsibility. In developing any amendments to legislation for which I have responsibility, I consult with relevant stakeholders on the possible impacts of those amendments, including with Aboriginal led organisations and bodies.
35. In my work as Minister for Police I have consulted with, and I intend to continue to consult with, stakeholders such as the VALS and Djirra. I will attend the next Aboriginal Justice Forum (**AJF**) scheduled for 20 and 21 July in Shepparton.
36. I note that Victoria Police is a key player (or "doer") in actioning the majority of the enforcement components of Government decisions. This means that an important part of my role is to support Victoria Police in the performance of its functions. An example of this is ensuring Victoria Police is sufficiently resourced and has the tools and workforce knowledge it needs to efficiently and effectively acquit its functions.
37. I am the prime line of communication between the Government and Victoria Police. There are regular scheduled meetings with the CCP and members of Executive Command (who form the leadership and strategic decision-making body of Victoria Police) where I am briefed regarding portfolio matters including significant issues or events. These meetings also provide me with a forum within which to discuss the expectations of Government in relation to strategic matters. The discussions can include policy directions, funding, and actions that Victoria Police is taking to implement the Government's agenda. I am also briefed by Victoria Police about its engagements with Aboriginal groups and initiatives, such as its attendance and participation in the AJF.
38. It is clear to me that Victoria Police must continue its efforts to build trust with the Aboriginal community. We know that in Victoria, over-policing has historically led to Aboriginal people being arrested for low level offences for which other Victorians may not have been subject to arrest. I acknowledge the recent finding of the Victorian Parliamentary Inquiry into the Criminal Justice System that over-policing remains a significant issue. I recognise that Victoria Police continues to grapple with unconscious bias, systemic injustice and unequal use of discretionary powers. This is clear in the consistent decline in complaints being made by Aboriginal people between 2017 and 2022.⁹ This results in a greater number of interactions for Aboriginal people with the criminal justice system than non-Aboriginal people.
39. Racial profiling and racial bias within Victoria Police is completely unacceptable. It is my expectation that Victoria Police takes the findings of the Victorian Parliamentary Inquiry about over-policing seriously, and establishes a culture where it is clear that

⁹ See Statement of Shane Patton, Chief Commissioner of Victoria Police, dated 31 March 2023, [122], Table 3.

Aboriginal people must be treated with greater respect and dignity regarding their human rights than is currently the case.

40. Victoria Police is working to proactively improve police interactions with Aboriginal people through the Aboriginal Portfolio Reference Group, the Aboriginal Justice Forum, the Aboriginal Community Liaison Officer Program and the Police Aboriginal Liaison Officer Program.¹⁰ To support Victoria Police to continue to improve interactions with Aboriginal people, I will monitor data provided by Victoria Police about engagements with and outcomes for Aboriginal people, independent data, and continue to discuss strategies for improvement with the Aboriginal community and Aboriginal stakeholders.

PART A: Deaths in Custody

Recommendations arising from the Inquest into the Passing of Veronica Nelson (Nelson Inquest) and the Inquest into the Death of Tanya Louise Day (Day Inquest)

41. Every death in State custody is an absolute tragedy. I recognise that these deaths too often take place in isolation away from family and country and this has a profound impact on the Aboriginal community. It is obvious to me and should be obvious to anyone that it is unacceptable for there to be any deaths in police care, custody and police custody related operations.
42. As a citizen and as a Minister of this Government, I wish to express my deepest condolences and sympathies to the family, friends and loved ones of all Aboriginal people who have died in any custodial or related environment. The Victorian Government acknowledges the long-standing Aboriginal community advocacy on this issue, and is committed to ensuring that it does everything possible to put in place measures to prevent deaths like this from happening again. These reasons contributed to the Government's decision to establish this Commission.
43. Since the Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**) released its final report in 1991, 32 Aboriginal people have died in prison and police custody in Victoria. Of these deaths, 10 occurred while the person was in police care and custody or during a police custody related operation. I am aware that the CCP's statement to this Commission has more information on these tragic deaths and Victoria Police's work in this area.¹¹
44. I recognise that, as the Minister for Police, I have a unique opportunity by reason of my position to drive continued improvements in relation to issues such as police custody. I can and will ensure that Victoria Police is clear on my expectations that safe, respectful and culturally-sensitive care is provided to Aboriginal people in police custody and seek regular briefings on how this is being delivered. I will also work with

¹⁰ See Statement of Shane Patton, Chief Commissioner of Victoria Police, dated 31 March 2023, [118].

