



A self-determined approach to health, housing and education in Victoria

Submission to the Yoorrook Justice Commission's investigation into systemic injustice experienced by First Nations people in relation to health and healthcare, housing and homelessness, and the education system



Acknowledgement of Country

Victoria Legal Aid operates on the unceded lands of First Nations peoples throughout Victoria. We acknowledge the Traditional Custodians of the land and respect their continuing connections to land, sea, and community. We pay our respects to First Nations people and communities throughout Victoria, including Elders past and present.

We acknowledge the experiences of First Nations people experiencing education, housing, health and/or mental health issues, and their treatment by related services and connected systems.

We appreciate the capability, strength and resilience that arises from First Nations Victorians' approaches to social and emotional wellbeing and connection to Country, and we are guided by and support their decision making.

Note of thanks

We would like to acknowledge and thank Tiffany and Andrew (not their real names), two consumers and lived experience experts, for sharing their experiences and truth telling through this submission.

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About this submission

Opening note

Victoria Legal Aid (**VLA**) welcomes the Yoorrook Justice Commission's investigation into systemic injustice experienced by First Nations people in relation to health and healthcare, housing and homelessness, and education in Victoria.

We acknowledge and are led by the self-determined, community-led solutions, advocacy and expertise of Aboriginal Community Controlled Organisations (**ACCOs**), including the Victorian Aboriginal Legal Service (**VALS**). We strongly support primacy being given in this investigation to the submissions of VALS, other ACCOs, and to First Nations people with lived experience.

We are conscious that, as a mainstream organisation, our submission should be viewed as supplementary to these contributions and expertise. VLA's submission is offered in this spirit.

VLA's practice and client experience¹

VLA is an independent statutory authority responsible for providing non-legal advocacy, information, advice and legal assistance. Our clients are diverse and experience high levels of disadvantage. The issues outlined in this submission and our recommendations for systems change are based on our data and practice experience working with First Nations clients, and our insights into the different experiences and outcomes we can identify through comparison of First Nations and non-First Nations client experiences.

In 2022-23, VLA assisted 86,321 unique clients, provided 78,751 in-house duty lawyer services, and responded to 138,969 requests for assistance through Legal Help. During the same period, VLA assisted 6,783 First Nations unique clients. This includes through the work of VLA's Aboriginal Community Engagement (**ACE**) officers, specialist non-legal roles based across Victoria that focus on client support, community engagement and legal education and work towards improving access to justice for First Nations communities across Victoria.

In relation to our practice areas that directly relate to the health, housing and education systems:

- VLA is the largest provider of legal services to **people with disability** in Victoria. In 2022-23, just over one third (34%) of our clients, or just under 30,000 people, disclosed having a disability or experiencing a mental health issue. For First Nations clients and consumers, this increases to 42%.
- In addition, VLA's **specialist mental health lawyers** and **Independent Mental Health Advocacy (IMHA) non-legal advocates** work with people facing or subject to compulsory mental health treatment in every designated mental health service in Victoria, including at child and adolescent, adult and aged, and long-term secure extended care units (**SECUs**), as well as at Thomas Embling Hospital. First Nations consumers represent just under seven per cent of VLA's clients and consumers in these spaces.
- VLA's specialist Economic and Social Rights program includes work in **residential tenancy**, which is focused on renters facing disadvantage, marginalisation and risk of homelessness,

¹ For more detail, see **Annexure 1** and [Annual Report 2022–23 | Victoria Legal Aid](#).

including First Nations renters and renters with disabilities, including mental health issues. In 2022-23, across our practice areas, VLA assisted 5,179 clients who identified as being homeless or at risk of homelessness. This complements the assistance provided by the broader legal assistance sector, including community legal centres and the Victorian Aboriginal Legal Service.

