

IN THE MATTER OF THE YOORROOK JUSTICE COMMISSION

Statement of the Chief Commissioner of Police Shane Patton APM

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IN THE MATTER OF THE YOORROOK JUSTICE COMMISSION

Statement of the Chief Commissioner of Police Shane Patton APM

I, SHANE ANDREW PATTON, Chief Commissioner of Victoria Police, say as follows:

ACKNOWLEDGEMENT AND APOLOGY

1. I would like to firstly acknowledge the Traditional Owners of Country across Victoria and pay my respects to their Elders past, present and future. I recognise and embrace the fact that Aboriginal people are connected to the oldest, continuous history.
2. This statement is true and correct to the best of my knowledge and belief. I make this statement in response to a notice from the Commission and in it I respond to specific questions that I am informed have been allocated to me by consultation between the State and the Commission. This statement is based on my 45 year career in Victoria Police and my views as its Chief Commissioner. In preparing this statement, I have consulted with personnel of Victoria Police and been provided with information in Victoria Police's records. Where I make statements based on information provided by others or information within Victoria Police, I believe this information to be true. In preparing this statement, I have also read the whole of Victorian Government submission to the Commission on the criminal justice system and the whole of Victorian Government submission to the Commission on the child protection system.
3. I would also like to warn Aboriginal readers of this statement that it contains the names of deceased persons.
4. Throughout this statement, I use the term Aboriginal to respectfully refer to Aboriginal and Torres Strait Islander people. This is to ensure consistency with the current terminology used in existing Victoria Police policies and documents and forums in which we participate or with whom we engage (for example, Aboriginal Cultural Awareness Training, Aboriginal Justice Forum, Aboriginal Justice Caucus). My use of this term is not intended to deny the right of Aboriginal people to determine the way in which they are referred.
5. I see the Yoorrook Justice Commission as an opportunity for State agencies like Victoria Police to publicly acknowledge the wrongs that have occurred and which still occur and to make a public commitment to how we intend to operate and engage with Aboriginal individuals, organisations and communities and to then follow through with actions to implement the commitments. It is a non-negotiable fundamental requirement for Victoria Police under my leadership for there to be constant meaningful improvements in this area. It is unacceptable that Aboriginal people are over-represented in the Victorian criminal justice system. I have already committed Victoria Police to taking real action to address the over-representation of Aboriginal people in the criminal justice system and I will continue to do so.

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6. As Chief Commissioner, and on behalf of Victoria Police, I wish to formally and unreservedly apologise for police actions that have caused or contributed to the trauma experienced by so many Aboriginal families in our jurisdiction, when I appear before the Commission. I have provided the Commission with the contents of my apology and I seek the Commission's permission to say the apology when I commence my evidence.
7. Victoria Police is also continuing to work with the Stolen Generations Advisory Committee, in consultation with the Stolen Generations Reparations Unit, to develop an apology for the role of police in the Stolen Generations, which was recommendation 9 of the Stolen Generations Reparations Steering Committee's 2021 Report.

BACKGROUND

8. I am the 23rd Chief Commissioner of Victoria Police. Over the course of my long career with Victoria Police, I have undertaken diverse policing roles including operational uniform policing, as a detective in criminal investigations, internal investigations, a criminal prosecutor, public transport safety, traffic, training and education, and all facets of counter terrorism.
9. My previous leadership roles span:
 - 9.1 acting as Chief Commissioner on six separate occasions between 2016-2019;
 - 9.2 Deputy Commissioner, Regional Operations from November 2018 to June 2020, responsible for the four geographic Regions and the Transit & Public Safety, State Emergencies & Support, and Family Violence Commands;
 - 9.3 Deputy Commissioner, Specialist Operations from June 2015 to November 2018, responsible for Crime, Counter Terrorism, Road Policing and Intelligence & Covert Support Commands and the Forensic Services and Legal Services Departments;
 - 9.4 Assistant Commissioner of North-West Metro Region, responsible for the City of Melbourne and its major events from August 2014 to August 2015;
 - 9.5 Assistant Commissioner for State Emergencies & Security Command, responsible for State emergency management, police communications, counter terrorism, critical infrastructure protection, State event planning and prisoner management from July 2012 to August 2014;
 - 9.6 Chief of Staff to two previous Chief Commissioners; and
 - 9.7 co-chairing a Regional Aboriginal Justice Advisory Committee as Superintendent of Southern Metro Region Division 3 in 2010-2011.

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10. I have held national positions as Victorian Australia-New Zealand Counter-Terrorism Committee Senior Advisor and National Chair of the Crowded Places Advisory Group sub-committee. I am also a member of the International Association of Chiefs of Police Advisory Agency, the FBI National Executive Institute, the Australian Criminal Intelligence Commission. I am a former member of the Victorian Sentencing Advisory Council (from April 2015 to October 2018) and Coronial Council of Victoria (from February 2016 to February 2018).
11. As Chief Commissioner, I lead an organisation of over 22,380 staff, including more than 16,450 police officers and 1,470 Protective Services Officers (PSOs),¹ who provide policing services to almost seven million residents in Victoria. I manage a network of 331 police stations across the State, to deliver the operational, forensic, intelligence, policy, training and administrative functions required to keep Victoria safe, secure and orderly.
12. As of 28 February 2023, there were 130 people identifying as Aboriginal or Torres Strait Islander employed by Victoria Police including 95 police officers, two police recruits, six PSOs, and 27 Victorian public service employees.² This number includes 25 positions designated for Aboriginal and Torres Strait Islander applicants pursuant to section 12 of the *Equal Opportunity Act 2010* (Vic).
13. As Chief Commissioner, I recognise the importance of fostering a diverse workforce which reflects the communities it serves and engages with. We understand that representation is critical to increasing the trust of Aboriginal people in Victoria Police. Victoria Police is committed to expanding employment opportunities for Aboriginal people at all levels within the organisation. The Victoria Police Diversity Recruitment Program and other programs that Victoria Police participates in to attract and interest Aboriginal people in a career with Victoria Police are discussed in paragraph 145.
14. As Chief Commissioner, my focus is on ensuring police prevent and reduce crime; are visible, accessible and accountable to the community; and that our workforce is supported, decisive and inclusive. I am the Executive Sponsor of the Victoria Police human rights and Aboriginal Community portfolios. In this capacity, I chair the Chief Commissioner's Human Rights Strategic Advisory Committee, which I explain in paragraph 118.8. I also represent Victoria Police at the Aboriginal Justice Forum which is discussed in paragraph 118.2.

¹ Other than police officers, PSOs are the only sworn cohort within Victoria Police. PSOs have some but not all the powers of police. Their key roles include providing security at the Victoria Police Centre, various Government offices, Government House, Parliament House, the Shrine of Remembrance, Melbourne CBD courts as well as several suburban courts. PSOs are also deployed across the Victorian public transport network to improve the community perception of safety and focus on addressing antisocial behaviour, alcohol and drug related offences, weapons and property damage. They may also provide support and assistance for particular operations and in response to a State of Emergency or State of Disaster in Victoria. PSOs are different again to Police Custody Officers which I explain in paragraph 56.

² These numbers are based on Victoria Police human resource records where members can elect to self-identify as Aboriginal or Torres Strait Islander.

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15. I am fortunate to have had the opportunity to learn about Aboriginal kinship, Culture and Country through time spent at Worawa Aboriginal College, and by participating in six Aboriginal Justice Forums since becoming Chief Commissioner of Police.³ I appreciate the opportunities I have had to work with the many Aboriginal Elders and community members who have given their time and energy to work in partnership with Victoria Police, and with me.

OVERVIEW OF VICTORIA POLICE

16. Victoria Police was established as the Victoria Police Force in 1853 under the *Police Regulation Act 1853 (Vic)*. This Act created an agency subject to regulation. Prior to this date, 'policing' was undertaken by the 'colonial police force' administered from New South Wales.⁴
17. Victoria Police's role is now defined by the *Victoria Police Act 2013 (Vic)* (**Victoria Police Act**) and is to serve the Victorian community and uphold the law to promote a safe, secure and orderly society.⁵ The general functions of Victoria Police include:
- 17.1 preserving the peace;
 - 17.2 protecting life and property;
 - 17.3 preventing the commission of offences;
 - 17.4 detecting and apprehending offenders;
 - 17.5 helping those in need of assistance.⁶
18. The formal relationship between the Government, through the Minister for Police, and the Victoria Police, through the Chief Commissioner, is governed by the *Victoria Police Act*. The *Victoria Police Act* permits the Minister for Police to give written directions to the Chief Commissioner, after consultation with the Chief Commissioner, on the policy and priorities of Government to be pursued in performing the functions of Victoria Police.⁷ The Chief Commissioner is responsible to the Government for implementing those policies and priorities, along with other statutory responsibilities.⁸ The operational independence of Victoria Police is maintained by providing that, generally speaking, the Minister for Police may not direct the Chief Commissioner on operational matters. For example, these include the enforcement of the law in relation to any persons or group of persons, the investigation and prosecution of offences in relation to any persons or group of

³ I attended AJF57, AJF58, AJF59, AJF61, AJF62 and, recently in March 2023, AJF64. Deputy Commissioner Neil Paterson attended AJF60 and AJF63 on my behalf.

⁴ The colonial police were the police force administered from New South Wales. See Victoria, No. 24 Act for the Regulation of the Police Force, 19 January 1853 <http://gazette.slv.vic.gov.au/view.cgi?year=1853&class=A&page_num=1&state=V&classNum=A4&id=>.

⁵ *Victoria Police Act 2013 (Vic)* s 8 ('*Victoria Police Act*').

⁶ *Ibid* s 9.

⁷ *Ibid* s 10(1).

⁸ *Ibid* s 16.

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persons, and the allocation or deployment of police officers or PSOs to or at particular locations.⁹

19. At present, there are no written directions to me under the *Victoria Police Act* by the Minister for Police.
20. Victoria Police provides policing services to the Victorian community 24 hours a day, seven days a week, across four geographic regions. By way of high level summary, these are:
 - 20.1 Western Region – the largest geographically, covering 60% of the State, providing policing services to more than one million people across six divisions;
 - 20.2 North-West Metro Region – encompassing inner, western and northern areas of Melbourne and its surrounds, providing policing services to more than two million people across five divisions;
 - 20.3 Southern Metro Region – directly aligned to the Southern Metropolitan government region, providing policing services to more than one and a half million people across four divisions; and
 - 20.4 Eastern Region – one of the most geographically diverse regions, incorporating metropolitan, rural and alpine areas, providing policing services to almost two million people across six divisions.

The four regional boundaries correspond with other Victorian Government department boundaries, thereby enhancing cross-departmental service delivery, particularly in relation to emergency management.

21. The regions are complemented by specialist operational commands (such as Crime Command, Road Policing and Transit & Public Safety Command), operational support commands (such as Intelligence & Covert Support Command, Family Violence Command and Forensic Services Department) and corporate departments (such as Capability Department, Professional Standards Command and People Development Command).
22. Policing practice is governed by legislated obligations, which are translated into policy and guidelines in the *Victoria Police Manual (VPM)* and related instructional and educational documents, systems and processes. Agreements and protocols govern the respective roles and responsibilities in many of Victoria Police's key areas of interaction with partner agencies.

⁹ Ibid s 10(2). This is subject to subsection 10(3), which provides certain circumstances where the Minister for Police may direct the Chief Commissioner on certain operational matters specified in subsection 10(2).

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23. Police receive training and education in the application of their legislated obligations, policy and guidelines, through formal courses, online modules and subject-specific sessions. Where appropriate, this training involves subject matter experts from within or external to the organisation.
24. I turn briefly to oversight of policing practice, noting I will return to this topic in more detail later in this statement. Internally, the Audit and Risk Committee established in accordance with the Standing Directions of the Minister for Finance made under the *Financial Management Act 1994 (Vic)*¹⁰ provides independent assurance to the Chief Commissioner on Victoria Police's risk, control and compliance framework and its external accountability responsibilities.
25. Critical incidents¹¹ are reviewed by an independent senior police officer through Victoria Police's Operational Safety Critical Incident Reviews (**OSCIRs**) to support operational learnings and continuous improvement. The investigation of critical incidents involving police is also oversights by our Professional Standards Command.
26. Professional Standards Command is responsible for investigating complaints made directly to Victoria Police or referred from external authorities such as the Independent Broad-based Anti-Corruption Commission (**IBAC**). The Professional Standards Command is also responsible for discipline investigations of police.
27. The Priority and Safer Communities Division within the Capability Department works with frontline police to enhance service delivery to our priority communities. These are Aboriginal and Torres Strait Islander, LGBTQ+, Multicultural, Disability, Mental Health, Seniors and Youth communities. The Priority and Safer Communities Division maintains ongoing liaison with representatives of these communities including through portfolio reference groups. The portfolio reference groups have been established to bring together respected representatives from each of these priority communities to provide advice to Victoria Police, raise issues and opportunities related to their communities, and contribute to the development of new policy and projects. Each portfolio reference group has Terms of Reference and meets on a quarterly basis.

¹⁰ *Financial Management Act 1994 (Vic)* s 8; *Standing Directions 2018* s 3.2.

¹¹ A 'critical incident' is defined in s 82 *Victoria Police Act 2013* to mean: (a) an incident involving the discharge of a firearm by a member of Victoria Police personnel while the member is on duty; or (b) an incident involving a member of Victoria Police personnel while the member is on duty which: (i) results in the death of, or serious injury to, a person; and (ii) involves any one or more of the following: (A) the use of force by the member; (B) the use of a motor vehicle by the member (including as a passenger) in the course of the member's duty; (C) the death of, or serious injury to, a person while that person is in the custody of the Member.

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28. The Priority and Safer Communities Division also includes Victoria Police’s Aboriginal Community Portfolio, which comprises two designated positions (for Aboriginal people only)¹² including a Portfolio Manager and a policy and projects officer. Other employees in the Division (police officers and public servants) provide resourcing support. Together, they manage the Aboriginal Portfolio Reference Group and are the primary organisational contacts for Aboriginal Community requests for information, support and liaison.
29. Executive Command is the peak decision-making body within Victoria Police and comprises the Chief Commissioner, the four Deputy Commissioners and the two Deputy Secretaries. This body is responsible for setting the strategic direction of Victoria Police, monitoring organisational performance, determining key priorities and risks and managing organisational capacity and capability. Executive Command is supported by sub-committees (operations, State tasking and coordination, procurement, resource allocation and cost control, digital transformation and safety, people and culture) and peak stakeholder committees. This includes the Aboriginal Portfolio Reference Group and the Human Rights Strategic Advisory Committee, which I refer to in paragraph 118.8. In 2020 I appointed Assistant Commissioner Russell Barrett, the head of our Southern Metro Region, to lead our Aboriginal Affairs reform agenda. AC Barrett reports directly to the Deputy Commissioner, Capability and myself as Executive Sponsor of the Aboriginal portfolio (discussed further in paragraph 118.1). This appointment highlights Executive Command’s commitment to ensuring strong and consistent leadership and drive across Victoria Police for both reducing over-representation and ensuring that Aboriginal Victorians are consulted on policies and programs that affect themselves, their families, and their community.
30. Victoria Police has a number of organisational directions and actions to fulfil commitments to Aboriginal people such as:
- 30.1 the Victorian Aboriginal Affairs Framework 2018–2023;
 - 30.2 Burra Loptja Dunguludja Victorian Aboriginal Justice Agreement Phase 4 signed in 2018. I note that Victoria Police is a member of the Aboriginal Justice Forum, the peak coordinating body responsible for overseeing development and implementation of Aboriginal Justice Agreements; and
 - 30.3 Dhelk Dja: Safe Our Way – Strong Culture, Strong Peoples, Strong Families. Victoria Police has been involved in the Dhelk Dja Partnership Forum (formerly known as the Indigenous Family Violence Partnership Forum) since 2005.
31. These are all outlined in the Victoria Police Aboriginal Inclusion Strategy and Action Plan 2018–2021 and the Aboriginal and Torres Strait Islander Inclusion Action Plan 2023–2025 that will be launched this year during Reconciliation Week (27 May to 3 June 2023). The Aboriginal and Torres Strait Islander Inclusion Action Plan 2023–

¹² For Aboriginal and Torres Strait Islander applicants pursuant to section 12 of the Equal Opportunity Act 2010 (Vic): see paragraph 12 above.

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2025 supports the implementation of the Victoria Police Workforce Diversity and Inclusion Framework 2023–2030.

RESPONSE TO COMMISSION QUESTIONS FOR VICTORIA POLICE

32. I set out below information on the Victoria Police policies, processes and programs having regard to questions within my scope which I understand to have been asked of me. In answering the questions, I have endeavoured to respond broadly with the objective to assist the Commission with a comprehensive answer to the issues that I understand are being raised.
33. As I have said earlier in this statement, I am committed to Victoria Police taking real action to address the over-representation of Aboriginal people in the criminal justice system. However, even with the best of intentions, these issues are extremely challenging and I welcome all the Commission's guidance. I am continuing to listen and learn, and look forward to receiving the Commission's findings and recommendations.

Question 129. What other key current State policies, programs and initiatives (including trials, and programs being run through ACCOs) are in place to reduce the risk of First Peoples deaths in custody (to the extent not identified and described in the responses to the questions above).