¹¹ See Statement of Shane Patton, Chief Commissioner of Victoria Police, dated 31 March 2023, [67] to [76].

my ministerial colleagues and Victoria Police on changes to laws and practices to reduce the number of Aboriginal people in custody in the first place. I know this is a key focus of the Commission and I welcome the Commission's views and recommendations on this matter.

Question 125(b). *Explain what the State intends to do in response to the recommendations of the Nelson Report, particularly relating to Victoria Police (R7-12).*

45. On 30 January 2023, His Honour Coroner McGregor delivered his findings in relation to the tragic death of Veronica Nelson (**Nelson Report**). I accept that Ms Nelson's death was preventable and acknowledge the Coroner's findings that the actions of Victoria Police members contributed to this tragic outcome. These findings and the public intoxication reforms which I address later in my statement are the most significant events involving police in my time as Minister for Police.
46. I understand that the Attorney-General and Minister for Corrections will give evidence to the Commission about the actions the State intends to take in response to the recommendations of the Nelson Report. Principal among those actions is the reform of the *Bail Act 1977*.
47. I have therefore answered this question insofar as it is directed to the Coroner's recommendations that were addressed to the CCP and Victoria Police (being recommendations 7-12). By way of summary, the Coroner recommended that Victoria Police and/or the CCP:
 - 47.1 make certain amendments to the Victoria Police Manual policies and guidelines (recommendation 7);
 - 47.2 update its training to include training in relation to the requirements of the Charter and regarding the obligations of police prosecutors (recommendation 8);
 - 47.3 partner with appropriate ACCOs to develop and implement a strategy for ongoing cultural awareness training, monitoring and performance review (recommendation 9);
 - 47.4 correct any misunderstanding suggestive of an 'informal policy' regarding opposition to bail applications involving the exceptional circumstances test, or discouraging police bail decision makers from the proper consideration of their discretion (recommendation 10);
 - 47.5 require police bail decision makers to undertake periodic training regarding s 3A of the *Bail Act* (recommendation 11); and
 - 47.6 collect, retain and publish certain statistics (recommendation 12).
48. Each of the actions that the Coroner has recommended that Victoria Police and/or the CCP undertake are matters that fall within Victoria Police's operational responsibility. It follows that Victoria Police is responsible for implementing the recommendations.

49. I am, however, committed to working with and supporting Victoria Police and the CCP when it comes to changes, improvements and recommendations in relation to deaths in police care, custody and their custody related operations. If the Coroner's Court, an expert body or indeed this Commission makes recommendation to the CCP, I expect the recommendations to be considered expeditiously and to be briefed on any issues of substance in relation to Victoria Police's response. In the event that I am of the opinion that the CCP has not responded adequately to certain recommendations, I will consider giving directions, as I am empowered to do as described in paragraph 26.4 above.
50. I have been briefed by the CCP about Victoria Police's response to the recommendations of the Nelson Report. I am also aware of the response to recommendations 7-12 from the CCP's statement to this Commission.¹² I am therefore aware of the CCP's letter dated 24 March 2023 to the Coroner's Court setting out Victoria Police's formal response to this Coronial Inquest.
51. Accordingly, I understand that it is Victoria Police's intention to accept or accept in principle all recommendations directed to them. I welcome this decision of the CCP. I also welcome the steps Victoria Police has already taken to implement in full or through interim measures a number of the recommendations including improved training for prosecutors and the clear communication of the CCP's expectation with regard to bail decisions.
52. I acknowledge that despite commitments from Government and agencies including Victoria Police to implement recommendations, too often this fails to deliver real and sustained changes in the experiences of Aboriginal people with the criminal justice system. One key reason for this is the time it takes for recommendations to be implemented in full. One current example of this is the delays in fully implementing the recommendations of the Tanya Day inquest which were handed down in 2020. It is important that the implementation of changes to policies and processes is carefully considered to avoid to the extent possible unintended negative outcomes. This must be carefully balanced against the need to build trust through making meaningful change. Too often we have not got this balance right.
53. It is my expectation that I will continue to be briefed by the CCP on Victoria Police's progress towards fully implementing the recommendations to it from the Nelson Report. I accept that I have an important responsibility for ensuring that the CCP can and does respond adequately to the Coroner's recommendations. I will be regularly seeking updates from the CCP on Victoria Police's implementation progress in order to keep their work on the agenda between us and to ensure it remains a high priority. If there are issues or problems about the operationalising of the recommendations, I expect to be informed about this by the CCP. As the Minister for Police I will offer Victoria Police any support I can to ensure the timely implementation of all accepted recommendations.