- VLA is also the leading provider of legal advice and advocacy to people seeking assistance with **discrimination** matters in Victoria. Through our Equality Law Program, we provide telephone and in-person advice services in addition to representation in legal proceedings. In the past year, we provided over 1,300 legal advices on discrimination, sexual harassment, victimisation and vilification. Further, between 2011 and 2024 VLA provided 418 First Nations clients with legal services in discrimination law. Over half identify as living with a disability, and around seven per cent were at risk of homelessness. Almost a quarter of clients were young people under the age of 24 years.
- As outlined in our previous two submissions to the Yoorrook Justice Commission, VLA is also the largest provider of legal services to **adults and children in the child protection system** across Victoria, and the largest **criminal law practice** in Victoria, including the only legal practice in Victoria with specialised **youth crime** services that operate across the state. We also provide a specific service for **prisoners**, through our Prisoner Legal Help telephone service, and deliver the Independent Family Advocacy and Support service (**IFAS**), which provides non-legal advocacy to parents in the early stages of child protection involvement, prioritising First Nations parents and primary carers, parents with intellectual disabilities, and parents from culturally and linguistically diverse backgrounds.

For more information about VLA and our work, see **Annexure 1**.

Further, for a full list of submissions VLA has made to relevant government consultations that relate to the specific areas of health, housing and education, see **Annexure 2**. We note that VLA's previous two submissions to the Yoorrook Justice Commission² outline additional foundational reforms to address the harms experienced by First Nations people in the criminal legal³ and child protection systems.⁴ These foundational reforms remain relevant to the consideration of issues of health, housing and educational justice for First Nations people.

² Victoria Legal Aid submission to the Yoorrook Justice Commission investigation into systemic injustice in the child protection system (2022), available at: <https://library.vla.vic.gov.au/firstrms/fullRecord.jsp?recnoListAttr=recnoList&recno=63534>; Victoria Legal Aid submission to the Yoorrook Justice Commission investigation into systemic injustice in the criminal justice system (2022), available at: <https://library.vla.vic.gov.au/firstrms/fullRecord.jsp?recnoListAttr=recnoList&recno=63533>.

³ These include building a self-determined criminal justice system, identifying and addressing systemic racism within the criminal justice system, addressing intersecting system failures which create and compound disadvantage, keeping First Nations people out of the criminal justice system, making imprisonment a sanction of last resort and reduce the harms of imprisonment, and strengthening criminal justice system oversight and accountability.

⁴ These include building a self-determined approach to the welfare of First Nations children, transforming the child protection system to prevent entry of First Nations children into out-of-home care, enhancing fairness and supporting families to stay together, providing vital independent support for First Nations families in the child protection system, and the critical need to stop the criminalisation of First Nations people.

Executive Summary

Social support systems that should prevent adverse outcomes

“I am a proud Wiradjuri, Jawoyn and Wongaibon woman, a single mother with a grandchild.

Before my involvement in the mental health system, I was a dental nurse and looking to study pathology and biochemistry. I believe a lot of lives get ruined by compulsory treatment orders and the medications they force onto people, and by not having access to safe and quality housing, and education.

I think they need to change the whole system to make it fairer.” Tiffany

The social support systems of housing, education, disability and mental health should work to prevent adverse health, social and economic outcomes, and help build an inclusive and rights-respecting community. First Nations people have the right to access healthcare, education and housing without discrimination and with respect to their right to cultural identity and the principle of self-determination.⁵ Under Federal and Victorian law, it is unlawful to discriminate against someone based on race in the provision of healthcare services, education and accommodation (which covers all forms of housing including public and private housing).⁶

Yet, through our work and from working closely with our partners, including VALS and other ACCOs, we see that First Nations people continue to experience systemic racism and direct and indirect discrimination on the basis of their race, and other intersecting attributes such as disability, age, sex and gender, across all areas of public life, including racial discrimination and prejudice in education,⁷ when accessing public and social housing, and healthcare, including access to healthcare services in prisons.