34. As Chief Commissioner, I can only speak to this question in relation to police care and custody. Corrections Victoria is responsible for care and custody in correctional facilities and the Department of Justice and Community Safety is responsible for care and custody in youth justice facilities.
35. All people, including Aboriginal children, young people and adults, who come into police care or custody do so for a variety of reasons. People may be in police care or custody where they are:
- 35.1 found ill, injured or in need of assistance;
 - 35.2 taken into protective care, e.g. when a child is reported as absconding from care;
 - 35.3 in accordance with the *Crimes Act 1958* (Vic), such as when being questioned or otherwise being investigated (sections 464(1)(c)(i)-(iii)), when found committing (section 458) or believed on reasonable grounds to have committed an indictable offence (section 459), when arrested (section 464(1)) or under a provision of another Act (section 464(1)(b));
 - 35.4 under lawful arrest, apprehended, in the company of police and being questioned, or otherwise investigated for an offence;
 - 35.5 directed (section 14) or detained (section 15) under the *Family Violence Protection Act 2008* (Vic);

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- 35.6 detained or remanded in a police gaol (as defined in the *Corrections Act 1986*); or
- 35.7 being transported by police.
36. A person may be in police care or custody whether they are in a public place (including, for example, when police are seeking to intercept a vehicle for a traffic offence), in a police vehicle, or in police facilities.¹³ From that point in time, Victoria Police assumes a responsibility for the person's safety, security, health and welfare.
37. I acknowledge that taking a person into police care or custody limits their rights and freedoms, including under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter of Human Rights**).
38. Police are often called upon to deal with some of the most marginalised and disadvantaged members of the Victorian community. These people may be experiencing diagnosed or undiagnosed physical or psychological health issues, alcohol and drug dependencies, self-harm, be suicidal or living with a physical, cognitive, or intellectual disability. Victoria Police notes that specialised support services are often better placed to meet these needs. However, despite service system improvements, the reality is that after business hours and in regional areas, Victoria Police is typically the only agency that is consistently available to respond to individuals in crisis. This situation often results in individuals who require a therapeutic response coming into contact with police instead. This includes Aboriginal people.
39. People in police care and custody are under no obligation to disclose their medical history to police and some may choose not to tell police, as is their right. However, this means police might not always have a full picture of their individual needs.

Police care and custody procedures

40. Police must treat every person who enters Victoria Police care and custody according to their unique circumstances. In doing so, police must balance the safety and security of these individuals, police staff and the broader community. I have communicated my expectation that police must be respectful, fair, and non-discriminatory and act with the highest level of integrity, professionalism and impartiality. This has included in forums across the workplace and in global emails sent to all staff in April 2021 and March 2023. It is an important issue and I will continue to emphasise these values on an ongoing and regular basis in my position as Chief Commissioner.

¹³ VPMP Persons in police care or custody, as at 29 November 2021.

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41. Victoria Police has policies and practices for the care and safety of individuals entering police care and custody. Instructions in the VPM aim to ensure that:
 - 41.1 people are treated humanely and with dignity;
 - 41.2 health, safety, security, and welfare issues are addressed appropriately;
 - 41.3 a person's human rights are only limited to the extent necessary for the safety, security and welfare of the person, and others; and
 - 41.4 ambulance and hospital services are engaged where necessary.

42. The relevant chapters of the VPM that apply to the care and safety of persons in police care and custody are 'Persons in police care or custody', 'Safe management of persons in police care or custody', 'Attendance and custody models', and 'Police Custody Officers'. As I explain in paragraph 56, Police Custody Officers are specialist custody staff. The 'Persons in police care or custody' chapter provides that, where a person comes into the care or custody of police, for reasons including, but not limited to, those set out in paragraph 35, Victoria Police assumes a responsibility for the person's safety, security, health and welfare. This chapter sets out the 'Management Principles' that underpin the management of a person in police care or custody, as follows:
 - 42.1 the overarching consideration is the safety, security, health and welfare of a person in care or custody;
 - 42.2 each person in police care or custody must be treated as an individual, having regard to their specific needs and risks. It must not be assumed that all persons need to be managed as a high risk;
 - 42.3 decisions about how a person is managed and what amenities they are given access to must balance the person's human rights including their welfare, dignity and any risk to their safety and security or the safety and security of others, including police members and Police Custody Officers;
 - 42.4 persons must be continually monitored and assessed, particularly in respect of their medical conditions, risk of self-harm, risk of harming others and security risk. When medical or safety risks are identified, they must be responded to appropriately and appropriate assistance or advice must be obtained; and
 - 42.5 communication between police members and Police Custody Officers who have responsibility for persons in care or custody is essential. All relevant risks, issues and information about the person must be communicated to and understood by other members and Police Custody Officers.

43. Victoria Police is committed to continuous improvement of custody policies, practices and facilities to ensure compliance with Victoria's Charter of Human Rights. Since 2018, Victoria Police has instituted the following to improve compliance:

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- 43.1 Introduction of a computerised and standardised Detainee Risk Assessment into the Custody Module (**Custody Module**). The Custody Module is a Victoria Police computerised record of all persons being lodged in police cells. The Detainee Risk Assessment provides for consideration not only of medical risks, but records risks around prohibited items, medications that the person in custody may be taking, injuries, next of kin details and then categorises them against custody risks.
- 43.2 Created four mandatory custody related training packages. These are interactive modules designed to keep Victoria Police employees up to date with current custody related policies and practices. I expand on the custody related training packages at paragraph 81.3.
- 43.3 Created a specific Human Rights portfolio within Legal Services Department which is resourced with one full-time human rights lawyer, currently occupied by an experienced human rights lawyer who has recently completed further studies in human rights law at the University of Oxford. Additional support is provided on an as needs basis by the Victorian Government Solicitor's Office (**VGSO**) as well as the Human Rights portfolio in Priority and Safer Communities Division whose role it is to contribute to new and amended policies as to their gender equity, human rights, Aboriginal Self Determination and occupational health and safety compliance. The Inspector in charge of Custody Operations, the Chief Custodial Health Officer, and representatives from the Human Rights portfolios in Legal Services Department and Priority and Safer Communities Division, meet on a fortnightly basis to discuss issues related to human rights in police custody. As part of the Prosecutors Training Course, prosecutors must complete compulsory human rights training as part of the POL87115 Graduate Certificate. This qualification allows for the attainment of general skills in police prosecution including prosecution practice, and legal and judicial processes within a police environment.
- 43.4 Reviewed and revised the relevant policies within the VPM to reflect changes in best practice, community and organisational expectation, legislative amendment and the recommendations of external reviews. For example, the VPM on Safe Management of Persons in Police Care or Custody has been updated 23 times since it was first issued on 22 February 2010. Changes have included: revisions as part of the Persons in Custody Policy Review Project; amendments in regards to interview rooms being used as temporary detention facilities and to include the requirements for supervision when persons attend for an interview; amendments regarding prisoner health issues and updated reference to the Custodial Health Advice Line; clarifications to responsibilities and procedures for welfare management of suspects under investigation for child sex offences following police interviews, following a Coronial Inquest; and updates to introduce the role of supervising Police Custody Officers. This summary is not exhaustive of all relevant VPM amendments from time to time.

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44. In addition, there is the following work occurring moving forwards:
- 44.1 Victoria Police is reviewing the six current VPM Rules and Guidelines relating to custody with a view to these being consolidated and supported by several practice guides.¹⁴ These changes are intended to further strengthen and clarify the expected treatment of persons in police care and custody such as through addressing topics including Aboriginal people in custody, LGBTIQ+ people in custody, youth, religious items, disability, and opioid replacement. The rollout of these enhanced policies will be supported by additional mandatory training modules. This is expected to be completed before the end of 2023.
 - 44.2 Victoria Police will continue to participate in cross-Government forums intended to give us a better understanding of emerging issues and concerns on custody related matters, such as the Victorian Custody Reference Group (with Victoria Legal Aid, various Community Legal Services, Victorian Aboriginal Legal Service (**VALS**) and the Magistrates' Court of Victoria).
 - 44.3 Victoria Police will also continue to participate in the Australia & New Zealand Police Custody Liaison Group (**ANZPCLG**) forums. This forum was created, and first chaired, by Victoria Police for the heads of custody for all Australian police agencies, where members can discuss, share information and ideas on custody related matters. Meetings are held on a monthly basis with the last meeting being held on 28 February 2023.
45. Victoria Police also has guidance materials and undertaken a range of educational activities to ensure police are aware of their obligations under the Optional Protocol to the Convention Against Torture (**OPCAT**) and Victorian legislation. Victoria Police's commitment to OPCAT is shown by:
- 45.1 being chosen by the Commonwealth Attorney General's Department to represent all Australian law enforcement agencies in the pre-visit briefing of the United Nations Inspectors prior to their visit in 2022;
 - 45.2 presenting to all Australian law enforcement agencies on the outcome of that briefing; and
 - 45.3 preparing educational material and instructions that were disseminated to all Australian law enforcement agencies, Corrections Victoria, Youth Justice Victoria and Forensicare prior to the visit.

¹⁴ These are four chapters from the VPM being *VPM Safe management of persons in police care or custody*; *VPM*; *VPM Persons in police care or custody*; *VPM Attendance and custody modules* and *VPM Police custody officers*; and two additional policies under the State Emergencies and Support Command, being 'Escapes and Absconders' and 'Gazetting Police detention facilities'.

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46. I have been briefed on how Victoria Police cooperated with and facilitated an unannounced inspection by the four-person United Nations OPCAT Subcommittee for the Prevention of Torture to Victoria Police Melbourne West Complex on 21 October 2022.
47. There are a number of risk mitigation strategies in place for when any individual is taken into police care or custody. Firstly, police are required to complete the attendance module (**Attendance Module**) for each person in police care or custody taken to police premises (including booze buses) as soon as practicable and prior to any interview or related procedures taking place.¹⁵ The Attendance Module is a Victoria Police computerised record of all persons in police care or custody (other than witnesses).
48. In accordance with the *Crimes Act 1958*,¹⁶ police must notify VALS within one hour of any Aboriginal person being taken into custody. Under the legislation a person may be considered to be an Aboriginal person if the investigating official who took the person into custody is of the opinion that the person is such a person. Further, in considering whether a person is an Aboriginal person, the investigating officer must have regard to any statement made by the persons as to whether they are an Aboriginal person. In practice, the latter is operationalised based on those who identify as being Aboriginal or Torres Strait Islander when asked the 'Standard Indigenous Question' (**SIQ**), being the nationally endorsed question used to determine whether a person is Aboriginal or Torres Strait Islander.¹⁷ As required under section 464AAB of the *Crimes Act 1958* and operationalised in the VPM,¹⁸ the SIQ is asked at the time the attendance module is completed and then again when a person is being read their caution and rights. When someone provides a positive response to the SIQ, an email to VALS alerting them to presence of the person in custody is automatically generated.
49. Persons under 18 years of age raise special issues. In recognition of the vulnerability of Aboriginal children, and taking account of the findings in reports such as *Our youth, our way* by the Commissioner for Aboriginal Children and Young People,¹⁹ on 6 December 2021, I issued a Chief Commissioner's Instruction (CCI 07/21) for additional oversight arrangements. The Instruction requires that, for all Aboriginal children in custody, the custody sergeant (or supervisor) must immediately notify the on-duty senior sergeant who provides overall oversight of that child. An Aboriginal child is any person under the age of 18 years who identifies as being of Aboriginal and/or Torres Strait Islander descent. Police must report:

¹⁵ *Crimes Act 1958* (Vic) s 464FA (1)(a) ('*Crimes Act*'); VPMG Attendance and Custody Modules (1.2) and VPMG Safe management of persons in police care or custody (4.3).

¹⁶ *Crimes Act* (n 15) s 464FA(1).

¹⁷ Victoria Police acknowledge that some Elders and members of the Aboriginal community find the term 'Standard Indigenous Question' inappropriate or offensive. The terminology is used by the Commonwealth Australian Bureau of Statistics and by other government agencies, so Victoria Police use the terminology to support the provision of consistent information.

¹⁸ VPM Interviews and Statements, as at 17 February 2022

¹⁹ Commission for Children and Young People, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in Victoria's youth justice system* (Melbourne: CCYP, 2021).

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

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- 49.1 the justification for their decisions and actions during the custody process, including the reason for the child being in custody and necessity for the child to be held;
- 49.2 that the local Aboriginal Community Justice Panel, where one is available, has been notified; and
- 49.3 that appropriate family support or independent person and referral notifications have been made.
50. On 5 December 2022, I issued Instruction CCI 05/22²⁰ to reissue and replace CCI 07/21. The re-issuing of the CCI, rather than incorporating it into the VPM, was done as an interim measure while feedback to proposed policy changes was considered as part of a Custody Policy Review. Contents of the CCI have now been incorporated into the draft policy and a set of special practice notes around vulnerable people. I anticipate the new policy will be published by the time the CCI expires in December 2023.
51. Compliance with CCI 05/22 is monitored actively. The Priority and Safer Communities Division (referred to in paragraph 27) provides quality assurance of the oversight function and notifies the relevant work unit manager of any identified issues and outcomes. Compliance rates with CCI 05/22 have been relatively stable at close to 100% since the introduction of new compliance management protocols in June 2022, clarifying the roles of the supervising Police Custody Officers and Senior Sergeants in endorsing the process and enhancing quality control of the forms being submitted.
52. Since May 2017, Victoria Police has also been participating in the Fast Track Remand Court in the Children's Court, which aims to expedite bail applications for children in that Court.
53. To ensure that Aboriginal people in police care or custody are connected with culturally appropriate services, police notify local Aboriginal Community Justice Panel volunteers in areas where they operate, whenever a person in police custody identifies or is identified as Aboriginal or Torres Strait Islander.²¹
54. Aboriginal Community Justice Panel volunteers guide police in welfare matters, notify relatives and friends with the person's consent and advise on any known history that may be relevant to the person's health, safety, or well-being while in custody.²²

²⁰ A CCI is effective for one year from the date of publication; consequently, if it is to reapply after one year, it must be reissued. When this CCI was remade, minor amendments were also made to reflect improvements identified during its operationalisation including by clarifying that the bail decision maker must seek advice when considering whether to deny bail.

²¹ VPMG Attendance and custody modules, s 1.9, as at 1 October 2019.

²² Ibid. See, also, VALS, *Aboriginal Community Justice Panels Program* (web page) < <https://www.vals.org.au/aboriginal-community-justice-panels-acjp-program/> >

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55. There are currently 12 Aboriginal Community Justice Panels across Victoria, covering 76 of the State's 331 police stations.²³ Each of the 76 stations has its own list of panel volunteers who can be contacted 24 hours a day, seven days per week. This program is sponsored by the Department of Justice and Community Safety as part of the Koori Justice Unit. As such, it is not controlled by Victoria Police.
56. Victoria Police does have a cohort of specialist custody staff. There are 400 Police Custody Officer positions allocated to the 22 police stations with custody facilities. As at 24 March 2023, 33 of these positions are vacant. Police Custody Officers are Victorian Public Servants employed by Victoria Police to perform a dedicated custody management role. They undertake an eight-week training program at the Victoria Police Academy, which involves practical 'cell environment' scenario training and assessments to teach them how to manage the care and wellbeing of persons in custody; the application of relevant legislation and policy; defensive tactics; reporting systems including LEAP, Attendance and Custody modules²⁴; and fingerprinting. The program also comprises 'in field' training in weeks four and seven to build on the skills learned through Academy-based training. This training includes a one hour session on day 14 of the program about Aboriginal people, in relation to issues such as their over-representation in the criminal justice system and the Royal Commission into Aboriginal Deaths in Custody. As stated in paragraph 139, in March 2023, Victoria Police's Aboriginal Cultural Awareness Training was made mandatory for Police Custody Officers and this is continuing. As at 24 March 2023, 44 Police Custody Officers (12%) have undertaken the training voluntarily.

Bail laws

57. I recognise that the application of existing bail laws are a focus of this Commission, particularly following the inquest into the tragic death of Ms Veronica Nelson in the custody of Corrections Victoria. On behalf of Victoria Police, I provide my sincere condolences to Ms Nelson's family for their loss. I also recognise the chronology of events that saw Ms Nelson have contact with Victoria Police leading to her custody and acknowledge the areas for improvement outlined for Victoria Police and the learnings for the organisation.
58. Victoria Police has carefully considered the 11 recommendations made by the Coroner to Victoria Police relating to the death of Ms Nelson. Victoria Police accepts these recommendations, noting one recommendation (no. 12) is accepted in principle, and has commenced implementing them. Attached to my statement and marked **CCP-1** is a copy of my letter to Coroner McGregor dated 24 March 2023 providing a formal response to his Honour's recommendations (including recommendation 12).

²³ There are currently Aboriginal Community Justice Panels in Shepparton, Echuca, Swan Hill/Robinvale, Mildura, Horsham, Portland/Heywood, Warrnambool, Geelong, Bendigo, Ballarat, Northern Metropolitan and Dandenong.

²⁴ From 1 July 2017 to 6 September 2022, 263,791 individuals were processed through the Custody Module, an average of 43,965 per annum.

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59. I note that a police officer is included as one of the bail decision makers in section 3 of the *Bail Act 1977* (Vic) (**Bail Act**). The *Bail Act* provides for the particular circumstances in which police are empowered with a decision to grant or refuse bail.²⁵ Police can be bail decision makers if, and only if, they are of or above the rank of sergeant or are an officer in charge of a police station.²⁶
60. Police are to make and recommend bail decisions based on the need to ensure a person charged with an offence appears in Court, and the principle that all people are presumed innocent until proven guilty.²⁷
61. In deciding whether to provide bail or remand a person accused of an offence, police are to act in accordance with the *Bail Act*, including the guiding principles of:
- 61.1 maximising the safety of the community and persons affected by crime to the greatest extent possible;
 - 61.2 taking account of the presumption of innocence and the right to liberty;
 - 61.3 promoting fairness, transparency and consistency in bail decision making; and
 - 61.4 promoting public understanding of bail practices and procedures.²⁸
62. Section 3A of the *Bail Act* requires a bail decision maker (which, as I say, includes police) to consider any issues that arise due to the person's Aboriginality including:
- 62.1 the person's cultural background, including the person's ties to extended family or place;²⁹ and
 - 62.2 any other relevant cultural issue or obligation³⁰ (a term which is not defined).
63. Currently, there is oversight of police making bail decisions embedded in the *Bail Act* itself. For example:
- 63.1 Only senior police officers may act as bail decision makers and they may only do so in limited circumstances, as noted in paragraph 0.
 - 63.2 If bail is refused in circumstances contemplated by sections 10(6) and 10AA of the *Bail Act*, the person must be brought before a court 'as soon as

²⁵ See, for example, *Bail Act 1977* (Vic) s 10(1) ('*Bail Act*').

²⁶ *Ibid* s 10(2).

²⁷ VPM Bail and Remand, Context, as at 16 February 2022 ('VPM Bail and Remand').

²⁸ *Bail Act* (n 26) s 1B; VPM Bail and Remand.

²⁹ *Bail Act* (n 26) s 3A(a).