¹² See Statement of Shane Patton, Chief Commissioner of Victoria Police, dated 31 March 2023, [58].

Question 127(b) and (c). *Explain what the State has done, or intends to do, in response to the recommendations of the report of Deputy State Coroner Caitlin English on the Inquest into the Death of Tanya Louise Day dated 9 April 2020 (Day Report), including:*

b. Review by Victoria Police of:

i. The Victoria Police Manual to include falls risk assessment; and

ii. Training and education regarding the RCIADIC and its recommendations.

c. The implementation by Victoria Police of training for all police regarding:

i. The Victoria Police Manual and requirement for safe management of persons in police care/custody; and

ii. Medical risks of people affected by alcohol.

54. On 9 April 2020, Her Honour, Deputy State Coroner Caitlin English delivered her findings into the death of Ms Tanya Day. The death of Tanya Day was a tragedy and I offer my condolences to family and community for their loss. Ms Day's death was avoidable.
55. Principal among the actions the State is taking following the Day Report is the decriminalisation of the offence of public drunkenness. I understand that the Attorney-General will give evidence on this important issue.
56. I was briefed about the Deputy State Coroner's findings and recommendations in the Day Report upon taking my office in June 2022. Since I became Minister for Police in June 2022, I have had ongoing briefings with the CCP and Executive Command about the preparations and readiness of Victoria Police once the offence of public drunkenness is repealed. This has been a significant issue which has been a key topic of discussion between us arising out of the Day Report. It has also been a top policy priority since my first appointment as the Minister for Police.
57. I am also aware of the response of the CCP to the specific recommendations to Victoria Police in the Day Report. The CCP's statement to the Commission addresses the Coroner's recommendations that are concerned with Victoria Police,¹³ being (in summary) to:
 - 57.1 amend the Victoria Police Manual Rules and Guidelines to include a falls risk assessment for each person in custody who appears to be affected by alcohol or drugs or illness (recommendation 3);
 - 57.2 review training and education within Victoria Police regarding the findings and recommendations of the RCIADIC to ensure knowledge and appropriate compliance (recommendation 4);

¹³ See Statement of Shane Patton, Chief Commissioner of Victoria Police, dated 31 March 2023, [78]-[82].