We also see how individual and systemic racism and experiences of discrimination contribute to negative physical and mental health outcomes for First Nations people, and impact the social and emotional wellbeing of First Nations individuals, families, and communities.⁸ These impacts are compounded for First Nations clients who have previously experienced or witnessed other forms of discrimination, systemic racism and disadvantage.⁹

The recent Public Understanding of Law Survey (**PULS**) outlines that First Nations people experience more frequent legal problems, multiple problems and large clusters of problems, and that those

⁵ *International Covenant of Economic, Social and Cultural Rights* (ICESCR) 1966, art 1, 12, 13 (ratified by Australia 10 December 1975), *International Covenant on Civil and Political Rights* (ICCPR) 1966, art 1, 27 (ratified by Australia 13 August 1980), Declaration on the Rights of Indigenous Peoples 2007, *Racial Discrimination Act* Cth (1975), s 9.

⁶ *Racial Discrimination Act* Cth (1975), s 9, s 13, *Equal Opportunity Act* Vic (2010), s 38, s 44, s 52-53.

⁷ See, e.g. Victoria Legal Aid, Addressing discrimination to prevent violence, abuse, neglect and exploitation – Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (30 April 2020).

⁸ See e.g. Pat Dudgeon, Abigail Bray and Roz Walker, ‘Mitigating the impact of racism on Indigenous well-being through human rights, legislative and health policy reform’, *Med Journal of Australia* 2023; 218 (5): 203-205; Thurber KA, Brinckley MM, Jones R, et al. ‘Population-level contribution of interpersonal discrimination to psychological distress among Australian Aboriginal and Torres Strait Islander adults, and to Indigenous–non-Indigenous inequities: cross-sectional analysis of a community-controlled First Nations cohort study’. *Lancet* 2022; 400: 2084-2094.

⁹ Monash University, Inclusive Australia: Social Inclusion Index 2021 Report found that almost half (49.7%) of Aboriginal and Torres Strait Islander people reported experiencing at least one form of major discrimination.

problems generally tended to last longer.¹⁰ This “[confirms] the compounding impact of social disadvantage on justiciable problem experience.”¹¹ Further, while First Nations people sought legal advice and assistance at similar or higher levels, they had higher levels of unmet legal need.^{12 13} Through our practice, we see how contact with child protection and criminal legal systems can also lead to and/or exacerbate civil legal issues, creating multiple intractable legal issues. We often see First Nations clients and consumers who are experiencing at least one, and often multiple social and legal issues, including:

- Being subject to compulsory treatment, seclusion and restraint when there are less restrictive options available
- Abuse and violence, including misidentification as primary aggressors and a punitive response to adolescent violence in the home, which can lead to inappropriate responses in the family violence system, police contact and involvement with the mental health and child protection systems
- Detention for prolonged periods in restrictive environments, including prison, because of systemic injustice and racism, including a lack of housing and support options in the community¹⁴
- Risk of eviction, experience of homelessness, or living in insecure or unsafe housing
- Social disadvantage, race and police contact that contributes to high rates of involvement in the criminal legal, mental health and child protection systems, including leading to incarceration, and
- Separation from families and children through the child protection system,¹⁵ which can exacerbate trauma, mental health and housing issues.

It is important to note that for First Nations people who experience intersectional discrimination and disadvantage, the above experiences can be further compounded. For example, for First Nations young people, we see systemic racism manifest in overrepresentation in the youth justice system, including an overrepresentation in youth detention.

¹⁰ Victoria Law Foundation (2023). *Public Understanding of Law Survey (PULS)*, available online [64f542eb58fe75c66682d24a_The Public Understanding of Law Survey Report 2023 Volume 1.pdf \(webflow.com\)](https://www.viclaw.org.au/64f542eb58fe75c66682d24a-The-Public-Understanding-of-Law-Survey-Report-2023-Volume-1.pdf)

¹¹ PULS, p20, 155.

¹² PULS, p116, 156.