³⁰ *Ibid* s 3A(b).

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practicable' and if it is outside of ordinary court sitting hours, they must be brought before a bail justice 'as soon as practicable'.³¹

- 63.3 If bail is refused by the bail justice or court, the accused may make an application for bail to the Supreme Court if they were legally represented before the bail justice or to the court to which the accused is remanded to appear if they were not legally represented without the need to demonstrate the existence of new facts and circumstances.³²
64. It goes without saying that Victoria Police must follow and comply with the provisions of the *Bail Act* as they exist and as amended if that occurs.

Deaths in police care, custody and custody related operations

65. No person should die or sustain a serious illness or injury because of contact with the criminal justice system. Every death in police care or custody is tragic. Victoria Police is committed to improving outcomes for Aboriginal people in police care and custody, including in partnership with Aboriginal communities. There should be no deaths of Aboriginal people in or related to police care or custody, or in any part of the criminal justice system.
66. The Royal Commission into Aboriginal Deaths in Custody investigated the causes of the deaths of 99 Aboriginal people held in the custody of police, prison and juvenile detention centres in each Australian state and territory between 1980 and 1989. I repeat that each death is a tragedy. By referring to this information I want to make it clear that I do not view these deaths as a quantitative matter and I do not wish to diminish the importance of these lives and the profound impact that the loss of each person will have had, and continue to have, for their family and community.
67. Despite the prime importance of being focussed on the person and not statistics, I set out the following in order that the State and the community can be more informed of the circumstances of the tragedies of deaths in police care or custody in the hope its assists real reform.
68. In the 32 years since the Royal Commission into Aboriginal Deaths in Custody released its final report on 15 April 1991,³³ there have been 10 deaths of Aboriginal people in Victoria Police care and custody, or during police custody-related operations. During this period, there were 169 deaths of non-Aboriginal people in police care and custody, or during police custody-related operations. Victoria Police provided information to the Commission about these deaths in our response to NTP-002-008 in February 2023. In summary, tragically there have been the following deaths:

³¹ Ibid s 10(6).

³² Ibid s 18AA.

³³ *Royal Commission into Aboriginal Deaths in Custody* (Final Report, 15 April 1991) <<https://www.naa.gov.au/explore-collection/first-australians/royal-commission-aboriginal-deaths-custody>>

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- 68.1 one occurred in a police cell;³⁴
- 68.2 one occurred in a police divisional van;³⁵
- 68.3 one occurred in hospital from injuries sustained in police cells;³⁶
- 68.4 two occurred in connection with a police pursuit;³⁷
- 68.5 one occurred from injuries suffered after being struck by a motor vehicle;³⁸
- 68.6 one occurred by drowning, while being pursued by police;³⁹
- 68.7 one occurred from injuries sustained after being shot by police;⁴⁰
- 68.8 one occurred from epileptic seizure, over two months after sustaining a head injury during arrest;⁴¹
- 68.9 one occurred in hospital, following arrest under section 351 of the *Mental Health Act 2014* (Vic).⁴²
69. I acknowledge the pain and distress that these sad events created. I have referred to this information to show that measures to prevent deaths in police care or custody must be capable of addressing a range of circumstances where Aboriginal people may come into contact with police.
70. As recommended by the Royal Commission into Aboriginal Deaths in Custody, Victoria Police provides details of individual deaths, including of Aboriginal people, to the Australian Institute of Criminology. The Institute then publishes these in the National Deaths in Custody Program annually.⁴³ This reporting contains detailed information on each death in custody and enables comparison and identification of longer-term trends.
71. Victoria Police also notifies the Coroners Court of reportable deaths,⁴⁴ enabling appropriate coronial inquest into matters. I regard Coroners Court recommendations as playing an important role in informing best practice across police policy and practice. I have briefly referred to the Victoria Police response to the recommendations of the inquest into the death of Ms Nelson in paragraphs 57 to 58

³⁴ 1991

³⁵ 1992.

³⁶ 2017.

³⁷ 2006 and 2017.

³⁸ 2006.

³⁹ 2003.

⁴⁰ 1994.

⁴¹ 2004.

⁴² 2017.

⁴³ Australian Institute of Criminology, *National Deaths in Custody Program* (web page) <<https://www.aic.gov.au/statistics/deaths-custody-australia>>

⁴⁴ *Coroners Act 2008* (Vic) s 4.

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and I discuss Victoria Police's response to the recommendations from the inquest into the death of Ms Day in paragraphs 77 to 82.

72. In its final report delivered in 1991, 74 recommendations of the Royal Commission into Aboriginal Deaths in Custody recommendations were directed towards police. Victoria Police identified that more than 100 of these recommendations involved Victoria Police in some way, including directly or indirectly through our influence on the implementation of recommendations by other agencies, or the State.
73. Victoria Police has conducted or participated in several reviews of the status of its implementation of these 100-plus recommendations, with the aim being to ensure that recommendations are fully implemented or underway.
74. In October 2020, Victoria Police commenced a comprehensive review of all 339 Royal Commission into Aboriginal Deaths in Custody recommendations to identify what further work we could do to fully implement all recommendations and their true intent, regardless of whether we had previously determined that the recommendations had been fully implemented.
75. Victoria Police is continuing to review the status of its implementation of the recommendations of the Royal Commission as part of the Aboriginal Justice Caucus Project. The intent of the review is to revisit all recommendations of the Royal Commission applicable to Victoria Police in order to verify their status and to ensure that acquittal of each element is subject to a self-determination process through the Caucus Project Team of the Aboriginal Justice Caucus. Since September 2022, Victoria Police has been working with the Caucus Project Team to further implement and report against 74 recommendations identified as being relevant to police in this self-determined process. Of these 74 recommendations, Victoria Police has assessed that 40 have been fully implemented, 15 are mostly implemented, seven are partially implemented, and eight are not implemented. Four remain under review to assess their current status, with further work required.⁴⁵ Recommendations will be considered acquitted once determined by the Caucus Project Team.
76. I accept there is still much work to be done by Victoria Police, and that it is unacceptable that this is still the case 32 years after the final report was handed down. However, I acknowledge the work that Victoria Police has done over the years to progress important initiatives such as:
 - 76.1 collecting, recording and reporting relevant police data;
 - 76.2 training police in cultural awareness and custody practice improvements;
 - 76.3 improving training in policies and guidelines regarding police pursuits;
 - 76.4 increasing the practice of issuing cautions and warnings before charging Aboriginal people, especially young people;

⁴⁵ This is correct as at 16 March 2023. Work is ongoing and the implementation status of the recommendations is regularly updated.

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- 76.5 notifying Aboriginal legal, health, and other support services when an Aboriginal person is to be remanded in police custody;
- 76.6 improving monitoring when Aboriginal people are in police care or custody;
- 76.7 increasing discretion to support bail applications; and
- 76.8 eliminating safety hazards in police cells.

Recommendations arising from the Inquest into the Death of Ms Tanya Louise Day (Day Inquest)

- 77. Firstly, on behalf of Victoria Police, I provide my sincere condolences and formally apologise to Ms Day's family for their loss. While I intend to meet with Ms Day's family in person, at a time of their choosing, I believe it is important to acknowledge this tragedy and the police role in it, in this forum.
- 78. On 9 April 2020, the Deputy State Coroner handed down findings in the inquest into the death of Ms Day. The Coroner made 10 recommendations, with five recommendations directed toward the Chief Commissioner of Police (recommendations 3 to 7).
- 79. I commenced as Chief Commissioner on 27 June 2020. Attached to my statement and marked **CCP-2** is a copy of my letter dated 14 July 2020 to the Coroner's Court accepting recommendations 3 to 7 in full.
- 80. I acknowledge that there were completely unacceptable elements in Victoria Police's practice and procedures at the time of these events and that they do not meet community expectations of Victoria Police. Indeed, I am briefed that no OSCIR was completed following the death of Ms Day in police custody (see paragraph 25). Changes have been made to avoid that oversight and to better clarify when an OSCIR is to be called.
- 81. I state the following information as to the status of implementation of recommendations from the inquest into the death of Ms Day as of 24 March 2023:
 - 81.1 ***Recommendation 3: That the Victoria Police Manual Rules and Guidelines be amended to include a falls risk assessment as part of the detainee risk assessment for each person in custody who appears to be affected by alcohol or drugs or illness.***

Victoria Police has implemented a range of activities, initiatives and training to mitigate the risk of a similar death or injury of a person in police custody, including:

 - (a) adding further mandatory training on management of persons in police care or custody;
 - (b) making amendments to the VPM 'Persons in Care and Custody' and guidelines on 19 February 2021; and

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- (c) introducing the Detainee Risk Assessment into the Custody Module (explained at paragraph 43.1) which includes risk assessment about persons lodged in custody for being drunk in a public place and introduces the COMA Scale,⁴⁶ related mandatory minimum observation levels, and automatic notification to the Custodial Health Advice Line.

Questions relating to the Falls Risk Assessment are being finalised for inclusion in the Detainee Risk Assessment by June 2023.

- 81.2 ***Recommendation 4: That there be a review of training and education within Victoria Police regarding the findings and recommendations of the Royal Commission into Aboriginal Deaths in Custody to ensure knowledge and appropriate compliance.***

Victoria Police reviewed its training to enhance cultural awareness and encounters with the Aboriginal community, in light of the recommendations of the Royal Commission into Aboriginal Deaths in Custody, including by revising Aboriginal Cultural Awareness Training through a self-determination lens. This training and our progress with its rollout are expanded on in paragraphs 135 to 142. Given the current State-wide rollout plan, and the recruitment of 502 additional police and 50 PSOs over the next two years, acquittal of this recommendation is scheduled by December 2024.

- 81.3 ***Recommendation 5: That training be implemented 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.***

In 2019 Victoria Police reviewed and updated the training packages available on its online learning hub. The mandatory training was revised to include four custody-related training packages that fulfil this recommendation.

- (a) 'Persons in Police Care or Custody' – This course and the related policy and guidelines address the accountabilities and responsibilities for persons in police care or custody and underpin Victoria Police's application of the Charter of Human Rights and Responsibilities. All police members up to and including inspectors and all Police Custody Officers are required to complete this course. As at 14 March 2023, the completion rate was 83%.

⁴⁶ The COMA scale is used to objectively describe the extent of impaired consciousness in all types of acute medical and trauma patients.

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- (b) 'Persons in Police Care or Custody: Custody Staff' – This course focuses on the role of custody staff in the custody environment. All police members up to and including Inspectors and all Police Custody Officers are required to complete this course. As at 14 March 2023, the completion rate was 69%.
- (c) 'Persons in Police Care or Custody: Senior Police Custody Officers, Police Supervisors and Managers' - This course focuses on the role of supervisors and managers in the custody environment. As at 14 March 2023, the completion rate was 59%.
- (d) 'Persons in PSO Care or Custody' - This course and the related policy and guidelines address the accountabilities and responsibilities for persons in PSO care or custody and underpin Victoria Police's application of the Charter of Human Rights and Responsibilities. All PSOs are required to complete this training. As at 14 March 2023, the completion rate was 91%.

These training courses are a mandatory component of Foundation Training for sworn members and PSOs. The courses reference the relevant VPMs and staff are tested on their knowledge.

While the inclusion of this content in Foundation Training ensures that all new sworn officers receive this training, I recognise the urgent need to increase the compliance rates for existing staff. Further work is underway to improve tracking of compliance with course completion. I am aware of communications that were sent out on 3 March 2023 instructing staff in their obligation to complete these courses, including a targeted email to all sergeants, Inspectors and Police Custody Officers and an intranet bulletin board message. Completion rates are being tracked at the executive level on a monthly basis.

81.4 ***Recommendation 6: That training be implemented within Victoria Police regarding the medical risks of individuals affected by alcohol.***

Victoria Police through its Custodial Health Service staff has integrated training specifically pertaining to alcohol withdrawal and the medical risks of individuals affected by alcohol into its Foundation, PSO and Police Custody Officer course curriculum. The Detainee Risk Assessment includes a question regarding alcohol consumption and considerations for alcohol withdrawal. Police, PSOs and Police Custody Officers are also trained in assessing and responding to individuals according to the COMA Scale. The COMA Scale assists non-medically trained staff to determine the action required based on the best verbal response of a person in police care or custody. It is designed as a dynamic scale whereby the action can be escalated if the best verbal response deteriorates over time.

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- 81.5 ***Recommendation 7: That Victoria Police 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 of Human Rights.***

Victoria Police engaged the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) to conduct a compatibility review of its training and the Charter of Human Rights and Responsibilities.

On 6 May 2022 Victoria Police received a draft report from the VEOHRC recommending Victoria Police consult Aboriginal stakeholders as part of the compatibility review, rather than as part of revising the training as necessary.

Accordingly, the draft report was presented to the Aboriginal Portfolio Reference Group on 22 November 2022 for feedback. Stakeholder engagement is continuing and will be followed by liaison with VEOHRC in April 2023 on the steps required to finalise the report.

82. While we have made significant progress on these important improvements, the extent of research, consultation and coordination required has meant that full implementation has taken longer than I would have hoped. However, I will continue to report to the Aboriginal Justice Forum on our progress.

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 so 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 the 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.

83. Victoria Police fully supports decriminalisation of public drunkenness and moving to a health-based response model and has publicly stated so since this was announced. I address Victoria Police’s position and preparations for this reform, however I do not believe it is for Victoria Police to specifically speak to The Police Association position.
84. Victoria Police has been working with Government on all aspects of the reform since the Government’s commitment was made in 2019. Currently, Victoria Police is participating in the Government’s Public Drunkenness Reform trial at sites in four municipalities: Yarra, Dandenong, Shepparton and Mt Alexander Shire. Victoria Police supports a health-based outreach and sobering services being rolled out across Victoria.
85. In the police experience, there are broadly three categories of drunk people who require a response:

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- 85.1 Those who are compliant and who police judge can be safely transferred into the care of friends or family or be arranged to be transported home.
- 85.2 Those who are not compliant or who pose a risk to themselves or to others.
- 85.3 Those who have also committed offences.
86. Police will continue to divert people in the first category (as it currently does) and will continue to arrest those in the third category (as it currently does).
87. Victoria Police considers that a safe and effective model is required to respond to people in the second category. Victoria Police advocated for new low level threshold detention powers to deal with those risks, similar to those in operation in New South Wales. Ultimately, Government determined that no new powers were necessary.
88. Victoria Police is now working through operationalising its response to this second category through policy and training developments. Victoria Police will ready itself with appropriate advice, training and instructions as part of its preparations before the repeal of the offence of public drunkenness on 7 November 2023.
89. Victoria Police has established a dedicated project team responsible for operationalising the public drunkenness reform. This team is tasked with ensuring a smooth transition to a decriminalised environment, including by ensuring that all members understand the intent and drivers of the reform, their powers and are able to confidently apply the skills and knowledge.
90. The steps we are taking to operationalise the reform include:
 - 90.1 Developing policy to guide members including a Chief Commissioner's Instruction and a practice guide. On 20 October 2022 I issued Instruction CCI 04/22 directing Victoria Police members operating within the areas of the Public Drunkenness Reform trial about how their duties should be performed during the trial period.
 - 90.2 Developing training for frontline members (police and PSOs) in line with the policy, including an eLearning package and a facilitated learning program to enable members to understand the application of the policy in a range of scenarios. The aim of the policy and training will be continuing to strengthen existing operational processes that focus on de-escalation and diversion of intoxicated people to friends, family and support services rather than on using legislated powers to manage those people's escalation. The eLearning is scheduled to be completed by all members prior to decriminalisation on 7 November 2023. The facilitated learning program will be delivered over a longer period given the large number of members to train.
 - 90.3 Developing procedures for police and PSOs to link in with outreach services and for recording and reporting on incidents.

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- 90.4 Developing an evaluation framework so that Victoria Police can monitor the transition to a decriminalised environment. Victoria Police will participate in the evaluation and monitoring framework being put in place by the Department of Justice and Community Safety. Victoria Police will also establish its own internal monitoring and evaluation process and this will be designed over coming months.
- 90.5 Developing communication strategies for both internal communications and public messaging regarding Victoria Police's changing role in managing public drunkenness.
91. To assist in developing relevant policy and to ensure that it meets community expectations, decriminalisation of public drunkenness was considered by the Chief Commissioner's Human Rights Strategic Advisory Group on 14 March 2023. The policy and the human rights assessment will be taken back to the reference group after further development.
92. In addition to the above, Victoria Police is also:
- 92.1 engaging with stakeholders including via structures such as the Department of Health's Aboriginal Advisory Group and other Aboriginal Advisory structures;
- 92.2 progressing other areas focusing on reducing drunkenness in public places and identifying more services to support people who are drunk in public places. These areas include liquor licensing, event management and management of entertainment precincts.
93. It should be noted that the Victoria Police approach to policing public drunkenness has already evolved significantly over the past 15 years. Crime Statistics Agency (CSA) data show that in 2009, police in Victoria arrested 21,898 people for public drunkenness. By 2019, the number of arrests had dropped to 6,598.⁴⁷ By 2022, arrests had dropped to 3,860 for public drunkenness offences (that is, a reduction in the rate of arrest of 23%). The rate of reduction of arrests of Aboriginal people⁴⁸ over the same period (from 2019 to 2022) was 31%, with 503 Aboriginal people arrested for public drunkenness offences in 2019 and 349 Aboriginal people arrested for public drunkenness offences in 2022.
94. The reason for this substantial and sustained reduction in arrests for public drunkenness is due to Victoria Police's implementation of a range of proactive policing initiatives and early intervention practices aimed at connecting people to support services, including creating referral pathways to drug and alcohol services. For example, police and PSOs help people who are drunk and at risk to themselves or others, particularly those who can be safely collected by friends and family, or for

⁴⁷ Includes alleged offenders identifying as Aboriginal, non-Aboriginal and where Aboriginal status is unknown.

⁴⁸ Aboriginal status data are derived using the revised Crime Statistics Agency (CSA) most frequent counting rule which records the most frequently appearing meaningful response as correct, and may not represent the Aboriginal status recorded by police at the time of the incident.

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whom police can safely organise transport, to move them to a safe location. We also seek medical assistance if required and de-escalate aggressive behaviour by people who are drunk.