- 57.3 implement training for all Victoria Police custody staff regarding the Victoria Police Manual Rules, Guidelines and local police station Standard Operating Procedures regarding the mandatory requirements applicable for the safe management of persons in police care or custody (recommendation 5);
 - 57.4 implement training within Victoria Police regarding the medical risks of individuals affected by alcohol (recommendation 6); and
 - 57.5 request the Victorian Equal Opportunity and Human Rights Commission to conduct a section 41(c) review of the compatibility of its training materials with the human rights set out in the Charter (recommendation 7).
58. Each of these recommendations are matters that fall within Victoria Police's operational responsibility as part of the delineation described above. It follows that Victoria Police are responsible for implementation of the recommendations.
59. From being briefed and from the CCP's statement, I understand the current status of implementation of the recommendations by Victoria Police. In addition to the transition to a public health response to public intoxication, I consider these changes by Victoria Police to be further steps towards mitigating the risk of future deaths in police custody in circumstances similar to that of Tanya Day.
60. I acknowledge the progress Victoria Police has made towards fully implementing Coroner English's recommendations, as it should, and I welcome this progress. Notwithstanding this progress, I note that the CCP's response to the Coroner indicated an expectation that all custody staff would have completed relevant mandatory training by December 2020. I am concerned that this has not occurred and it is unacceptable to me that there continues to be low completion rates across some staffing cohorts. A clear example of this is that as at 14 March 2023 only 59 per cent of senior Police Custody Officers, police supervisors and managers have completed the *Persons in Police Care or Custody: Senior Police Custody Officers, Police Supervisors and Managers* mandatory training course.¹⁴ This is particularly troubling to me noting the recommendations arising from the recent Veronica Nelson Inquest address similar issues. The events of the worldwide pandemic were unprecedented and it was understandable that significant Victoria Police resources were directed towards the pandemic response. It is my expectation that Victoria Police will fully implement the remaining recommendations with a greater sense of urgency. I am open to consideration of all powers at my disposal to ensure not only that Victoria Police is clear about my expectations but also that the CCP is empowered to deliver them.

PART B: Public health-based response to public intoxication

61. The Victorian Government fully supports the repeal of Victoria's public drunkenness laws. We acknowledge that this reform has taken too long, and this has had devastating impacts for Aboriginal people. The Government has now passed

¹⁴ Statement of Shane Patton, Chief Commissioner of Victoria Police, dated 31 March 2023, [81.3(c)].

legislation to decriminalise public drunkenness, which is due to take effect on 7 November 2023.

62. In committing to this reform the Government, and I, recognise that the offence of public drunkenness has had a profound and disproportionate impact on Aboriginal people. I also accept that the disproportionate impact of these laws on Aboriginal people has been discriminatory.
63. The Government is implementing a health-based approach to public intoxication because it is the most effective way to reduce contact with the justice system, prioritise health and safety, and reduce the possibility of deaths in custody following arrests for public drunkenness.
64. Accordingly, the Government, and I, recognise that the decriminalisation of the offence is a necessary first step to ensuring that Victorian laws do not continue to contribute to, or further entrench, inequity. The Government has a responsibility to ensure Aboriginal people receive equitable treatment under the law.
65. The details of the reform are best addressed by the Attorney-General and the Minister for Mental Health. I wish, however, to make some observations regarding the key role that Victoria Police will play in ensuring the success of the reform and my intentions regarding the way Victoria Police and I will consult in respect of the rollout of the reform.
66. In acknowledgement of the need to transition to a health-based response to public intoxication, the Government has decided that no additional police powers are required to respond to a person solely based on public intoxication. The Government carefully considered the advice from Victoria Police that new low level threshold powers would assist Victoria Police to operationalise the new reform. As stated, it was the decision of Government not to proceed in this way. That debate has passed and I have understood the views of the Aboriginal community that this outcome is in their best interests.
67. Therefore, police will not have a formal role in responding to people who are intoxicated in public where there is no other offending behaviour or criminality present. Victoria Police's role in managing people intoxicated in public will be limited to where community safety risks or criminality are present.
68. The police response will be informed by the behaviour of the person and the particular risks presented, rather than the intoxication itself. This is an important element in reducing the reliance on a police response and supporting a genuine transition towards a health-based approach.
69. Victoria Police is necessarily a key partner in this reform, noting that they will continue to encounter people who are intoxicated in public and be contacted by members of the community about intoxicated persons. I am aware from my regular briefings with the CCP that in preparation for the legislation taking effect in November 2023, Victoria

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Police has taken active steps to ensure their readiness. This is addressed in the CCP's statement.¹⁵