¹³ However, while the PULS provides an important and recent dataset, we note the relative lack of disaggregated data collected by service providers, Courts, tribunals, dispute and complaint resolution bodies that would assist in further identifying these systemic injustices and experiences related to the health, housing and education systems, as compared to the data available in the criminal legal or child protection systems. For example, Victoria Law Foundation’s *Calibrating Justice: The use and utility of administrative data in Victoria’s civil justice system* report noted that some Victorian courts and tribunals have recently started to measure and collect information on “Indigenous status” and that “such a variable is needed to assess civil justice access, performance, and outcomes for First Nations people. This includes basic information such as whether First Nations people are under or overrepresented as plaintiffs and complainants (or defendants and respondents) for certain types of civil justice matters.” They also note that, by comparison, extensive data clearly demonstrates overrepresentation of First Nations peoples in the criminal justice system. (p29). Available at: [Data mapping project: Calibrating Justice | Mapping Justice | Victoria Law Foundation](#). Further, the follow up report [Mixed Bunch The use and utility of administrative data in dispute and complaint resolution bodies in Victoria](#) indicates the lack of data collected by various Victorian bodies and subsequent impact on dispute and complaint resolution.

¹⁴ Including under custodial supervision orders under the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) and under supervised treatment orders. See, e.g., Victoria Legal Aid, *People falling through the cracks between the NDIS and mainstream services*, (20 July 2021).

¹⁵ See, e.g. Victoria Legal Aid, *Achieving safe and certain homes for children* (2020) (available at: [More work needed to achieve safe and certain homes for Victorian children | Victoria Legal Aid](#)); also Office of the Public Advocate, *Rebuilding the village: Supporting families where a parent has a disability* (Report 2, 2015) (available at: (OPA Rebuilding the Village)).

As such, while we do not have visibility of the overall operation of the broader health, housing and education systems, what we do see is how they intersect with our clients' and consumers' lives, what happens when they let people down, and how they can operate to reinforce systemic racism. This includes seeing worsened outcomes for First Nations clients and consumers, including diminished health and wellbeing and restricted social and economic participation.

We present this holistic response to this stage of truth-telling in Victoria for this reason.

Foundational reforms to uphold and enliven a self-determined approach to health and healthcare, housing and education systems in Victoria

The disproportionate, far-reaching and intergenerational harms experienced by First Nations people in the social support systems relevant to the Yoorrook Justice Commission's investigation are the consequence of centuries of laws, policies, systems and structures that have entrenched systemic and structural racism, normalised the exclusion and disempowerment of First Nations people, and systematically denied their right to self-determination.

As a service provider within and engaged with these social systems, VLA acknowledges our role in these systemic injustices. We recognise and support that solutions to these injustices must be led by First Nations people and communities.

We reiterate our view that the settler-colonial systems investigated in this stage of truth-telling are not broken, but are rather functioning as intended, and that radical change is needed to reform these inherently unjust and racist systems. We support this transformative change to uphold and enliven the principle of self-determination, including through the opportunities presented by treaty and truth-telling for culturally determined approaches to address systemic injustice.

The sovereignty of First Nations people has never been ceded and reforms of the health, housing and education systems must acknowledge this, with self-determination built into their redesign. The right for Victorian First Nations communities to participate in, and make decisions about, all aspects of these systems and the impacts on their communities must be respected and upheld. Only through genuine self-determination can there be culturally safe systems that have equitable outcomes for First Nations Victorians. VLA supports meaningful and concrete action to turn the policy commitment to self-determination into reality.