95. Victoria Police existing training supports members to respond to public drunkenness by employing de-escalating and non-custodial powers, to support a reduction in arrests. For example, current Foundation Training covers the following topics:
- 95.1 educating members on how to make an assessment of the level of drunkenness (COMA scale) and the person's demeanour;
 - 95.2 educating members on community-driven and non-custodial options available to police, including transport, Ambulance Victoria, family/friends and collection from police station. Scenarios are also used to contextualise decision-making and processes;
 - 95.3 explanation of the offences Drunk in a Public Place (section 13 of the *Summary Offences Act 1966* (Vic) (**Summary Offences Act**)) and Drunk and Disorderly in a public place (section 14 of the *Summary Offences Act*) and associated powers of arrest; and
 - 95.4 training for PSOs, which also covers the offences for being drunk in public, in accordance with police training, including a common sense approach where assistance, rather than arrest/punishment, is to be considered.

Question 140. Provide an overview of the processes and/or systems currently in place within Victoria Police to monitor and provide oversight of police interactions with First Peoples.

Question 141. In responding to paragraph (140) above, please include reference to any processes that address police displays of unconscious bias, systemic racism, or unequal exercise of discretionary powers.

Unconscious bias, systemic racism or unequal exercise of discretionary powers

96. This next part of my statement addresses issues of police interactions and relationships with Aboriginal people, oversight of Victoria Police, data on complaints and related issues. I want to commence by stating upfront that I am extremely concerned that Aboriginal people or groups still report (or others report) encounters involving unconscious bias, racism and unequal exercise of discretionary powers. I am deeply concerned when these issues continue to be raised in discussions such as at the Aboriginal Justice Forum. I cannot be clearer; there is no room for any unconscious bias, systemic racism, or unequal exercise of discretionary powers by any employee of Victoria Police.
97. I accept the definition of systemic racism submitted on behalf of Ms Day's family in the Inquest into her death as:

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a process that produces statistically discriminatory outcomes for particular racial or cultural groups. It may involve unconscious bias, or laws, policies, and practices, that operate to produce such outcomes. That outcome may occur without conscious racist intent ... without any individual displaying expressly racist or discriminatory behaviour and without institutional policies or practices that are expressly or openly racist.

98. I am also deeply concerned by statistics indicating low substantiation rates of complaints made by Aboriginal people, that the proportion of alleged Aboriginal youth offenders who receive cautions is persistently and significantly lower than for alleged non-Aboriginal youth offenders, and about the low levels of confidence that some Aboriginal people have to report complaints to Victoria Police.
99. Addressing these issues requires constant vigilance, self-assessment and engagement with the community to identify the processes, systems and practices that may be producing such negative outcomes. I commit to ensuring that Victoria Police, in partnership with the Aboriginal Community, routinely challenges, identifies and rectifies outcomes that perpetuate over-representation in the criminal justice system, as a standard and ongoing function of how we operate as an organisation.
100. The facts and matters in my statement are evidence that Victoria Police accepts that deficiencies remain and that, while we have been taking wide-ranging action, we still have work to do. As Chief Commissioner of Victoria Police, I will not tolerate bias, racism or unequal exercise of discretionary powers toward Aboriginal people (or anyone else).

Police oversight and accountability

101. I accept that police oversight arrangements and police accountability are central to providing assurance to the community and to Victoria Police members that racism and discrimination including through the unequal exercise of discretionary powers are not being perpetuated. The objectives of police oversight arrangements and police accountability are to:
- 101.1 protect the public from wrongful acts by police;
 - 101.2 maintain public confidence in policing; and
 - 101.3 maintain the integrity of police personnel.
102. These objectives can be operationalised in a range of frameworks and structures. They lie at the heart of the current Victoria Police complaint and discipline system, and I expect that they will be the basis for Government consideration of future arrangements. Victoria Police is open to any arrangements that uphold these objectives.

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103. Victoria Police will follow and implement the police internal and external oversight and accountability arrangements that are legislated. This framework is ultimately a matter for Government.
104. I believe that effective oversight and accountability enables Victoria Police to:
- 104.1 take internal and public responsibility;
 - 104.2 respond swiftly and proportionately to poor practice, misconduct and offending;
 - 104.3 understand-and learn from experience; and
 - 104.4 drive improvements in individual and organisational performance.
105. More generally, I acknowledge the importance of, and am constantly striving to create, an environment and culture within Victoria Police where employees feel empowered to identify, learn and respond appropriately, where mistakes are made or behaviour or conduct is inappropriate. Our cultural awareness training program, which I expand on at paragraph 135 to 144 below, is a key plank of this work.
106. As part of my leadership as Chief Commissioner, I purposely set the tone to reflect the values of Victoria Police, including my expectations that all employees of Victoria Police will:
- 106.1 own up to mistakes and receive support and guidance to improve performance; and
 - 106.2 call out colleagues who make mistakes or act inappropriately, including by providing immediate peer feedback and escalating concerns to senior staff to ensure appropriate consequences are imposed.
107. In keeping with this expectation, in October 2022, I introduced a culturally sensitive formal apology process, developed in partnership with the Koori Engagement Unit of Coronial Services Victoria, to ensure meaningful apologies are made directly to family members impacted by police actions or approaches. This process emerged from specific apologies I gave at Aboriginal Justice Forum 62 for the distress that police actions caused the loved ones of two Aboriginal individuals who had died. This process will apply when Priority and Safer Communities Division (**PSCD**), in conjunction with my office, identify circumstances that warrant an apology.
108. As an organisation, Victoria Police is continually reviewing, assessing, auditing and analysing the conduct of our officers and our systems and processes that we have in place to ensure they are free from bias, racism or unequal exercise of discretionary powers. I acknowledge that this requires an ongoing position of vigilance, as we know there is still more work to do. We know this from when an individual officer does not conduct themselves to Victoria Police's requirements and expected standards of behaviour.

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109. The rollout of technology such as in-car video for Highway Patrol vehicles from 2008 and body worn cameras for all frontline police officers from 2018 further enables the accountability of police officers as they provide footage of the nature and outcomes of interactions with members of the community.
110. Unconscious bias and its impact on the Aboriginal community is specifically addressed in our Aboriginal Cultural Awareness Training. I address this training generally in paragraphs 135 to 142. The topic of discretionary power is broached in several ways including in discussions on the over-representation of Aboriginal people in custody and in youth cautioning programs. Further historical context covers Stolen Generations and systemic racism. Additional content is shaped by the lived experiences of individual presenters and truth telling by Aboriginal Community Liaison Officers.
111. We will continue to work with stakeholders and members of the Aboriginal community to educate our workforce on these matters, and work within our oversight mechanisms to identify problematic behaviour and stop it from happening in the future.

External oversight of Victoria Police

112. The IBAC is empowered to investigate complaints about misconduct and serious misconduct by Victoria Police employees. Victoria Police notifies the IBAC of all complaints received and the IBAC can investigate any complaints at their 'own motion'. The IBAC has direct access to the Victoria Police Professional Standards Command complaints management database and is able to monitor and assess any active complaint. The IBAC can also receive complaints directly from complainants or through public interest disclosures (whistle-blower complaints) made under the *Public Interest Disclosures Act 2012 (Vic)*.
113. Ultimately, the IBAC has discretion over which matters it investigates. However if a complaint is referred back to Victoria Police, Victoria Police is obliged to complete the investigation. The IBAC refers most of the complaints about Victoria Police back to police for investigation.⁴⁹
114. I acknowledge the importance of having a system in which the community has confidence. That obviously needs to be a system in which the Aboriginal community has confidence. Confidence and trust in police is paramount to allow us to police with authority and consent. I recognise that, irrespective of what I believe to be the impartiality of a police investigation, at least some within the community have a view that police should not investigate police.
115. The Government is currently reviewing police oversight arrangements to consider the most effective model for investigation of police and oversight of them. As Chief Commissioner, I am open to the exploration of any model that can deliver the

⁴⁹ In 2021/2022, the IBAC assessed 385 public interest complaints about Victoria Police, of which 353 (91.7%) were referred to Victoria Police for investigation. Independent Broad-based Anti-corruption Commission, *Annual Report 2021/22* (Report, 1 December 2022) <https://www.ibac.vic.gov.au/docs/default-source/reports/ibac-annual-report-2021-22.pdf?sfvrsn=e4cb6eaf_9>.

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practicalities of timeliness, fairness and confidence in the process, to both the public and the police. I am absolutely committed to ensuring that our complaint and discipline system is not only fair and transparent, but is also seen and believed to be so by all members of our community, particularly Aboriginal people.

116. Accordingly, as part of the review, Victoria Police has advocated for legislative amendments to the *Victoria Police Act* to remove barriers to making complaints including by diversifying those who are able to receive complaints. Such an amendment would align with the goal of providing victim-centric support. Without the limitation of offering the role exclusively to sworn officers, the role may be opened up to a more diverse group of complaint takers. A greater diversity could in turn promote accessibility, for example, certain complainants, including those from priority communities, may feel more comfortable making a complaint to a VPS employee rather than a police officer. For example, it is the Victoria Police position that Aboriginal people should have the option to make a complaint about a police officer to a Victorian Public Servant who is not a police member, such as an Aboriginal Community Liaison Officer, in order to increase confidence to lodge a complaint. The existing legislation does not currently provide this option.

Improving police interactions with Aboriginal people

117. Victoria Police has a range of forums and processes in place to proactively improve interactions with Aboriginal people. These are intended to enable Victoria Police members to better understand the experiences of Aboriginal people.
118. In addition to training of the workforce (including our Aboriginal Cultural Awareness Training I address in paragraphs 135 to 142), the main mechanisms to improve interactions with Aboriginal people are the following:
- 118.1 The *Aboriginal Portfolio Reference Group* was re-established in 2018 as the overarching governance structure for embedding self-determination across Victoria Police. The Reference Group provides a mechanism for Aboriginal community leadership and decision-making in the design, development and delivery of policies and programs that affect Aboriginal children and adults. The Reference Group also advises on inclusive policy, processes and practices for strengthening partnerships with the Aboriginal community, addressing the barriers to reducing over-representation, and increasing Aboriginal employment and inclusion within Victoria Police.

Quarterly meetings of the Reference Group are co-chaired by Assistant Commissioner Russell Barrett and Aboriginal leader, Mr Chris Harrison as State-wide Co-Chair of the Aboriginal Justice Caucus. Membership includes the Commissioner for Aboriginal Children and Young People, and representatives from the Victorian Aboriginal Community Services Association Ltd, Victorian Aboriginal Child Care Agency, VALS, Koori Youth Council, Aboriginal Community Justice Panel, Koori Justice Unit in the Department of Justice and Community Safety, Koori Courts, Magistrates' Court of Victoria, and Aunty Joy Murphy, former Chair of the Victorian

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Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody.

As an example of its role, in 2021 the Reference Group reviewed the *Search of persons* policy. In response to the review, Victoria Police updated the VPM to justify when necessary, and minimise use of full searches for a young person under the age of 18 and improve oversight of Aboriginal children in police custody, with the Reference Group endorsing the updates.⁵⁰ In 2022, the Reference Group was also engaged throughout the Discipline Transformation Project (see paragraph 132) to embed self-determination and better ensure that the complaints process encourages Aboriginal community members to contact police and that it is culturally safe to do so. In November 2022, the draft Aboriginal and Torres Strait Islander Inclusion Action Plan 2023–2025 was presented to the Reference Group for further input and support. It is anticipated that Victoria Police’s *Aboriginal and Torres Strait Islander Inclusion Action Plan 2023–2025* will be launched during Reconciliation Week in 2023 in consultation with the Victoria Police Aboriginal Employee Network Council.

118.2 Victoria Police participates in the following:

- (a) The *Aboriginal Justice Forum*: The Aboriginal Justice Forum brings together leaders in the Aboriginal community with senior representatives from justice agencies. It created an opportunity for Aboriginal Community leaders to actively hold justice agencies, including Victoria Police, to account and to work together to improve outcomes with Aboriginal Communities and individuals. Victoria Police has been participating in the Aboriginal Justice Forums since 2000. My attendance at Aboriginal Justice Forums, most recently on 16 and 17 March 2023, provides me with an opportunity to hear from those present about issues involving police. I come away from every forum with a deeper understanding but also concrete action items – whether that be directly from the Aboriginal community, inspired by what I have heard or from the briefings I am provided ahead of the forum. Some recent action items include an agreement to reinstate reporting to the forum on Aboriginal complaints made to Victoria Police, to report back on data relating to adult cautioning, and to advise of the number of ACCOs on Victoria Police’s referral system.⁵¹

At the Aboriginal Justice Forum on 16 and 17 March 2023, in response to issues raised by Aboriginal community leaders, I committed Victoria Police to:

⁵⁰ VPM Searches of a person, s 2.2, as at 15 December 2021.

⁵¹ See, generally, Aboriginal Justice, *Aboriginal Justice Forum* (web page) <<https://www.aboriginaljustice.vic.gov.au/the-aboriginal-justice-forum>>

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- (i) assessing the viability of a new Aboriginal Community Liaison Officer for the metro area, in consultation with the North West Metro RAJAC Chair, within the next two months;
- (ii) determining whether Victoria Police data systems enable us to capture the number of times that a child who needed to be taken to care, has to stay at a police station while awaiting Child Protection to pick them up;
- (iii) analysing the poor substantiation rate in Professional Standards Command complaints data for Aboriginal people;
- (iv) reviewing the State-wide operation of the Aboriginal Youth Cautioning Program;
- (v) advertising the new Bendigo Aboriginal Community Liaison Officer role within the next month;
- (vi) engaging with VALS on the implementation of recommendations from the Veronica Nelson inquest, such as around explaining the VALS notification;
- (vii) conveying to management the concerns expressed by VALS about increased 'targeting' of Aboriginal persons in a local area;
- (viii) sharing all Victoria Police information regarding our recommendations from the Royal Commission into Aboriginal Deaths in Custody;
- (ix) obtaining further information about an investigation currently underway in a local area into a claim of Aboriginality;
- (x) considering the feasibility of developing an Aboriginal-specific health intake form as part of our custody practice reform;
- (xi) participating in a national review of funding of community legal services, if invited;
- (xii) considering the application of restorative justice principles in our rollout of the Aboriginal Youth Cautioning Program and also more broadly across the justice system for family violence matters; and

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- (xiii) discussing the issuing of a caution to a child and the police response to a neighbourhood dispute with the relevant divisional Superintendent.

The Aboriginal Justice Forum is generally held three times a year in different locations around the State. The remaining meetings for 2023 are planned to be held in July and October.

- (b) The Dhelk Dja Partnership Forum, established in 2005 to address Aboriginal family violence and ensure the appropriateness of police responses.⁵²
- (c) Regional Aboriginal Justice Advisory Committees and Local Aboriginal Justice Advisory Committees⁵³ to develop and maintain strong partnerships between Aboriginal communities and justice agencies and to facilitate localised problem solving.

118.3 The *Police and Aboriginal Community Protocols Against Family Violence (Protocols)* are agreed between local Aboriginal Communities and Victoria Police, and reflect a trilateral partnership between the Dhelk Dja Partnership Forum, the Aboriginal Justice Forum and Victoria Police. The Protocols are an activity under the *Djelk Dja* agreement and related rolling action plan 2020–2023.⁵⁴ The Protocols document the local police response to family violence where a person identifies as Aboriginal or Torres Strait Islander. The objectives of the Protocols are to build positive relationships between communities and police, and to strengthen the police response to incidents of family violence.⁵⁵ Victoria Police's primary objective is to reduce the number of family violence incidents, and the rates of families experiencing repeated incidents of family violence. The Protocols currently operate in 10 sites around the State,⁵⁶ with a commitment to refresh the Protocols and expand to additional sites.⁵⁷ A further seven sites are in the process of being established.

⁵² Victorian Government, *Dhelk Dja Partnership Forum* (web page) <<https://www.vic.gov.au/dhelk-dja-partnership-forum>>

⁵³ Aboriginal Justice, *Regional Aboriginal Justice Advisory Committees* (web page) <<https://www.aboriginaljustice.vic.gov.au/regional-aboriginal-justice-advisory-committees>>

⁵⁴ Victorian Government, *Family Violence Reform rolling action plan 2020–2023* (web page) <<https://www.vic.gov.au/family-violence-reform-rolling-action-plan-2020-2023>>

⁵⁵ Victoria Police, *Code of Practice for the investigation of family violence* (web page) <<https://www.police.vic.gov.au/code-practice-investigation-family-violence>>

⁵⁶ These sites are in Bairnsdale, Ballarat, Dandenong, Darebin, Latrobe, Mildura, Shepparton, Swan Hill, Warrnambool and Wimmera. Victoria Police, *Family violence and Aboriginal communities* (web page) <<https://www.police.vic.gov.au/family-violence-and-aboriginal-communities>>

⁵⁷ Department of Families, Fairness and Housing, *Ending Family Violence Annual Report (2021)* 61 <<https://www.vic.gov.au/ending-family-violence-annual-report-2021>>

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- 118.4 The *Aboriginal Community Liaison Officer Program* established in 2005 to address Royal Commission into Aboriginal Deaths in Custody recommendation 231.⁵⁸ This program aims to strengthen relationships and facilitate communication between Victoria Police and Aboriginal people across Victoria.⁵⁹ Aboriginal Community Liaison Officers are Aboriginal employees of Victoria Police and Victoria Police currently has 16 positions across Victoria, including the recent establishment of a position in Bendigo.⁶⁰ However five of these positions are currently vacant. The Aboriginal Community Liaison Officers are located in areas with significant Aboriginal populations.
- 118.5 The *Police Aboriginal Liaison Officer Program* was also implemented to address Royal Commission into Aboriginal Deaths in Custody recommendation 231. Police Aboriginal Liaison Officers are police officers who also hold an Aboriginal portfolio role in addition to their duties but do not need to be (and are generally not) Aboriginal or Torres Strait Islander. They develop knowledge and expertise in issues impacting their local Aboriginal Community through community networking, community development and liaison. This enables positive partnerships and provision of a culturally safe environment at their local police station and the resolution of issues. Police Aboriginal Liaison Officers work closely with Aboriginal Cultural Liaison Officers.⁶¹ As of February 2023, there are 233 Police Aboriginal Liaison Officers across Victoria. Numbers of police suitable to take on the role have increased since our state-wide rollout of Aboriginal Cultural Awareness Training.
- 118.6 My appointment of Assistant Commissioner Russell Barrett in 2020 to lead the Aboriginal Affairs Reform Agenda across Victoria Police. This senior appointment was to highlight my commitment to ensuring strong and consistent leadership on reducing over-representation and ensuring that Aboriginal Victorians are consulted on policies and programs that affect them, their families, and their community, striving to embed self-determination.
- 118.7 My Instruction (CCI 05/22) (discussed in paragraph 50) requiring focussed oversight and review of police actions in respect of all Aboriginal children who come into police custody. Monitoring obligations are built into the reporting requirements.