70. Once the legislation takes effect, it is my expectation post 7 November 2023 that the CCP will brief me on a regular basis regarding any operational issues experienced by Victoria Police in the rolling out of the response. I will raise any substantive or major issues or difficulties that are reported to me by Victoria Police with the relevant responsible Ministers, the Hon Gabrielle Williams MP, who is leading the implementation and evaluation of the health response and health model, and the Attorney-General, the Hon Jaclyn Symes MP, who will focus on the justice impacts of the reform. I also see my role as being ready, willing and available to support Victoria Police in taking the actions it needs in effectively operationalising the reform so it is a success for the Victorian community and especially the Aboriginal community.
71. I will advocate for any changes or additional support required by Victoria Police to give effect to the repeal of public drunkenness and will be briefed on their own data and intelligence gathered as they operationalise this reform. I will also engage with stakeholders beyond Victoria Police including organisations such as the VALS to ensure the roll out of the reform is effective.

State assessment of Victoria Police and Police Association's position on decriminalisation of public drunkenness

Question 133. *On 16 January 2023, Police Association Victoria Secretary Wayne Gatt was reported to have said:*

"Decriminalising public drunkenness, of itself, is not a dangerous reform. What is dangerous, however, is to do without maintaining the safety net that would provide police with a means to manage people in the community that do not consent to a health response or where a health response is simply not available".

Provide an explanation of Victoria Police and the Police Association's position on decriminalising public drunkenness (in the latter case: as understood by Victoria Police) and outline the State's assessment of and response to that position.

72. I understand that the Police Association has expressed concern that the health-based response does not provide police with the opportunity to respond where a person who is intoxicated in public does not consent to a health response, or where a health response is not available.
73. As with any significant Government reform, concerns have been expressed about the roll out and operationalising of the new health-led response to public intoxication including the risk of unintended impacts on community safety issues. I'd like to be clear that this uncertainty is a natural part of rolling out any significant Government reforms. That has been my experience in political life and as a member of the

¹⁵ Statement of Shane Patton, Chief Commissioner of Victoria Police, dated 31 March 2023, [88]-[92].

Government. The Government takes these concerns seriously as it is committed to ensuring the success of this reform. An independent evaluation monitor is being established and I understand the Attorney-General's statement provides further detail on this. I am also aware that Victoria Police will be establishing an internal evaluation framework¹⁶ and it is my expectation that I will be regularly briefed on any emerging themes or issues that may arise. Finally, noting the disproportionate impact of public drunkenness offences on Aboriginal people, I will seek feedback directly from the Aboriginal community on the roll out of the reform and where appropriate, will provide information on emerging themes or issues for appropriate action.

74. From 7 November 2023, it will not be an offence for people to be drunk in public; therefore, it will not be appropriate for police to have coercive powers in responding to individuals who are intoxicated in public where there is no alleged criminality present.
75. As I have already said, the Government has heard the argument mounted that a safe and effective model to respond to people who do not consent to a health response, and who pose a risk to themselves or others, requires police to have new or special powers to intervene to prevent alcohol-fuelled anti-social behaviours. The Government does not agree with this position.
76. As stated above, Victoria Police will retain their existing powers to respond to community safety concerns. To the extent that Victoria Police will continue to be called upon to respond to people who are intoxicated in public and are displaying behaviours of concern, police can continue to rely upon their existing operational strategies (such as, de-escalation) and, where required and at the discretion of members, utilise general powers to respond to any alleged criminal offending.
77. In my opinion, cultural change will be a significant part of this reform. Victoria Police will be educating its members on how to respond to public intoxication in a decriminalised environment. Based on my knowledge on Victoria Police's preparatory work and its skills as an organisation, I have confidence in Victoria Police to do what is necessary to adapt to the realities of the reform. I will be monitoring this, with a view to assisting and supporting Victoria Police in the ways I have mentioned in this statement and challenging them to do better if needed. This is key Government reform. It must be implemented.
78. But cultural change cannot just occur within the police. A shift is needed in the way the community thinks about public intoxication, in order to align community expectations with the Victorian Government's public health model for responding to this social issue. That may take time but, again, I am confident it will occur. It is my experience, that when given the opportunity, the Victorian community has demonstrated its willingness to engage with progressive reforms.