In the immediate term, we see several solutions to minimise harm, reduce racism and discrimination, and improve systemic approaches. These would contribute to the overarching aim of supporting the radical change, outlined above, that would promote, uphold and enliven a self-determined approach to these key social support systems in Victoria. The immediate areas for reform identified across this submission include:

- **Increase cultural safety competence** within the health, housing and education systems as well as interrelated law enforcement, child protection and legal systems, to deepen understanding of race, racism and racial inequality in Victoria. This should include a requirement to complete anti-racism training and increased **resourcing for First Nations service providers and dedicated**

roles and supporting change of policies, behaviours, and beliefs that perpetuate racist ideas and actions, in particular by:

- Centring the voices of and calls for justice from First Nations people, including in alignment with the Uluru Statement from the Heart and with the work of the Yoorrook Justice Commission
- Being grounded in a human rights framework
- Preventing and addressing systemic racism, including racial bias and discrimination within the health, housing, education and related legal and non-legal systems, and
- Addressing the impact of colonisation and intergenerational trauma on First Nations people with community led solutions.
- **Prioritise prevention**, including addressing the key drivers of health and mental health issues, homelessness and housing insecurity, and barriers to education completion, as well as racism and discrimination, through funding for and implementation of self-determined, co-designed community campaigns, projects, services and initiatives. This should include:
 - Supporting the social and emotional wellbeing (**SEWB**) model of care, and the central role of ACCOs in delivering SEWB, as well as addressing the stigma associated with SEWB within mainstream healthcare providers
 - Ensuring First Nations mental health consumers are able to access culturally safe services and supports, including on Country no matter where they live and which service they come into contact with
 - Increasing the supply of long-term social housing that is affordable for people on low incomes and has the right supports for people's needs, including implementing the recommendations from the *Mana-na woorn-tyeen maar-takoort - Every Aboriginal Person Has A Home* framework
 - Ensuring access to culturally safe and appropriate supports to help sustain tenancies
 - Reforming the child protection system to improve educational outcomes for First Nations children in care, and
 - A commitment to First Nations lived experience leadership.
- **Support justice reinvestment approaches that shift funds allocated to expensive end-of-process options, such as imprisonment, to investment in health, housing and social and community led supports, and initiatives that focus on addressing structural inequality and disadvantage.** We see, for example, the positive outcomes and benefits in access to non-legal advocacy and First Nations-led solutions-focused lists such as the Koori Court and *Marram-Ngala Ganbu* Koori Family Hearing Day as well as the mainstream solutions-focused lists such as Family Drug Treatment Court, Drug Court, Assessment and Referral Court and Neighbourhood Justice Centre, as well as the as Court Integrated Services Program (**CISP**), where the underlying issues leading to the offending are prioritised over a legal contest. We support the expansion of such specialist problem-solving courts and CISP, as well as the investment needed across the health, housing and education systems, for instance in effective programs that aim to address housing needs for First Nations people involved in the criminal legal system, including

Baggarrook and *Wulgunngo Ngalu Learning Place*, and those that support and promote social and emotional wellbeing practice, policy and research, such as the *Balit Durn Durn Centre*.

- **Further enshrine the human rights of First Nations people:**¹⁶ While the Victorian *Charter of Human Rights and Responsibilities Act 2006 (the Charter)* protects the rights to access healthcare, education and housing without discrimination, we support calls on governments to comprehensively adopt the United Nations Declaration on Rights of Indigenous People (**UNDRIP**) in order to protect, respect and uphold the human rights of First Nations people and communities, as well as the inclusion of additional rights under relevant UN Covenants and the right to self-determination in the Charter, as indicated in the 2015 eight-year review of the Charter.¹⁷ We note our support for First Nations people to lead the definition and incorporation of self-determination into the Charter, guided by the UNDRIP's universal framework in developing the right within the Charter, and for government to commit to this further reform to the Charter.
- **Policy and law reform to prevent racism and discrimination**, including empowering victims of racism to seek redress and providing them with support, and strengthening laws and sanctions against racial discrimination and hate, including through an enforceable positive duty to eliminate discrimination under the *Equal Opportunity Act 2010 (Vic)*.¹⁸
- **Mental health reforms**, including:
 - Monitoring the cultural safety principle under the new *Mental Health and Wellbeing Act 2022 (Vic)*, led by First Nations consumers, and
 - Implementing the review into compulsory treatment criteria and alignment of decision-making laws.
- **Implementing health-based responses as an alternative to police contact and criminal legal system involvement**, including decriminalisation of offences linked with disadvantage arising from poverty, homelessness, disability, alcohol and drug use, mental health issues and other forms of social exclusion.
- **Ensuring people in custodial settings have adequate, culturally safe access to healthcare, including mental health care.** This should include improvements to healthcare for people in custody, and First Nations-led monitoring and evaluation of the contractual arrangements between Corrections Victoria and providers of primary healthcare in prisons, to ensure these services are culturally safe and are delivering the anticipated benefits for First Nations people in custody, and in line with the *Yoorrook for Justice* report recommendations.