⁵⁸ Recommendation 231 is: That different jurisdictions pursue their chosen initiatives for improving relations between police and Aboriginal people in the form of police aides, police liaison officers and in other ways; experimenting and adjusting in the light of the experience of other services and applying what seems to work best in particular circumstances: *Royal Commission into Aboriginal Deaths in Custody* (Final Report, April 1991) vol 5.

⁵⁹ Aboriginal Justice, *Community policing for crime prevention* (web page) <<https://www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-justice-outcomes-framework/goal-22-fewer-aboriginal-people-enter-the-1>>

⁶⁰ Bairnsdale; Morwell; Wodonga; Shepparton; Ballarat; Warrnambool; Geelong; Mildura; Swan Hill; Echuca/Bendigo; Footscray; Northcote; Dandenong; Knox; Horsham.

⁶¹ Aboriginal Justice, *Community policing for crime prevention* (web page) <<https://www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-justice-outcomes-framework/goal-22-fewer-aboriginal-people-enter-the-1>>

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- 118.8 The *Chief Commissioner's Human Rights Strategic Advisory Committee* that monitors Victoria Police's response to human rights and discusses emerging human rights issues. The Committee meets quarterly and includes senior representatives from the Commission for Aboriginal Children and Young People and VALS.
- 118.9 The Neighbourhood Policing model I launched in April 2022 involves listening, understanding and responding to the needs of the community and responding appropriately, together.⁶² Local Safety Committees in each Police Service Area bring together community, government and non-government stakeholders to address specific safety issues in their area. Aboriginal community groups have been identified as important community partners within this model.

Improvements to the collection of data

119. The *Crimes Act 1958* requires Victoria Police to ask the SIQ as soon as practicable after a person is taken into custody.⁶³ Legislative changes⁶⁴ and IT enhancements have improved compliance with this requirement, in turn improving Victoria Police's collection of data that helps to understand police interactions with Aboriginal people. The most recent data available on police compliance with asking the SIQ is from February 2023. In that month, police asked 91% of offenders and 76% of victims the SIQ. In comparison, in early 2020 those figures were 88% and 73% respectively.⁶⁵
120. An important consideration is how the SIQ is asked, and Victoria Police strives for every police officer to ask the question with respect and professionalism. Although police must ask the question, any response is voluntary. Police must respect the right of every individual to not respond or to identify as Aboriginal and/or Torres Strait Islander. It is not appropriate or possible for Victoria Police to validate an individual's claim to identify as Aboriginal and/or Torres Strait Islander.
121. The SIQ helps police to better connect Aboriginal people to culturally appropriate support services when entering police custody. To support this work Victoria Police collects and shares information about Aboriginal people through:
- 121.1 contributing LEAP data to the annual Victorian Aboriginal Affairs Framework data dashboard. The data dashboard demonstrates how Government is

⁶² Victoria Police, *Neighbourhood policing* (web page) <<https://www.police.vic.gov.au/neighbourhood-policing>>

⁶³ *Crimes Act* (n 15) s 464AAB requires that if a person is taken into custody, an investigating official must ask the person whether they are an Aboriginal person as soon as practicable after the person is taken into custody; and in any event, before any questioning or investigation under section 464A of the *Crimes Act* commences.

⁶⁴ For example, the L17 form now requires the Standard Indigenous Question to be asked in relation to any child of a victim survivor or perpetrator of family violence.

⁶⁵ I am informed that the 2020 date is from April 2020, and that data prior to March 2020 cannot be reliably or meaningfully compared to data post March 2020 due to IT system changes.

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tracking against commitments to improving outcomes for Aboriginal Victorians,⁶⁶

- 121.2 reporting key data about Aboriginal interactions with police to the Aboriginal Justice Forum;⁶⁷
- 121.3 holding Aboriginal themed forums (known as CompStats⁶⁸ and CommSafes⁶⁹) in 2018⁷⁰ and 2021⁷¹ to discuss key data on ‘improving policing responses to the over-representation of Aboriginal Victorians in the justice system’. In the case of CommSafes, this discussion is with Aboriginal Community leaders; and
- 121.4 scoping the development of our data monitoring capability for Aboriginal people, following discussion at Aboriginal Justice Forum 63. The purpose is to investigate what data might be available on the application of police powers that disproportionately affect marginalised people including field contacts, searches, move on orders and youth arrests. The data will also be disaggregated by Aboriginal status, age, gender and geographic location.

Question 143. In each year since 1 January 2017, how many complaints have been made to Victoria Police that relate to the treatment of First Peoples?

122. Table 3 below sets out complaints made to Victoria Police by Aboriginal people, including those relating to Victoria Police’s investigation of complaints, from 2017 to 2022. This is the most reliable data Victoria Police has available that is relevant to the Commission’s question, although we do acknowledge it may not capture all complaints that relate to Aboriginal people, for example where complaints relating to the treatment of Aboriginal people are made by non-Aboriginal people. I also note that the rate of complaints may have been impacted by COVID lockdowns from 16 March 2020, throughout 2021 and for half of 2022.

⁶⁶ Victorian Government, *Victorian Government Aboriginal Affairs Report* (web page) <<https://www.firstpeoplesrelations.vic.gov.au/aboriginal-affairs-report>>

⁶⁷ For example, at the Aboriginal Justice Forum 63 in December 2022, Victoria Police contributed data for agenda papers on Aboriginal Youth Cautioning Program and the uptake of the Aboriginal Cultural Awareness Training.

⁶⁸ ‘CompStats’ were introduced in 2004 to measure and monitor performance and ensure accountability on organisational priorities including crime, road trauma, personnel issues, ethics, finance and a range of government led initiatives or priorities.

⁶⁹ ‘CommSafes’ are ‘Community safety forum’ which are periodically organised by Victoria Police, open to the public and provide an opportunity for Victoria Police to engage at a local level with partner agencies and the community on safety and crime issues. CommSafes can be organised around a particular issue or theme or can be based on a geographic location.

⁷⁰ Victoria Police response to NTP-001-001 of May 2022. This was an internal CompStats project.

⁷¹ This was a CommSafe forum open to Aboriginal Community Leaders and other members of the public.

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Table 3: Complaints made to Victoria Police by Aboriginal People, 2017–2022

Complaints made to Victoria Police by Aboriginal People		
Year	Files	Allegations
2017	46	91
2018	44	122
2019	35	94
2020	29	90
2021	13	28
2022	19	77
Total	186	502

Table 4: Types of complaints made to Victoria Police by Aboriginal People, 2017–2022

Complaint Type	Allegations 2017 - 2022
Search and Seizure	4
Pursuit	2
Property	10
Preliminary Review	2
Oversight Investigation	1
Offending	2
Criminality / Corruption	19
Injury in Presence	2
Information Disclosure	6
Human Rights	20
Family Violence	5
Inappropriate use of Equipment	12
Duty Failure	103
Death in Police Presence	1
Custody	29
Correspondence File	12
Behaviour	75
Assault	191
Arrest	6
Total	502

Question 144. In each year since 1 January 2017, how many complaints have been made about Victoria Police’s investigation process itself, in the case of First Peoples?

123. I provide Table 5 below for the Commission’s awareness of the complaints made to Victoria Police by Aboriginal people about duty failure (breaches).

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Table 5: Complaints made to Victoria Police by Aboriginal People

Complaints made to Victoria Police by Aboriginal People – Duty Failures (Breaches) 2017–2020							
Duty Failure Breach Type	2017	2018	2019	2020	2021	2022	Grand Total
Fail to Act				1			1
Fail to Assist	6		1		1		8
Fail to Complete						1	1
Fail to Comply (Instruction)		1	3	1		3	8
Fail to Contact	1		1				2
Fail to Display				6			6
Fail to Inform		18	2	1		3	24
Fail to Investigate	1	1	2	1			5
Fail to Provide		5	7	4		3	19
Fail to Record			2	1			3
Fail to Take Action	2			2			4
Fail to Take Due Care		5	2		1		8
Improper Direction				1			1
Improper Management					1		1
Inadequate Investigation		4	1		1	3	9
Incorrect Entry (Recording)			1				1
Victim Charter				1		1	2
Total	10	34	22	19	4	14	103

124. For the purpose of the data presented in this table, a duty failure is where a Victoria Police employee does not discharge their duty to the community and each other in accordance with our values, policies, procedures and practices. Where a Victoria Police employee acts in a manner contrary to the organisational values, policies, procedures and practices, their actions will be scrutinised to determine if a duty

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failure has occurred. The outcome for duty failure can range from workplace guidance to dismissal. Duty failures can include, for example, failure of an attending police member to properly investigate a matter, failure of an attending police member to comply with instructions of supervisors in managing their incidents, and failure of an attending police member to undertake certain actions or compliance in accordance with legislated requirements or policy when attending to and addressing incidents involving Aboriginal people.

125. I am conscious that this data does not fully address the intent and scope of Question 144, that is, to provide information on the number of complaints about the way in which complaint investigations have been undertaken. I have therefore commissioned a manual review of the more than 180 complaints made by Aboriginal people over this period in order to fully answer this question. A manual review is necessary given some records are paper based and IT systems during this time period will not necessarily provide as complete an answer. I have directed staff to complete this work immediately. I undertake to provide the information from this review to the Commission in a supplementary statement as a matter of urgency.

Question 145. As at February 2023, how many First Peoples investigators were available to assist in the investigation of complaints concerning police conduct in the case of First Peoples?

126. There are no investigator positions within Professional Standards Command that are designated for Aboriginal people only. As at 24 March 2023, there are also no investigators who identify as Aboriginal within Professional Standards Command, though this is point in time data as an Aboriginal police officer may apply for any investigator position. In total, as of February 2023, there were 260 full time equivalent staff in Professional Standards Command including 62 in the Investigations Division. However, currently, 87% of the relevant investigations undertaken by Victoria Police are allocated to investigators outside Professional Standards Command. These investigations are still under the remit of the Conduct and Professional Standards Division of Professional Standards Command.
127. By June 2023 a Police Aboriginal Liaison Network will be introduced across Professional Standards Command, as explained in paragraph 133.5.
128. It is also important to understand that the allocation of complaints concerning police conduct for investigation by either Professional Standards Command detectives or other police officers across the organisation is determined by a number of factors, including the severity of the conduct being reported, any perceived or actual conflict of interest between the proposed investigator and the subject police officer/s, and the rank of the subject police officer/s. While we do have Aboriginal police officers, we would not allocate complaint files to them based solely on their Aboriginality.

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129. Recognising the impact of historical and cultural factors in interactions between Aboriginal people and police, 16% of public servants and 66% of police within Professional Standards Command have completed Aboriginal Cultural Awareness Training to date. This is the Aboriginal Cultural Awareness Training that is compulsory for all police and PSOs referred to in paragraphs 136 to 142. The remainder of Professional Standards Command investigators are scheduled to complete this training by September 2023.

Question 146. In the period since 1 January 2017, what surveys, reviews or audits have been undertaken to consider whether in the case of Victoria Police's complaint and/or misconduct investigation processes, whether in the case of First Peoples they are sufficiently:

(a) culturally appropriate/safe; and

(b) trauma informed,

and whether any further process improvements may be available?

130. Since 2017, a number of reviews have included in their remit the adequacy of Victoria Police's complaint and/or misconduct investigation processes in relation to Aboriginal people. The most recent and relevant of these was the IBAC's May 2022 *Review of Police Complaints involving Aboriginal People (2022 Review)*. The Parliament of Victoria's Independent Broad-Based Anti-corruption Commission Committee's *Inquiry into the external oversight of police corruption and misconduct in Victoria* in 2018 also raised the cultural safety of Victoria Police's complaints system as an issue of concern for Aboriginal people. Concerns raised in the 2018 inquiry included that Aboriginal people may underreport complaints of police misconduct because of being disenfranchised by the complaints system and due to a fear of police reprisals.⁷²
131. Victoria Police has also regularly produced statistical overviews of complaints made by Aboriginal complainants since 2020, and shared these reports with the Aboriginal Justice Forum. The reports benchmark and analyse outcomes of complaints made by Aboriginal people, in comparison with those made by non-Aboriginal people, as well as matters which are the subject of the complaints.
132. Victoria Police's ongoing Discipline Transformation Project, which I expand on in paragraph 133.1, also includes, as an area of focus, changes to its complaints and misconduct investigation processes that are intended to drive improvements in cultural safety for all priority community groups, including Aboriginal people.

⁷² Parliament of Victoria's Independent Broad-based Anti-corruption Commission Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018), 152-154
<<https://apo.org.au/sites/default/files/resource-files/2018-09/apo-nid190261.pdf>>

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133. Complaints are an important source of data that enables Victoria Police to oversight the actions of its employees and the concerns of community members. I have initiated a program of work to transform our complaints and discipline processes to address the issues identified and recommendations made in these inquiries and reviews. These include the following:
- 133.1 The Discipline Transformation Project initiated in June 2021 is delivering comprehensive changes to the organisation's complaint and discipline process, along with streamlined policies and procedures. As a priority, Victoria Police is working to simplify the complaint lodgement process, complaint classification, assessment, allocation, and determination. It is vital that the community has confidence that reports or concerns will be investigated fairly and impartially. In 2021 and early 2022, the Discipline Transformation Project team consulted with Aboriginal stakeholders including the Koori Complaints Project, the Regional Aboriginal Justice Advisory Committees and Local Aboriginal Justice Advisory Committees Network, and the Aboriginal Portfolio Reference Group. The discussion groups provided input and feedback into the development of the complaint forms.
- 133.2 The new complaint system will be implemented in June 2023. It will do the following:
- (a) It will make it easier for everyone, including Aboriginal people, to lodge complaints (including by simplifying the process for people making complaints). This has involved revision and development of two new complaint forms, including an electronic complaint form which is automatically sent to the Police Conduct Unit for triage and assessment once submitted. This form, which is for public use, is currently operational. The second form, which is for internal complaints, will be launched in July 2023.
 - (b) It will better capture the specifics of a complaint (including by improving the classification of complaints, allegation descriptors and resolution determinations). This was launched in July 2022.
 - (c) It will ensure that complainants are advised about the outcome of their complaint and the reasons for the decision (including by improving communication with complainants).
 - (d) It will ensure transparency, accountability, and robust decision-making (including by improving how complaints are assessed, allocated, investigated and determined). This has involved a review of all policies and guidelines that relate to complaints and discipline. As a result, three new policies have been drafted and will be launched in June 2023. Victoria Police is also pursuing ongoing legislative reform proposals with a view to enhancing our policies and processes.

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- 133.3 Victoria Police has accepted all 10 of the recommendations made in the IBAC's 2022 Review and committed to their implementation by 1 June 2023. For example, the IBAC recommended developing and implementing specific training to ensure genuine understanding of and engagement with human rights in operational policing, complaint investigations and serious incident oversights. Among other things this training was required to take into account the impact of cultural stereotypes and unconscious bias on police decision making. Progress towards implementing this goal include the training described in paragraphs 136 to 142 below.
- 133.4 Victoria Police is providing detailed complaints data at each Aboriginal Justice Forum, following a request made at Aboriginal Justice Forum 63 in December 2022.
- 133.5 By June 2023 a Police Aboriginal Liaison Network will be introduced across Professional Standards Command to provide subject matter expertise and improve understanding and response to complaints involving Aboriginal people. Professional Standards Commands has five Police Aboriginal Liaison Officers. Each Police Aboriginal Liaison Officer (though not Aboriginal) does have extensive knowledge and expertise in community networking, community development and liaison, and endeavours to create and maintain a culturally safe environment for Aboriginal people. When Professional Standards Command identify that an Aboriginal person is involved in the reported complaint, they will alert the Police Aboriginal Liaison Network, who will be proactive in engaging with the complainant to explain the process and / or link them in with the local Aboriginal Community Liaison Officer or Police Aboriginal Liaison Officer to provide ongoing support through the process from start to finish.
134. In addition to the benefits described above, the Discipline Transformation project has specific relevance to Aboriginal complainants. The new complaint forms include the SIQ to ensure Victoria Police identifies the involvement of Aboriginal people as a complainant, victim or subject employee, and complainants will be asked whether and what further assistance they may need to improve their communications with Victoria Police and their navigation of the complaint process. Complainants will be able to be submitted on behalf of someone else, and a person can act as an advocate for the complainant where there may be language or cultural barriers, or where the complainant may not be comfortable dealing directly with Victoria Police. Finally, the new Victoria Police complaints policy specifically details that complaints alleging discrimination based on a protected attribute or involving a breach of human rights will be treated seriously. This includes discrimination expressed directly or indirectly, including through the use of discriminatory language in records and written documents.

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Question 149. As at February 2023:

(a) What cultural awareness training is provided to Victoria Police officers, particularly in respect of First Peoples? Were any First Peoples individuals or organisations involved in developing the relevant training?

(b) Who delivers the training identified in the response to sub-paragraph (a)?

(c) How regularly is it provided (and to which Victoria Police staff and/or officers)?