¹⁶ Statement of Shane Patton, Chief Commissioner of Victoria Police, dated 31 March 2023, [90.4].

79. Obviously, a health-based response requires services for that health response. That is the responsibility of the Minister for Mental Health. Although I am confident in Victoria Police's readiness for the commencement of the new model, we will inevitably learn in the doing of this. To the extent that police are "filling the gap" and need assistance, I see it as my role to support them in order to enable them to assist Government to implement this historical reform, and if necessary to hold them accountable in the delivery of their role in this reform.
80. As a result, it is important that there is close review of all parts of the new public health-based model as it rolls out in practice, and on the ground. The Government is implementing independent monitoring and evaluation of the reforms to ensure that the objectives of the reform to reduce contact with the criminal justice system, particularly for Aboriginal people, are being met. This will include monitoring and evaluation of the availability of a health response to inform any decisions about whether further funding is required. It will also consider whether there are any changes to the way police respond to public intoxication, and if so, analysing the reasons for these changes. Responsibility for evaluation of the reform falls under the responsibility of the Attorney-General and the Minister for Mental Health for the justice and health-based impacts respectively.
81. I note that Question 134, which enquires as to the State's intended processes for evaluating and public reporting of existing Police powers in the case of public drunkenness, was originally allocated to me. These processes of evaluation and public reporting fall within the Attorney-General's portfolio, I understand that the Attorney-General will answer this question on behalf of the State in her statement. For my own part, I see independent evaluation and monitoring as critical, and I will be keen to see that it caters to the aspects of the reform that come within my portfolio as Minister for Police.


PART C: Closing Remarks

82. At its core, Victoria Police reflects the community it serves. Sadly, structural racism and injustice persists within our society and institutions like Victoria Police are not immune to this.
83. The criminal justice system is an imperfect system and too often we see our most marginalised and vulnerable people coming into contact with a system that is ill equipped to respond to their needs. I commit as Minister to working with my Ministerial colleagues and Victoria Police to address such impacts as they relate to my portfolio.
84. I acknowledge the recent Victorian Parliamentary Inquiry into the Criminal Justice System found that over-policing of Aboriginal people remains an issue and that evidence suggests that policing in Victoria disproportionately targets Aboriginal communities, particularly young people.

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85. I welcome the initiatives Victoria Police has rolled out to date including the increased use of cautioning through the expanded Aboriginal Youth Cautioning Programs.¹⁷ There is still more work to do. The statistics show that even as recently as 2020-2021, the use of cautions for Aboriginal youth is still approximately 7 per cent lower than their non-Aboriginal peers.¹⁸ This may illustrate how the issues of systemic injustice and unconscious bias remain contemporary issues for Victoria Police.
86. I am gravely concerned by the instances of police mistreatment that Aboriginal people have shared with the Commission. As with the Chief Commissioner of Police, I commit to working towards a system whereby such incidences are a historical, not a contemporary injustice.
87. To improve Aboriginal peoples' trust in Victoria Police and we must ensure that when Aboriginal people need police assistance, they seek this assistance. I accept that over-representation and limited police accountability fosters continued trauma, anger and mistrust of law enforcement within Aboriginal communities.
88. I recognise that key to building Aboriginal people's trust and ensuring fairness in policing for Aboriginal people is independent oversight of police. The Government is currently considering all stakeholder feedback from a systemic review of police oversight and is committed to reform in this area to improve police accountability.
89. While these reforms cannot simply be 'deferred to Treaty', I also note this Government's commitment to self-determination and Treaty and the potential for reforms to the criminal justice system to be negotiated through Treaty.

Sign here:**Print name:****Date:**


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Anthony Richard Canisles
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31/03/23
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¹⁷ Statement of Shane Patton, Chief Commissioner of Victoria Police, dated 31 March 2023, [167]-[169].

¹⁸ Statement of Shane Patton, Chief Commissioner of Victoria Police, dated 31 March 2023, [170], Table 7.