¹⁶ We note that, over the past few years, there has been a range of consultations in Victoria related to these areas, including to develop Victoria's Anti-Racism Strategy. We are concerned that several of these policy and law reform initiatives have either stalled with lapsed legislation, a lack of information regarding progress and next steps, or a lack of transparency regarding final reports and recommendations. This is particularly concerning given each of these relate to the experiences of First Nations people and communities, with consistent recommendations across these consultations noting the need to address system failures by upholding and enlivening the principle of self-determination and improving culturally safe and appropriate laws and service design and delivery.

¹⁷ See final report https://www.humanrights.vic.gov.au/static/829fd96367d7966006861f7cf4ccacf6/Resource-Charter_Report-2015.pdf and VLA's submission.

¹⁸ We note these reforms should include taking an intersectional approach to reforms to identify any overlap between obligations under, for example, the *Gender Equality Act* and the *Disability Act*, with a particular view to understanding First Nations experiences across each area. This should be addressed in implementation through, for instance, aligning disability impact assessments and gender impact assessments, and including First Nations disaggregated data in all assessments.

- **Rights and equality for people with disability**, including through the re-introduction of the Disability Inclusion Bill.
- **Social housing and residential tenancy reforms**, including by:
 - Implementing social housing regulatory reform to ensure First Nations Victorians have access to safe, affordable and secure housing, including through embedding cultural safety in performance standards, creating accessible and culturally safe complaints and dispute processes in social housing, and developing a clear, publicly available eviction prevention framework for social housing providers co-designed with First Nations renters, and
 - Amending the *Residential Tenancies Act 1997 (Vic)* to ensure evictions are an option of last resort and to recognise the distinct cultural connection between First Nations peoples and their homes.
- **Amending the *Worker Screening Act 2020 (Vic)*** to make clear that a Working With Children Check is not required to complete a practical placement that does not involve direct contact with children.
- **Strengthen and embed evaluation and accountability measures** across all relevant social support systems to improve quality, reach, equity and consistency of service provision, as well as to inform choice and ensure accountability, including by **improving data gathering**, for instance to report the use or duration of compulsory mental health treatment for First Nations consumers, as well as incidences of racism in the health, housing and education systems and interrelated child protection and legal sectors. We also support the recommendations made by the Victoria Law Foundation to improve civil legal data collection, and in particular the recommendations to strengthen disaggregated data that would further outline and identify First Nations client experiences. We note this should be led by the principles of Indigenous Data Sovereignty and Indigenous Data Governance.

Chapter 1: Addressing systemic injustice in the health and healthcare systems

“About seven years ago, I was feeling unsafe and scared, I thought the best thing to do was go to hospital, so I called an ambulance.

When I got to the emergency department, I was in a bit of a panic and they told me “You’re not voluntary anymore, we’re putting you on an assessment order.” They tranquilised me and that was really traumatising and unnecessarily aggressive. I was out of it for two days and they transferred me to another hospital while I was unconscious. It was very confusing, and the hospital was miles from home.

That whole experience made me lose confidence in hospitals and the police. I will never again call emergency services because of that experience.

I never felt I was being heard. I never felt I was taken seriously. I was just put on the side. I was treated like I was incompetent and incapable of taking care of my own life. They didn’t see the importance of being around my family and community for good health.