135. Victoria Police aims to ensure the cultural awareness of every police officer and employee. There is an existing system for Aboriginal Cultural Awareness Training.
136. The Aboriginal Cultural Awareness Training is a self-determined cultural awareness program. The program addresses the role that Victoria Police played in historical Government policies that directly affected the Victorian Aboriginal community. These include topics of colonisation, the Stolen Generations, cultural bias and Aboriginal identity. The training aims to educate on matters of terminology, language and Country, Acknowledgement and Welcome to Country.
137. The 3.5 hour training package was initially developed by Aboriginal employees and was revised in 2019 by Nyuka-Wara Consulting, a registered Aboriginal training provider working with Aboriginal Community Liaison Officers and other Aboriginal employees. In May 2022 the package was endorsed by the Aboriginal Justice Caucus.
138. Cultural content is presented by Aboriginal Community Liaison Officers and other Aboriginal employees, who share their personal experiences with the support of divisional and regional training officers.
139. As of 20 March 2023, Aboriginal Cultural Awareness Training has been delivered to 5,944 Victoria Police employees, including the senior and executive leadership groups.
140. Since May 2022, Aboriginal Cultural Awareness Training has been mandatory for all police and PSOs. In March 2023, the training was also made mandatory for Police Custody Officers and to date, 44 Police Custody Officers (12%) have undertaken the training.
141. To date, all the Aboriginal Cultural Awareness Training has been face to face, rather than via an online platform. This was considered most culturally appropriate format. However, in practice it can mean that a longer roll out is required. It also affects the availability of Aboriginal facilitators and Aboriginal Cultural Liaison Officers to deliver the cultural components of the training, including their ability to travel to regional and rural locations across Victoria. Consultation and planning are underway to video record Aboriginal and Torres Strait Islander employees' truth-telling experiences to expand the Aboriginal Cultural Awareness Training package and minimise cultural fatigue of presenters.

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142. Uptake of the training has been slowed by factors such as the need to balance the roll out with other operational requirements. For example, the need to ensure appropriate staff support across each station while members attend the training.
143. Additionally, police have the opportunity to receive cultural awareness training delivered by Aboriginal Community in their local areas. Training sessions are held subject to the availability of Elders and other trainers, who deliver a range of training programs to multiple organisations. These local programs are intended to sit alongside Aboriginal Cultural Awareness Training, to provide local knowledge and content to Victoria Police members in those areas. For example:
- 143.1 Localised sessions have occurred in the Police Paddocks in Dandenong, Halls Gap and various other regional areas where Elders introduce participants to local sacred sites, history and culture. Police Paddocks are held approximately once a month, subject to the availability of Elders and other trainers. In Halls Gap, where there is a cultural centre, Police Paddocks are held approximately two to three times per year.
- 143.2 Mulana kaalinya - 'Culcha Camps' are held at Barmah and Healesville. These involve police employees attending an overnight program on country with Elders, who allow participants to experience local sacred sites during a two-day camp and a half-day interactive cultural competency workshop. The workshop covers the history of Aboriginal people, impacts of colonialism, racism and unconscious bias, justice-related issues, Victorian Aboriginal Justice Agreement, Aboriginal connections with country and spirituality, and challenges and opportunities to improve police capabilities to work with Aboriginal communities. The workshops are typically held two or three times a year, depending on the availability of Elders and other trainers. The Culcha Camps have been running for over 10 years and were an initiative of the Victoria Police in Shepparton and the Aboriginal community.
144. Training in trauma-informed policing is provided via a dedicated online-learning hub and as part of the training of specialist investigators. This training supports police to use their professional judgement in each situation and uphold the human rights of the individual, while having regard to duty of care considerations. Other training relating to police interactions with Aboriginal children, young people and adults is as follows:
- 144.1 Since March 2021, an amended bail training package has been mandatory for police bail decision makers. The package specifies that relevant considerations include an accused person's Aboriginality and, from late 2022, has provided detailed information about the application and effect of section 3A of the *Bail Act*. The Victorian Government has recently announced reforms to bail laws. Training will be updated to reflect these reforms and other recommendations in due course once there is more certainty about them. These updates will be monitored by a newly established Bail Working Group comprising stakeholders from across Victoria Police.

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144.2 The police recruit Foundation Training (Diploma of Policing) includes two dedicated Aboriginal sessions and fifteen sessions that reference topics relevant to Aboriginal communities or that use case studies involving Aboriginal people. The sessions are one hour and are delivered face-to-face, except Community Encounters and PACE-3, which are three hours – a total of 21 hours across all foundation training at the Victoria Police Academy.⁷³

The sessions cover:

- (a) *Aboriginal Communities 1:* Wurundjeri Dreaming story, Academy Aboriginal dedications, Kulin Nations, colonisation, kinship, lore vs law, massacres, missions, Stolen Generations, assimilation, Aboriginality, Rights, Mabo, the Apology, Victorian Aboriginal communities today;
- (b) *Aboriginal Communities 2:* Wurundjeri welcome to country, Royal Commission into Aboriginal Deaths in Custody, Aboriginal Justice Agreement, child removal and out of home care, Taskforce 1000, Aboriginal Child Placement Principle, Aboriginal incarceration rate, over-representation, intergenerational trauma, mental health in Victorian Aboriginal communities, family violence, the SIQ, the Victorian Aboriginal Legal Service, Koori courts, terminology, cultural awareness, Victorian Aboriginal Child Care Agency;
- (c) *Community Diversity:* composition of the Victorian community, overview of the Victoria Police priority communities, including Aboriginal people;
- (d) *Community Encounters:* interaction with members from the Victorian community representing priority communities, including Aboriginal community members;
- (e) *Drivers of Crime:* social determinants that may influence crime, social justice, disadvantage, overview of the Victorian prison population, education, employment, housing, health and wellbeing, family and friends, young people, protective and risk factors, resilience, crime prevention;
- (f) *Critical Thinking:* What is critical thinking? Case studies involving priority communities. Reflective practice, tools for critical thinking (human rights, Victoria Police Manual, professional standards, and applying the Scrutiny, Ethical, Lawful and Fair (SELF) test to decision making);
- (g) *Caution and Rights:* practical application of cautioning of people in accordance with the *Evidence Act 2008*, s464 of the *Crimes Act* (in custody), SIQ, VALS, cautioning of children, right to an interpreter,

⁷³ I acknowledge that as a percentage of the entire course, the Aboriginal component is low. But in terms of the time spent on training regarding the priority communities curriculum, Aboriginal training is the highest.

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persons under 18, Independent Persons, usual Caution and Rights, formal Caution, preamble;

- (h) *Victoria Police eReferral System*: vulnerable community members, times when you may become vulnerable, Victoria Police priority communities, e-referral system, referral categories, no wrong door policy, who needs our help, consent, scenario, benefits of referrals, benefits of intervention, resources; and
- (i) *Professional Approach to Community Engagement (PACE) 1-5*: underlying issues which effect individuals and the wider community

- 144.3 The Police Manager's Qualifying Program was introduced in 2018 and is the qualifying program for all newly promoted senior sergeants and inspectors. The Program includes a stakeholder engagement day with a focus on strategic leadership and engagement. Participants are provided with a real-life scenario or report on an issue currently affecting a community. The Aboriginal scenario is about the removal of Aboriginal children into care and their placement within non-Aboriginal homes. It typically includes Aboriginal community members from VACCA, Aboriginal Community Liaison Officers, Priority & Safer Communities Division representatives, and other agencies. The stakeholder engagement day is approximately four hours.
- 144.4 Youth Specialist Officer training includes modules on adolescent development and trauma, the Children's Court of Victoria, young people, vulnerability and care, human rights and young people, the youth justice system and Victorian Legal Aid. Aboriginal case studies focus on Aboriginal young people, the SIQ and VALS notifications. Training takes place over two days.
- 144.5 Aboriginal Youth Cautioning Program training includes videos that focus on historical events impacting relationships between Aboriginal communities and police, promotion of child cautioning approaches and the importance of the SIQ. The videos are available at police stations across the state and on the Victoria Police intranet.
- 144.6 Persons in Police Care or Custody online learning package has been available to all employees since 2019 and addresses the accountabilities and responsibilities for persons in police care or custody and underpins our application of the Charter of Human Rights and Responsibilities. These online learning courses are mandatory for all sworn Police up to the rank of Inspector and all Police Custody Officers. Completion rates are being tracked to ensure compliance.

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- 144.7 Human Rights Everyday Policing is an online learning course that gives police an understanding of their obligations and responsibilities under the Charter of Human Rights and Responsibilities, how they consider human rights in their actions, and use of the acronym PLAN in deciding to limit a person's human rights. It is mandatory for all Victorian Police recruits.
145. In addition, Victoria Police supports Aboriginal workplace inclusion (addressed at paragraph 12 and 13 above) and adopts the principles of the *Barring Djinang* strategy, the five-year Aboriginal employment strategy for the Victorian public sector, through several Aboriginal employment pathways to Victoria Police:
- 145.1 Since its creation in 2018, the Victoria Police Diversity Recruitment Program has supported over 190 students from 55 cultures by preparing candidates to navigate the Victoria Police recruitment process since its creation in 2018. In 2022 the program's eligibility expanded to participants who identify as Aboriginal and/or Torres Strait Islander. The first seven participants of the Victoria Police Aboriginal Diversity Recruitment Program graduated in February 2023. There is one current participant due to graduate in May 2023. The program is delivered in partnership with various external providers and supports applicants to prepare for and navigate the recruitment process to become police officers, PSOs or Police Custody Officers. The program commenced in 2018 and has expanded to a 15-week accredited course. All participants are matched with a Victoria Police mentor, attend a tour of the Victoria Police Academy and receive presentations from guest speakers throughout the course. There is an entry round planned for July 2023.
- 145.2 The Aboriginal and Torres Strait Islander school-based traineeship program for Year 10, 11 and 12 students who are considering a career with Victoria Police. The program aims to provide young people with work experience and insight into a policing career. Seventy-four Aboriginal students have participated at 32 police stations since the program commenced in 2016. Since 2016, several students have been employed as public servants and police officers at Victoria Police. Currently, six graduates of the traineeship program are working at Victoria Police. There are 11 students currently participating in the traineeship program.
- 145.3 The Career Trackers (Barring Djinang Internship Program) administered by the Victorian Public Sector Commission. This links university students with employers to participate in paid, multi-year internships. Students perform their internships with sponsorship organisations like Victoria Police, with the aim of converting from intern to full-time employee at the completion of their university degree. Since 2019, four students performed internships with Victoria Police. One of these students is currently working for Victoria Police.

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- 145.4 The Youth Employment Scheme provides young people aged 15 to 29 years with a 12-month entry level opportunity to work in the Victorian Public Service while completing accredited training. The program is a pathway for students who have completed the Aboriginal and Torres Strait Islander school-based traineeship program. Since 2019, Victoria Police have employed three graduates through this program.
- 145.5 Aboriginal Pathway Graduate Recruitment and Development Scheme that began in 2013 and is administered by the Victorian Public Sector Commission. The Scheme is a 12-month paid program where graduates are placed in a home department and rotate through other participating agencies. Victoria Police has hosted six Aboriginal and Torres Strait Islander graduates between 2013 and 2017.
- 145.6 The Victoria Police Aboriginal Employee Network was established in 2018 to provide a supportive and consultative forum to raise workplace cultural issues, provide input into workplace policy and develop mechanisms for advocating to senior leadership. All Victoria Police employees who identify as Aboriginal and/or Torres Strait Islander are entitled to be members of the Aboriginal Employee Network. The sponsor is a Deputy Commissioner. An inaugural forum was held in July 2022 to reinvigorate the Aboriginal Employee Network and Network Council, and ensure appropriate consultation and self-determination in the development of the *Aboriginal and Torres Strait Islander Inclusion Action Plan 2023–2025*. As of 21 March 2023, eight employees have formally taken up positions on the Aboriginal Employee Network Council.
146. It will be apparent that some of these programs are more direct than others and that these are still relatively small numbers. I am committed to these types of initiatives continuing and new programs in order that there will be more Aboriginal police officers, PSOs, public servants and Police Custody Officers in Victoria Police. To encourage greater uptake of these opportunities, Victoria Police has commenced promoting the success stories within the organisation and to the community.

Question 177. Explain the health services that are currently available for First Peoples in police custody in Victoria:

- (a) male; and**
 - (b) female;**
 - (c) other (e.g. LGBTQI); and**
 - (d) children,**
- through ACCHOs or other culturally safe service providers.**
147. Victoria Police operates its own custodial health services, which are available 24 hours a day, seven days per week, and are staffed by qualified medical practitioners including doctors, nurses and pharmacists.

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148. Presently, there are no health services available for Aboriginal people in police custody that are operated by Aboriginal Community Controlled Health Organisations.
149. Victoria Police is reviewing the health services available to people in custody, including whether they are culturally appropriate and responsive to the unique needs of women, children and LGBTIQ+ individuals. For example, Victoria Police is engaging with the Aboriginal Portfolio Reference Group regarding the potential to expand of culturally appropriate health services to cover Melbourne. We are also seeking to:
- 149.1 review access to mental health care for those in police custody as part of Victoria Police's response to the Royal Commission into Victoria's Mental Health System; and
 - 149.2 engage with Corrections Victoria regarding their reception arrangements into prisons on the grounds that health care in police custody necessarily has to be suitable for short periods of incarceration.
150. Under existing arrangements, the Custodial Health Service of Victoria Police manages health care for people in police custody, including providing advice to custody staff. Victoria Police also operates a 24/7 Custodial Health Advice Line staffed by qualified nurses. These nurses provide guidance and advice to custody staff, on matters relating to:
- 150.1 general and mental health conditions;
 - 150.2 drug and alcohol issues;
 - 150.3 fitness for custody; and
 - 150.4 medication and general first aid.
151. In police cells, medical staff provide health services to people in custody. Health staff attend facilities to manage health needs and guide staff in assessment of risks, including as identified by the Detainee Risk Assessment. The Detainee Risk Assessments are completed when a person enters custody to assess their health, risks and needs. In addition to the 24/7 Custodial Health Advice Line, there is a nurse available 24/7 at the Melbourne Custody Centre, a nurse manager and nurse practitioner available seven days, a doctor available five days a week and up to two nurses to visit police stations seven days a week. Contracted doctors are available to visit regional cells.
152. When people leave police care or custody, police may make referrals to crisis accommodation, mental health support or legal support. Police endeavour to reasonably exhaust all avenues to assist a person leaving their care or custody in support of their safety, health, and wellbeing.

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RESPONSE TO COMMISSION QUESTIONS RELATING TO VICTORIA POLICE

Question 93. Provide an explanation of the current (as at February 2023) implementation status of the *Framework for the Reduction of Criminalisation of Children in Residential Care* (Framework). The Framework states that it will be reviewed on completion of the 18-month action plan, with a focus on, among other things, whether objectives and outcomes are being achieved. Please describe the outcomes of the review.

153. In February 2020, Victoria Police committed as a signatory to the *Framework to Reduce Criminalisation of Young People in Residential Care*, which is led by the Department of Families, Fairness and Housing.⁷⁴ The Framework aims to respond to the criminalisation of young people in residential care by reducing the reliance upon police to respond to minor behavioural matters that are more appropriately dealt with by the young person's designated carer.
154. An action plan between Victoria Police and the Department of Families, Fairness and Housing was established in March 2023 to achieve the shared strategic objectives set out in the Framework. Production of the action plan was delayed, including due to the COVID-19 pandemic, but I am pleased to see it now in place. Victoria Police deliverables which aim to reduce the overrepresentation of Aboriginal young people in the criminal justice system are the primary responsibility of the Priority and Safer Communities Division, lead by the Deputy Commissioner, Capability, and include:
- 154.1 increasing awareness of the Framework and adherence to its principles including by reference to the Framework in relevant policies or procedures, including the Child Cautioning Practice Guide and the draft Victoria Police Youth Strategy;
 - 154.2 identifying existing trauma-informed training or resources that may assist police engaging with vulnerable young people, reflecting a commitment made within the Framework to "...pursue opportunities to build the capacity of its workforce with training relevant to trauma and vulnerable young people";
 - 154.3 communicating relevant policy or procedure amendments to police regions;
 - 154.4 participating in state-wide Implementation Group activities aimed at identifying effective strategies to reduce criminalisation of young people in residential care;
 - 154.5 clearer advice for carers to ensure that police involvement is an option of last resort;

⁷⁴ Department of Health and Human Services, [A Framework to reduce criminalisation of young people in residential care \(January 2020\)](https://providers.dffh.vic.gov.au/sites/default/files/2020-02/A%20Framework%20to%20reduce%20criminalisation%20of%20young%20people%20in%20residential%20care.PDF) <<https://providers.dffh.vic.gov.au/sites/default/files/2020-02/A%20Framework%20to%20reduce%20criminalisation%20of%20young%20people%20in%20residential%20care.PDF>>

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- 154.6 that in accordance with Victoria Police's Cautions VPM and Child Cautioning Practice Guide, police will consider cautioning or diversionary approaches, wherever possible, or not charging, where appropriate; and
- 154.7 further developing our understanding of the criminal exploitation of children in residential care.