Since that first time, I have been on approximately 20 treatment orders. That is 20 times in seven years. It’s time that I was given a break to live my life.” Tiffany

Health is a fundamental human right.¹⁹ First Nations people have the right to access health services that are non-discriminatory and respect their cultural rights, the right to equality before the law and the principle of self-determination.²⁰

It is important to recognise the Victorian health system is designed based on a settler-colonial concept of health and wellbeing, and that consequently the language used in these systems does not necessarily reflect First Nations concepts of spiritual, social, emotional and cultural health and wellbeing. For example, First Nations consumers consistently raise how the term ‘mental illness’ focuses on a medical interpretation of their mental health issues and experiences.

Through our work, we see the way in which Victoria’s laws, services and systems continue to fall short for First Nations people with disability and mental health issues and for the broader community, and the need to extend obligations to protect the rights, prevent discrimination and promote the inclusion of First Nations Victorians with health and mental health issues and disability across sectors and services.

To address the systemic injustice experienced by First Nations clients and consumers in health and healthcare systems, including the mental health system, there is a clear need to deliver culturally safe, self-determined approaches, including through:

- Preventing racism and discrimination
- Implementing culturally safe and First Nations-led public health responses to health and mental health issues

¹⁹ ICESCR, art 12.

²⁰ *Charter of Human Rights and Responsibilities Vic* (2010), s 8, 19; *Racial Discrimination Act Cth* (1975), s 10.

- Strengthening oversight and governance, including through improved data gathering and information sharing, and
- Improving access to culturally safe healthcare in all settings including custodial settings.

Preventing racism and discrimination in healthcare settings

We regularly see healthcare services that are not providing culturally safe or appropriate healthcare, including in the mental health system.²¹ This includes First Nations clients experiencing discrimination in accessing healthcare services based on intersecting factors including their race, disability, and gender. First Nations clients have told us they experience discrimination in the form of denial of access to healthcare services, discriminatory terms on which the services were provided, and being subjected to other detrimental treatment in connection with the delivery of the service.

For example, clients reported derogatory, prejudiced, and racist comments from healthcare professionals, and being told they are not welcome to access general healthcare services. First Nations clients have also reported how the location of the service often disrupts access to existing health, family and community supports, including connection to Country, that provide essential health and wellbeing support. For instance, and as Tiffany outlines, we have seen First Nations consumers transferred to mental health services far from home. We have also seen First Nations consumers denied access to Aboriginal Liaison Officers, or not being told about First Nations-specific emotional and social wellbeing services that are available.

This discrimination and lack of culturally safe service provision has a profoundly detrimental impact, including increased feelings of distress and anxiety, in addition to the impacts of being denied access to necessary health services for the person's primary reason for presenting to a healthcare service. This is consistent with evidence that individual and systemic racism contributes to negative physical and mental health outcomes for First Nations people, and impacts the social and emotional well-being of individuals, families, and communities.²² We see the compounded effects of individual experiences of discrimination on First Nations clients, due to previous experiences or having witnessed other forms of discrimination, systemic racism, and disadvantage.²³ Further, fear of the consequences of police contact and/or culturally unsafe health services can lead to First Nations people not seeking healthcare in the first place, which can lead to diminished health and wellbeing outcomes, and in the worst case can be fatal.²⁴

In addition, as the *Yoorrook for Justice* report documented, discriminatory attitudes in universal services, such as health, lead to unnecessary reports to child protection that directly contribute to

²¹ See also Victorian Equal Opportunity and Human Rights Commission Annual Report 2022-23, p26-29, available at: https://www.humanrights.vic.gov.au/static/b5e7b4f3c6d85e4112523b18889035a5/Resource-Annual_Report_2022-23-Nov_2023.pdf

²² See e.g. Pat Dudgeon, Abigail Bray and Roz Walker, 'Mitigating the impact of racism on Indigenous well-being through human rights, legislative and health policy reform', *Med Journal of Australia* 2023; 218 (5): 203-205; Thurber KA, Brinckley MM, Jones R, et al. 'Population-level contribution of interpersonal discrimination to psychological distress among Australian Aboriginal and Torres Strait Islander adults, and to Indigenous–non-Indigenous inequities: cross-sectional analysis of a community-controlled First Nations cohort study'. *Lancet* 2022; 400: 2084-2094.