Question 135. Explain the State's position on the proposal for each of the following:

- (a) The age of criminal responsibility to be raised to 14 years;**
- (b) The age of incarceration to be raised to 16 years; and**
- (c) No one under 18 years of age transferred to an adult prison.**
155. The following is provided as information that may assist the Commission in relation to the age of criminal responsibility, noting Victoria Police cannot give the State's position on these important issues and also that the age of incarceration and the transfer of youths to an adult prison are not matters that have been raised with me.
156. Despite continued efforts from service providers, government and Victoria Police, a small number of children continue to commit serious and violent offences.
157. It is undoubtedly important that vulnerable children, who have a propensity for harming themselves and others, receive the therapeutic support they need, which currently is often achieved only through contact with the justice system and courts.
158. Consequently, I consider any legislative reform must be underpinned by widely available, responsive, and suitable wrap-around services for therapeutic early intervention to support children and prevent escalating patterns of offending.
159. More generally, I believe we need to think about this as a whole of system problem, not just a criminal justice problem. I consider we need to ensure the drivers that lead to these children being a risk to themselves and others are addressed and the protective factors are strengthened so that, as far as is possible, they never come into contact with the criminal justice system.
160. Ultimately, the age of criminal responsibility is a matter for Government, and we assist their deliberations by providing advice on crime occurrences, prevention strategies and investigative responses. As mentioned earlier, this involves balancing the need to ensure offender accountability with a commitment to ensuring police use their discretion to prevent children and young people who come into contact with police from becoming further involved in the criminal justice system.
161. Victoria Police has a range of initiatives to support young people to avoid or reduce their contact with the criminal justice system:

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- 161.1 Youth Resource Officers are police officers who engage proactively with young people and support their safety and wellbeing, and often work with families, schools and youth services. There are 31 Youth Resource Officers and Proactive Policing Operative roles across the State.⁷⁵
- 161.2 Youth Specialist Officers are police officers who engage with families, Youth Justice, courts and service providers to reduce the risk of re-offending and support young people to make positive choices in their lives. There are 48 Youth Specialist Officers across the State.⁷⁶
- 161.3 The Embedded Youth Outreach Program pairs a youth worker with a police officer to provide an immediate assessment and referral to youth-specific support services for young people who are in contact with police.⁷⁷ To reduce long-term involvement in the criminal justice system, the program engages with the young person and their family. Referrals include mental health, drug and alcohol, education, employment, and housing services. This includes follow-up support for young people.
- 161.4 Police and Clinician Emergency Response (**PACER**) units comprising a police member and a mental health clinician, provide a secondary response to incidents involving a person believed to have mental health issues. The PACER units assess the needs of the individual and make the appropriate referrals to mental health and other services to reduce the risk of them harming themselves or others. The units respond to children, young people and adults in need.
- 161.5 The Youth Crime Prevention and Early Identification Project was designed and is being piloted in western Melbourne in partnership with WEStjustice and other youth-focused organisations. Project objectives include training police officers on the benefits of early intervention and cultural competency; increasing the use and consistency of warnings and cautions and diversions for children and young people, including Aboriginal young people; establishing a fast-tracked Diversion List at Werribee and Sunshine Children's Courts to reduce the significant delay between arrest and the first listing of a diversion hearing; increasing early referrals for victims; and employing a dedicated Youth Crime Sergeant to oversee and promote the portfolio. Recently, through crime prevention funding, the project employed a central coordinator to manage police referrals with youth support services and to report on each young person's progress.

⁷⁵ Victoria Police, Youth (web page) <<https://www.police.vic.gov.au/youth>>

⁷⁶ Community Safety Statement 2019-2020, 10 <https://www.vgls.vic.gov.au/client/en_AU/search/asset/1298747/0>

⁷⁷ Victoria Police, Embedded Youth Outreach Program (web page) <<https://www.police.vic.gov.au/embedded-youth-outreach-project>>

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- 161.6 The Schools Engagement Model, which I launched on 10 December 2021, delivers crime prevention and safety messages to primary and secondary students. The level of engagement with each school is driven by the needs of the school and local community.⁷⁸ The resources developed for this Model highlight the potential impact of trauma on young people's engagement with police. These resources also highlight the potential discomfort that Aboriginal young people may experience in the presence of police officers and stress the importance of culturally sensitive engagement with Aboriginal young people. The Victorian Aboriginal Education Association Inc (VAEA) and VALS were consulted in the development of the model.
- 161.7 The Sports COPPS (Choices, Opportunities, Participation, Partnerships = Success) program aims to strengthen community bonds with marginalised and socioeconomically disadvantaged children in metropolitan and regional areas. The Program encompasses an educational component delivered to all participating school children, explaining not only the purpose of the program, but covering topics of personal safety and assistance, reporting such aspects to a 'Responsible Adult', protocols in ringing 000, and bullying and social media. This educational component is followed by a variety of interactive sports coaching clinics.
162. As noted in Wirkara Kulpa, *Aboriginal Youth Justice Strategy 2022–2032*, Victoria Police is committed to the shared goal of ensuring any young person's first contact with the criminal justice system is their last.⁷⁹ To support this aim, police will continue to:
- 162.1 increase pre-charge warning and cautioning opportunities, including making the Aboriginal Youth Cautioning Program (see paragraph 168) available in more locations across the State. Any expansion will be considered in partnership with local Aboriginal communities; and
- 162.2 work with the Aboriginal Portfolio Reference Group to increase police referrals to Aboriginal services, such as the Aboriginal Youth Support Service, when Aboriginal children and young people come in contact with police. Currently all non-crisis and non-family violence-related referrals for Aboriginal children and young people are triaged via VALS.⁸⁰

⁷⁸ Victoria Police, *Annual Report 2020-2021* (Report, 8 September 2023), 36.

⁷⁹ Wirkara Kulpa, *Aboriginal Youth Justice Strategy 2022–2032*, **Error! Hyperlink reference not valid.** Goal 3.2 (web page) <<https://www.aboriginaljustice.vic.gov.au/wirkara-kulpa-aboriginal-youth-justice-strategy-2022-2032>> 47

⁸⁰ *Aboriginal Justice Agreement 4, Burra Lotjpa Dungaludja*, Goal 2.3 - <[https://www.aboriginaljustice.vic.gov.au/the-agreement/the-aboriginal-justice-agreement-phase-4](https://www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-justice-outcomes-framework/goal-23-fewer-aboriginal-people-progress-9https://www.aboriginaljustice.vic.gov.au/the-agreement/the-aboriginal-justice-agreement-phase-4)>

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163. Generally speaking, if a young person commits an offence, then a therapeutic, rather than criminal justice system response should always be preferred. As outlined in the Victorian Government's *Youth Justice Strategic Plan 2020–2030*, Victoria Police works with Youth Justice, the courts and community agencies on diverting young people from Youth Justice and referring them to support and services in their local community. This diversionary focus is even more important for children aged 10 to 14 years.⁸¹

Police discretion to issue cautions

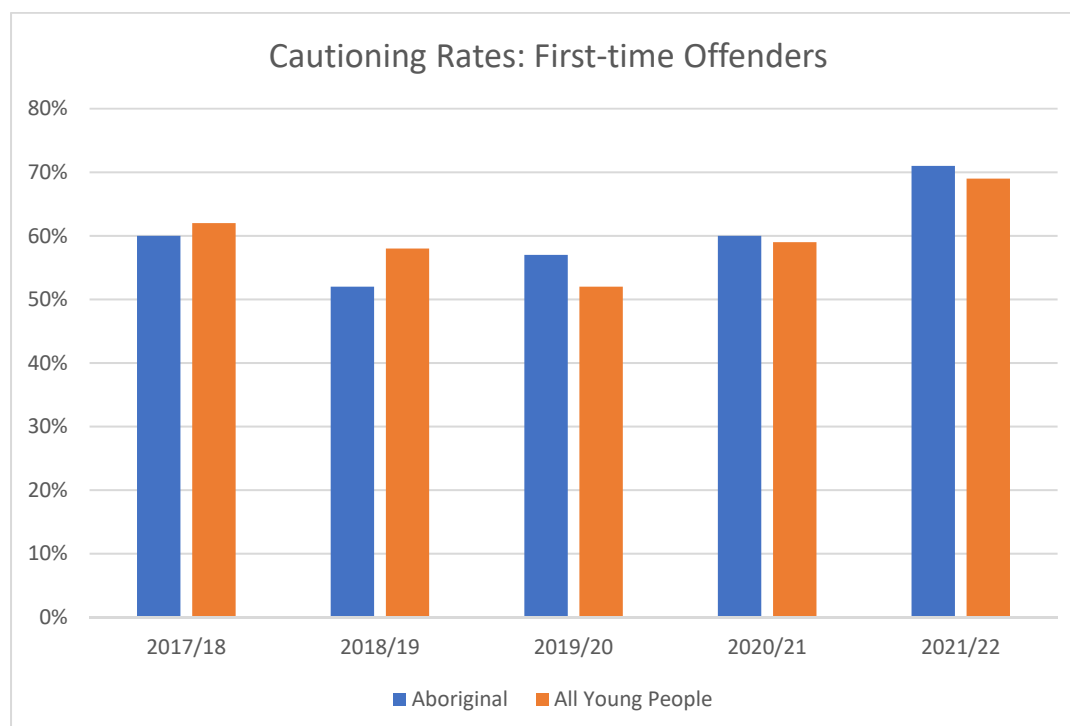
164. Police cautioning is an important method of achieving this aim.⁸² Police can currently issue four types of cautions:
- 164.1 child caution;
 - 164.2 shop steal caution (adult only) - eligibility for this was widened in July 2021,⁸³
 - 164.3 cannabis caution (adult only); and
 - 164.4 drug diversion (both adult and child).
165. Cautioning rates for Aboriginal first-time alleged offenders aged 10 to 17 years have fluctuated over the last five years between 60% and 71%. In the same period, cautioning rates for all Victorian first-time alleged offenders have also fluctuated between 62% and 69%. Table 6 shows the rates of cautioning for first-time alleged offenders aged between 10 to 17 years from 2017–2018 to 2021–2022.

⁸¹ Victorian Department of Justice and Community Safety, Youth Justice Strategic Plan 2020-2030 <<https://www.justice.vic.gov.au/youth-justice-strategic-plan-2020-2030-the-way-forward>> at 18

⁸² Victorian Government, Victorian Government Aboriginal Affairs Report 2021, measure 15.1.3 (web page) <<https://www.firstpeoplesrelations.vic.gov.au/victorian-government-aboriginal-affairs-report-2021/justice-and-safety#goal-15-aboriginal-over-representation-in-the-justice-system-is-eliminated>>

⁸³ VPM Cautions, as at 5 July 2021

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Table 6: Cautioning Rates: First-time offenders

166. In 2021–2022, 71% of Aboriginal first-time alleged offenders aged 10 to 17 years received a caution from police, compared to 69% for all first-time alleged offenders aged 10 to 17 years. This reflects a strong increase in cautioning rates for Aboriginal young people during the 2021–22 period, with the rate of cautioning for first-time Aboriginal offenders aged 10 to 17 years over the 12-month period, increasing by 11%.
167. In August 2021, Victoria Police amended its cautions policy to provide greater opportunities for police to issue cautions to young people. These changes include:
- 167.1 removing the requirement for the young person to admit the offence;
 - 167.2 prior criminal history no longer excludes a young person from being eligible for a caution;
 - 167.3 a young person can be cautioned on more than one occasion; and
 - 167.4 no limit to the number of cautions a young person can receive.⁸⁴
168. In 2019, Victoria Police introduced the Aboriginal Youth Cautioning Program at three pilot sites – Echuca, Bendigo and Dandenong. From July 2021, the program was permanently expanded to more than 20 sites in various Local Government Areas. Further sites will be identified through consultation with Aboriginal communities. The program includes an opt-in element for Aboriginal children and young people who are cautioned to meet with a panel of Aboriginal community leaders, to discuss

⁸⁴ VPM Cautions, as at 5 July 2021

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their support needs. I am committed to expanding this program due to strong support from Aboriginal communities and demonstrated increases in cautioning rates for first time offenders, as set out in Table 6 above. At the most recent Aboriginal Justice Forum 64 held on 16-17 March 2023, I committed to undertaking a Statewide review of the Aboriginal Youth Cautioning Program. The review will be completed in consultation with the Aboriginal Justice Caucus, and I will provide an update at the next Aboriginal Justice Forum (AJF 65) on this work including expected completion date.

169. To ensure police are making effective use of our cautions policy, particularly in relation to Aboriginal children, I issued Chief Commissioner’s Instruction (CCI 05/22) which requires police to identify whether they have given consideration to issuing a caution and, if not, why not.
170. However, Table 7 indicates that we still have work to do. The table shows that Aboriginal alleged offenders aged 10 to 17 years are less likely to receive a police caution or official warning than their non-Aboriginal peers.

Table 7: Youth cautions and warnings as a proportion of alleged offenders by Aboriginal status⁸⁵

Year	Aboriginal and Torres Strait Islander People	Non-Aboriginal
2011–2012	18.8%	35.1%
2012–2013	18.7%	31.3%
2013–2014	19.7%	28.8%
2014–2015	12.1%	25.8%
2015–2016	12.0%	21.7%
2016–2017	13.1%	22.2%
2017–2018	14.6%	24.9%
2018–2019	12.4%	23.2%
2019–2020	14.8%	21.2%
2020–2021	13.8%	20.0%

⁸⁵ Productivity Commission, Report on Government Services 2022, Table 6.3 (web page)
<<https://www.pc.gov.au/ongoing/report-on-government-services/2022/justice/police-services>>


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Court issued diversions

171. The Magistrates' Court of Victoria administers the legislated diversion process. In this process, if Victoria Police is the prosecuting agency, police consent is required in order to adjourn a matter to enable the accused to undertake a diversion.⁸⁶ Police consent wherever possible and appropriate, takes into account the seriousness of the offence, views of any victim and future risk of offending.
172. Data from the Sentencing Advisory Council⁸⁷ from 2011–2012 to 2020–2021 indicates that rates of court-based diversion in the Magistrates' Court have remained relatively stable. Victoria Police has been unable to identify any recent data showing rates of court-based diversion for Aboriginal compared to non-Aboriginal Victorians.⁸⁸

CONCLUDING COMMENTS

173. The information presented in this witness statement is intended to give the Commission an understanding of Victoria Police's current efforts to address systemic injustices, and inform the Commission's findings and recommendations. I recognise that more can be done and am committed to making the necessary improvements.
174. I confirm Victoria Police's commitment to working in partnership with Aboriginal people, self-determination and Treaty. As outlined above, I wish to engage openly and transparently with the Commission and am open to being guided by the Commission's recommendations and findings on a way forward.

Sign here: 

Print name: **Shane Patton APM**

Date: **31/03/2023**

⁸⁶ Magistrates' Court of Victoria (web page) <<https://www.mcv.vic.gov.au/find-support/diversion>>

⁸⁷ Sentencing Advisory Council, (web page) <<https://www.sentencingcouncil.vic.gov.au/sentencing-statistics/sentencing-outcomes-magistrates-court>>

⁸⁸ A Sentencing Advisory Committee report of 2008, *The Criminal Justice Diversion Program in Victoria: A Statistical Profile, October 2008* provides demographic information about defendants, such as gender and age, but does not include any comparison rates for Aboriginal compared to non-Aboriginal Victorians. See <<https://www.sentencingcouncil.vic.gov.au/publications/criminal-justice-diversion-program-victoria-statistical-profile>>

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Coroner McGregor
 Coroners Court of Victoria
 65 Kavanagh Street
 SOUTHBANK VIC 3006

Subject: Veronica Nelson - Finding into death with Inquest
Court Reference: COR 2020 0021
Date of Recommendation: 30 January 2023

Dear Coroner McGregor

Victoria Police response to recommendations in the Finding into the death of Veronica Nelson

This document provides a response to your recommendations as they relate to Victoria Police, arising from your Finding into the death of Veronica Nelson, delivered on 30 January 2023.

Recommendations 7.1 and 7.2: I recommend that the Chief Commissioner of Victoria Police amend any Victoria Police Manual (VPM) policies and guidelines to

7.1 ensure an Aboriginal or Torres Strait Islander person under arrest has a meaningful opportunity to make an informed decision about whether to accept an offer to communicate with a VALS CNO, including providing the person with information about the purpose of that contact and what assistance the CNO may be able to provide.

7.2 ensure an Aboriginal or Torres Strait Islander person under caution has a meaningful opportunity to both:

7.2.1. consider whether to exercise their rights to communicate with a friend or relative and a legal practitioner; and

7.2.2. to exercise those rights.

These recommendations are accepted and will be implemented within 12 months. The Prosecutions Division of Legal Services Department is responsible for implementation and will monitor progress fortnightly.

Victoria Police will liaise with the Aboriginal Portfolio Reference Group to ensure that any changes are made with a self-determination lens. The Victorian Aboriginal Legal Service (VALS) is notified automatically via the Attendance Register entry when an attendee is recorded as being Aboriginal or Torres Strait Islander. Some considerations may be that any obligation to ensure meaningful opportunity (which would need to be defined) does not result in unacceptable delays for that person to be interviewed or resulting in their time in custody being unnecessarily extended because of an expectation that they should consult VALS when they may choose not to.

Victoria Police will develop practical instructions to members in relation to this recommendation having regard to section 464A of the *Crimes Act 1958*. Further, Victoria Police will request that VALS jointly assist us in designing how these recommendations can be practically implemented, which may include developing an information sheet that can be provided to Aboriginal and Torres Strait Islander persons who are in police custody.

Recommendation 7.3: I recommend that the Chief Commissioner of Victoria Police amend any Victoria Police Manual (VPM) policies and guidelines to ensure they prominently identify the circumstances in which Police BDMs are permitted under the Bail Act to grant bail to an Aboriginal or Torres Strait Islander person who is required to demonstrate the existence of exceptional circumstances.

This recommendation is accepted and will be implemented within six months. The Prosecutions Division of Legal Services Department is responsible for implementation and will monitor progress fortnightly. To date, a bail working group has been established and a policy review has commenced. The amendments will reflect any bail reforms that are legislated.

Victoria Police accepts that further guidance material, clearer policies and targeted training can be offered to assist Police Bail Decision Makers meet their obligations and powers under the Bail Act, with targeted training addressing the existence of powers enabling the grant of bail to an Aboriginal or Torres Strait Islander person who is required to demonstrate the existence of exceptional circumstances.

Recommendation 7.4: I recommend that the Chief Commissioner of Victoria Police amend any Victoria Police Manual (VPM) policies and guidelines to require a record of all bail decisions made by Police BDMs, including where bail is neither granted nor refused but a person is taken before a court for decision, that reflects who made the decision, the relevant charge(s) and, if bail is not granted, the reasons for the decision and the information that informed the decision.

This recommendation is accepted and will be implemented within three months. The Prosecutions Frontline Support Unit of Legal Services Department is responsible for implementation.

Whether a person is either directly presented to the court or dealt with by a Police BDM, will be recorded in either the VP Form 1372 remand application document or via a standalone VP Form. Victoria Police will also amend the *VPM Bail and remand* accordingly.

Recommendation 7.5: I recommend that the Chief Commissioner of Victoria Police amend any Victoria Police Manual (VPM) policies and guidelines to require that when preparing a remand brief, members include reference to a person's Aboriginality in the remand summary so that BDMs are alerted to the relevance of s3A of the Bail Act in any remand/bail application.

This recommendation is accepted and will be implemented within three months. The Prosecutions Division of Legal Services Department is responsible for implementation.

Victoria Police is currently progressing amendments to the *VPM Bail and remand* and the VP Form 1372 remand application document to provide clearer guidance to police officers regarding their obligations to consider section 3A of the Bail Act during bail hearings.

Recommendation 8.1: I further recommend that the Chief Commissioner of Police review and if necessary update its training to all members to highlight the requirement that police members, as a Public Authority under the Charter, are required to act in accordance with the Charter when making decisions in the course of their duties. The training should provide members with knowledge and skills enabling members to use the Charter in the real-life decisions they make in the performance of their duties. Its aim should be to embed the Charter in police practice not merely raise members' awareness that the Charter is 'relevant' to Victoria Police as a public authority.

This recommendation is accepted and will be implemented by 31 December 2023. The Governance Unit of People Development Command is responsible for implementation.

The Chief Commissioner acknowledges that the Charter provides fundamental rights for all Victorians, and Victoria Police as a public authority is bound by it. All training packages prepared and delivered by Victoria Police are prepared and delivered in the context of police officers' obligations under the Charter. This commences at Foundation Training and is interwoven through all training delivered by Victoria Police. In addition, Victoria Police provides training to police officers in:

- a) Protecting Human Rights is Everyday Policing 2019;
- b) Persons in Protective Services Officer Care or Custody 2019;
- c) Persons in Police Care or Custody: All Staff 2019;
- d) Search of Persons 2019.

People Development Command is addressing enhanced human rights awareness in Foundation Training through:

- a) the implementation of the new ethics sessions; and
- b) the review of the Centre for Professional Policing sessions.

Further, specialised training on the *Charter of Human Rights and Responsibilities Act 2006* is available to all Victoria Police employees through an e-learning module 'Human Rights: Everyday Policing'.

The Foundation Training for police recruits includes three dedicated human rights modules. The Foundation Training Division of People Development Command has reviewed its curriculum, including the sessions pertaining to human rights. The review has identified a need to further contextualise the content for the human rights training to ensure that police officers can apply an operational working model.

The new curriculum has been developed, which provides a more focused and operational training. The curriculum is being moderated and reviewed by subject matter experts. The new curriculum will be implemented by the end of the year once the reviews have been finalised. The independent Chief Commissioner's Human Rights Strategic Advisory Group will be consulted as an authorising environment for this aspect.

Recommendation 8.2: I further recommend that the Chief Commissioner of Police review and if necessary update its training to all police prosecutors to highlight their obligations as officers of the court including their duty to inform the court of all relevant matters within their knowledge, including those favourable to an accused.

This recommendation is accepted and has been implemented. The Legal Prosecutions Specialist Branch will be responsible for ongoing monitoring.

Police Prosecutors have a primary duty to the Court, and a duty to transparently disclose all credible and reliable information to the Court. This content is incorporated throughout the initial prosecutor training course and is further emphasised in annual refresher training courses to all prosecutors. It will be further reinforced within each training course.

Recommendation 9: I recommend that the Victoria Police partners with appropriate Aboriginal Community Controlled Organisations to develop and implement a strategy for ongoing cultural awareness training, monitoring and performance review for all members.

This recommendation is accepted and has been implemented:

In September 2020, Victoria Police introduced an Aboriginal Cultural Awareness Training (ACAT) package that is now mandatory for all police, Protective Services Officers (PSOs) and Police Custody Officers (PCOs) and is embedded into the Victoria Police training calendar.

The 3.5 hour ACAT package is a self-determined cultural awareness program initially developed by Aboriginal employees and was revised in 2019 by Nyuka-Wara Consulting, a registered Aboriginal training provider working with Aboriginal Community Liaison Officers and other Aboriginal employees. In May 2022 the package was endorsed by the Aboriginal Justice Caucus.

The package addresses the role Victoria Police played in historical Government policies that directly affected the Victorian Aboriginal community. It addresses themes such as colonisation, the Stolen Generations, cultural bias and Aboriginal identity. It also aims to give employees some practical tools on terminology, language and Country, Acknowledgement and Welcome to Country.

Cultural content is presented by Aboriginal Community Liaison Officers and other Aboriginal employees, who share their personal experiences with the support of divisional and regional training officers.

As of March 2023, 5944 Victoria Police employees, including senior and executive leadership groups, and 44 PCOs have undertaken the training.

The delivery of ACAT, including performance and compliance, is a standing agenda item for Victoria Police to report on to the Aboriginal Justice Forum meetings.

Recommendation 10: I further recommend that the Chief Commissioner of Police urgently correct any misunderstanding suggestive of an 'informal policy' that:

10.1: requires or encourages members to oppose all bail applications involving the exceptional circumstances test; or

10.2: discourages police BDMs from the proper consideration of their discretion pursuant to section 13(4) of the Bail Act when it is available.

This recommendation is accepted and will be implemented within six months. The Prosecutions Division of Legal Services Department is responsible for implementation.

Victoria Police accepts that it is necessary and appropriate that all police BDMs are aware of their power to grant bail (where that power exists) in instances where the exceptional circumstances test applies. The *VPM Bail and remand* will be amended to insert a reference to each matter being considered on its own merits.

For immediate clarity, on 24 March 2023, I issued a global email to all police officers at the rank of Sergeant and above level, outlining the work that will be undertaken on addressing the Coroner's recommendations and providing an unequivocal message about compliance with existing policy and legislation. I have attached a copy of this email.

Recommendation 11: I also recommend that the Chief Commissioner of Victoria Police require police BDMs undertake periodic training to address the interpretation and application of section 3A of the Bail Act.

This recommendation is accepted and will be implemented within six months. The Prosecutions Division of Legal Services Department is responsible for implementation and will train Regional Training Officers to deliver the updated training package.

Victoria Police already provides Bail and remand Supervisor Training, which is delivered to all Police BDMs, including to any police officers who are seeking upgrading opportunities which would authorise them to be a Police BDM. This training incorporates section 3A of the Bail Act. The package is being updated and there will be recurring training for all police BDMs.

Recommendation 12: I recommend that the Chief Commissioner of Police collect and retain statistics that identify:

- 12.1. the number of people charged with an offence to which the 'exceptional circumstances test' applies and data relating to:
- 12.2. whether those people are bailed by Police or remanded in custody;
- 12.3. the racial and/or cultural identity of the person, including whether they identify as Aboriginal or Torres Strait Islander; and
- 12.4. the sex of the person; and
- 12.5. the number of people charged with an offence to which the 'compelling reasons test' applies and data relating to:
 - 12.5.1. whether those people are bailed by Police or remanded in custody;
 - 12.5.2. the racial and/or cultural identity of the person, including whether they identify as Aboriginal or Torres Strait Islander; and
 - 12.5.3. the sex of the person.

The data relating to these matters should be published and available for use by independent organisations and/or researchers.

This recommendation is accepted in principle.

The Law Enforcement Assistance Program (LEAP) allows for Victoria Police to capture some of the statistics recommended, for example, whether an accused identifies as Aboriginal or Torres Strait Islander, however, LEAP is unable to capture all of the data subject to this recommendation. Victoria Police will explore whether any of its current systems can be modified to enable this to occur.

Finally, I am aware that an additional five recommendations (Recommendations 2, 3, 4, 5 and 6) will impact Victoria Police. I therefore commit that Victoria Police will work with the relevant partners and participate in the consultation and actions required in response to these recommendations.

Yours sincerely



Shane Patton APM
Chief Commissioner

24 / 3 / 2023

From: Corporate-Communications-MGR <Corporate-Communications-MGR@police.vic.gov.au>
Sent: Friday, 24 March 2023 9:57 AM
Cc: Corporate-Communications-MGR
Subject: Message from the Chief Commissioner: Important obligations for bail decision makers



Message from the
Chief Commissioner
Shane Patton



This email has been sent to all sergeants and above

Good morning all,

Following the tragic death of Ms Veronica Nelson in January 2020 in the Dame Phyllis Frost Centre and based on evidence led at the inquest, Coroner McGregor made the following recommendation:

Recommendation 10: I further recommend that the Chief Commissioner of Police urgently correct any misunderstanding suggestive of an 'informal policy' that:

- 10.1. requires or encourages members to oppose all bail applications involving the exceptional circumstances test; or*
- 10.2. discourages police [bail decision makers] BDMs from the proper consideration of their discretion pursuant to section 13(4) of the Bail Act when it is available.*

While we will be updating the Victoria Police Manual and training content over the next six months, I want to be clear that there is no informal policy on members' decision-making under the Bail Act. Members are to apply the decision-making criteria in the Act and the processes as outlined in Victoria Police Manual Bail and Remand.

Following the strengthening of Victoria's bail laws in 2018, many alleged offenders are now placed in a reverse onus position where previously they were entitled to bail. Police BDMs were also provided with broader powers to determine bail. An appropriate consequence of these changes is greater scrutiny of bail decision making.

My expectation is that police BDMs will fulfill their legal obligations and consider the question of bail when required to do so by the Bail Act 1977. I note:

- Police BDMs have the power to bail alleged offenders, especially children, vulnerable adults, and Aboriginal and Torres Strait Islander persons. This

includes matters where the vulnerable person must demonstrate exceptional circumstances (except when charged with murder or treason).

- Police BDMs must apply specific provisions applicable to these vulnerable groups as outlined in sections 3A and 3B of the Act.

As a public authority under the Charter of Human Rights and Responsibilities Act 2006, all members are required to act compatibly with, and give proper consideration to, relevant human rights in the course of their duties.

This means genuinely considering your power to grant bail when it is available, in order to give effect to the right to liberty. It also means taking into account the particular vulnerability of Aboriginal and Torres Strait Islander people in custody to give effect to the right to equality and cultural rights under the Charter.

I want to make it clear that Victoria Police does not have a policy of opposing bail, nor refusing to act as BDM when they are authorised to do so, even when a person is required to show exceptional circumstances or compelling reason as to why they should be granted bail.

Each matter must be considered case-by-case and assessed on individual merits. Of course, there will be occasions where it will be appropriate to oppose an application for bail. This does not create an obligation to oppose bail where a person's circumstances establish exceptional circumstances or compelling reasons to grant bail and the person does not present an unacceptable risk.

To assist members in understanding and complying with their legal obligations, a [Bail and Remand Hub](#) has been provided by the Prosecutions Frontline Support Unit (PFSU) and bail training for supervisors is available through the RTO network. This training will soon become mandatory.

The PFSU provides an after-hours service in relation to urgent matters outside normal business hours, contactable via D24.

Regards,

Shane

Do not forward this email to external addresses

Under sections 227 and 228 of the Victoria Police Act 2013 it is an offence for any current or former Police employee to access, use or disclose police information when it is their duty not to.



VICTORIA POLICE



Shane Patton APM

Chief Commissioner of Police

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Deputy State Coroner Caitlin English
 Coroners Court of Victoria
 65 Kavanagh Street
 SOUTHBANK VIC 3006

Subject: Tanya Louise Day - Finding into death with Inquest
Court Reference: COR 2017 6424
Date of Recommendations: 9 April 2020

Dear Coroner English,

Victoria Police response to recommendations arising from Finding into the death of Tanya Louise Day

This document provides the response to your recommendations as they relate to Victoria Police, arising from the Finding into the death of Tanya Louise Day, delivered on 9 April 2020.

Recommendation 3: *That the Victoria Police Manual Rules and Guidelines be amended to include a falls risk assessment as part of the detainee risk assessment for each person in custody who appears to be affected by alcohol or drugs or illness.*

Since the death of Ms Day, a range of activities, initiatives and training have been implemented to mitigate the risk of a similar death or injury of a person in police custody.

These include (but are not limited to) the following.

- Additional mandatory training on the Victoria Police Learning Hub (**VPLH**) relating to the management of persons in police care or custody.
- Amendments to the Victoria Police Manual (**VPM**) "Persons in Police Care and Custody" and subordinate Victoria Police Manual Guidelines (**VPMG**).
- The introduction of a computerised and standardised Detainee Risk Assessment (**DRA**) which includes:
 - a specific and standalone risk assessment of persons lodged in custody for being found drunk in a public place;
 - introduction of the COMA Scale to all DRAs; and

- based on the Coma Scale and other facets of the DRA – minimum mandatory observation levels.
- Automatic notification (via email) to the Custodial Health Advice Line (**CHAL**) of all DRAs. CHAL is staffed 24/7 by qualified nurses who triage the DRA and prioritise any resulting care of medical needs of a person in police custody.
- CHAL can (where appropriate) arrange for any at risk person in custody to be:
 - checked via phone consultation;
 - taken to hospital;
 - prioritised for visitation by Custodial Health Staff
 - given appropriate medical care; or
 - a combination of the above.

Future activities planned to improve the safety and wellbeing of persons in police custody include:

- a holistic review of all police manual policy and guidelines to simplify, standardise and modernise all content;
- a review of phase one and implementation of phase two of the DRA to align policies, practices and procedures used by Victoria Police to manage the welfare of persons in police care and custody;
- Further mandatory training modules within the VPLH for custodial staff;
- ongoing review of foundation and promotional training of police, Police Custody Officers (PCO) and Protective Services Officers (PSO) for persons likely to be under the influence of drugs, alcohol or illness.

In relation to the specific recommendation by the Coroner that the VPM be amended to include a “falls risk assessment” Victoria Police has:

- started examining interstate and international practices to best understand what assessment might be undertaken by custodial staff, and the guidance and instructions provided to staff resulting from that assessment; and
- identified positions for questions and/or assessment tools within the current DRA. The DRA was designed with some flexibility, for example the current DRA was modified to include the current COVID-19 screening questions.

Recommendation 4: *That there be a review of training and education within Victoria Police regarding the findings and recommendations of the Royal Commission into Aboriginal Deaths in Custody to ensure knowledge and appropriate compliance.*

Victoria Police accepts Recommendation 4 and to that end will review training in the context of the RCIADC recommendations and report on specific training that has been, or is planned to be implemented, that seeks to enhance members cultural awareness and encounters with the Aboriginal

community. Examples of current training or key initiatives adhering to the RCIADC recommendations include:

- Revised Aboriginal Cultural Awareness Training to enable consistency in messaging, accreditation for recording compliance and adaptable for local input; and
- Professional Development Command suite of Aboriginal Cultural training within different courses/stages of policing.

Recommendation 5: That training be implemented 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.

Victoria Police notes no findings were made to suggest the members had inadequate knowledge of or training in the relevant VPM rules and guidelines or local station Standard Operating Procedures regarding the safe management of persons in police care or custody.

There are several courses on the VPLH relating to the management of persons in police care or custody. These courses are targeted to custody staff based on their level of involvement in supervising or managing persons in custody. These levels are mandated by VPMP Persons in Police Care or Custody as follows:

Course	Required to complete course
PPC Custody: All Staff 2019	All members and PCOs involved in managing or supervising persons in care or custody up to and including Inspectors.
PPC Custody: Custody Staff 2019	All members and PCOs up to and including Inspectors who work in, or are involved with, detention facilities (including members performing 265 and 150 shifts) must also complete this course.
PPC Custody: SPCOs and Police Managers 2019	All members from the rank of Sergeant up to and including inspector and Supervising PCSs must also complete this course.
Persons in PSO care or custody 2019	All PSOs

In response to the Coroner's recommendation from the Inquest into the death of Michael Darmody in 2017, the VPLH courses were reviewed and updated to include information on the medical checklist and the ISOBAR system of communicating health information. Updated versions of these courses were made available in 2019 and are a mandatory element of foundation training for sworn members and PCOs and certain promotional programs.

In April 2020, Executive Command mandated the compulsory completion of these courses to ensure they were undertaken by all relevant employees and not just those undergoing foundation or promotional training. It is expected that all custody staff will have completed the relevant course(s) by the end of 2020.

Victoria Police is satisfied the updated courses provide adequate instruction for VP custody staff regarding the current VPM and VPMGs. These courses will be reviewed following any future policy changes.

Training is not provided in the local Standard Operating Procedures (SOP). The purpose of the SOPs is to provide a more localised level of detail in line with the VPM and centralised training is incompatible with this approach.

With regard to training in relation to the VPM and VPMG, Victoria Police will continue to monitor completion rates and will consider the need for further communication activities to reinforce the mandatory completion of these courses.

With regard to the Station SOPs, Victoria Police will remind Station Commanders of the importance of reviewing and updating their SOPs regularly to ensure they align with the VPM, and to ensure all custody staff are provided with a copy upon commencement of their role.

Recommendation 6: That training be implemented within Victoria Police regarding the medical risks of individuals affected by alcohol.

All police members receive training regarding risks of individuals affected by alcohol, including the risk of driving while intoxicated; the links between alcohol and violence; and alcohol and accidental injury. Members are also trained in assessing and responding to individuals according to the Coma Scale.

The Custodial Health Service (CHS) currently provides training to commencing PCOs and Supervising Police Custody Officers (SPCO) covering a broad overview of the health risks in custody and the role of CHS in providing support in addition to direct clinical care. CHS also provides regular engagement through training days at all PCO locations across Victoria. The content varies on demand to meet the current needs in each area, and over the course of the year has included training on how to care for individuals affected by alcohol and other intoxicating substances.

CHS will work with People Development Command to assess the specific training needs for Victoria Police members and employees specific to their roles, responsibilities and likely engagement with individuals affected by alcohol, noting the recipients of this training are not health professionals. Once identified, these training needs will be developed into targets for deliverable training packages for all relevant employees.

It is noted the Victorian Government is moving towards a public health, rather than a law enforcement response to public drunkenness. The proposed roles and responsibilities of Victoria police within the proposed public health model have not yet been made explicit. These future roles and responsibilities need to be understood before a complete assessment can be made on future training requirements.

Recommendation 7: That Victoria Police 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.

Victoria Police agrees to engaging VEOHRC pursuant to s.41(c) of the Charter for the purpose of reviewing the training provided to Police and Police Custody Officers regarding human rights and custody, particularly the protection of Aboriginal Cultural Rights (s.19(2) Charter) and humane treatment when deprived of liberty (s.22), and provide a contemporary education package that promotes the protection of these rights.

I trust this advice clarifies the position of Victoria Police in respect to your findings in this matter.

Yours sincerely



Shane Patton APM
Chief Commissioner

14/7/20