²³ Monash University, Inclusive Australia: Social Inclusion Index 2021 Report found that almost half (49.7%) of Aboriginal and Torres Strait Islander people reported experiencing at least one form of major discrimination.

²⁴ For instance, fatal overdose is a preventable cause of death that is exacerbated due to the reluctance to seek healthcare assistance during a potential overdose, for fear of criminal repercussions. See the recent Coroners Court of Victoria report aimed at better understanding Victorian fatal overdoses (February 2023). Available [here](#).

First Nations children's disproportionate representation in the Victorian child protection system.²⁵ Fear of child removal, based on historic and ongoing practices in turn, contributes to First Nations women's fear or avoidance of engaging with some health services.

We see a need for cultural awareness and competence training to be included as a core element in training for everyone working in the health, healthcare and mental health systems, to address potential issues of unconscious bias in people who work across the health and healthcare systems and services.

Delivering on key policy and law reform commitments to provide a legislative framework that supports self-determination and cultural safety

Mental health reforms

Andrew's story

I am from Trowenna (Tasmania) and the Palawa Nation, I am Nuenonne – Nyunoni Language Group. I have lived in Naarm (Melbourne) for the best part of a decade. I am all the intersections that the police hate in a person; Aboriginal, Gay, HIV positive, living with disability, an Educated Warrior... and, worst of all, PROUD about it.

Throughout my life, I have experienced racism and discrimination, and systemic injustice. I've been the target of hate crimes and police violence.

The mental health system can and has destroyed lives unnecessarily. When I was under compulsory mental health treatment, it was as if I had found myself in a foreign country and I was being held. The question was: who was holding me and why?

My first time in a mental health unit, I wasn't provided with any information or my legal rights.

I've experienced coercion by the treating team, and been told that if I didn't stay in hospital they would withdraw my emergency housing offer. They also instructed my housing provider to evict me because it was easier to help me if homeless. Luckily I managed to negotiate to have the notice for eviction withdrawn. I am currently in social housing but have been concerned about raising my mental health and health issues with them.

I found a Post-It note on a wall in the mental health unit and the words: 'Independent Mental Health Advocacy'. Thank God I'd paid attention at school and was able to deduct that these words meant help! Help is the understatement.

If it had not been for IMHA and my amazing advocate, and them talking me through the situation I was in, in simple language I could understand, I probably would have been put on a six- or 12-month order that the hospital had no right to put me on – and which would have meant I would have lost my home, my job, my possessions and worst of all, my beautiful little dog who had never spent a night away from me in seven years. IMHA saved my life.

²⁵ The report states "This issue exemplifies the failures and harms discussed in this chapter — retraumatizing child removal driven by systemic and overt racism, and a lack of support services despite government commitments." p106

Reforming compulsory mental health assessment and treatment in Victoria

Following the Royal Commission into Victoria's Mental Health System, the review of compulsory mental health treatment and alignment of decision-making laws provides an important opportunity to consider the future of mental health treatment in Victoria. VLA has recently facilitated 16 people with lived and living experience of compulsory treatment to share their stories, including a First Nations consumer who spoke to the lack of culturally safe care they were provided. Originally an independent review, the review is now being led by the Department of Health, and we encourage the Yoorrook Justice Commission to seek updated information on the new process and timeframes for this review.

We refer to our submission to the review,²⁶ which includes recommendations to work towards a mental health system that eliminates compulsory treatment – supported through systems reform, physical environment improvements, partnerships between lived experience experts and clinicians, cultural change and sustained resourcing – as well as a range of reforms needed now that will radically reduce the use and duration of compulsory treatment and promote a rights-respecting system that centres consumer will and preferences and personal recovery, with supported decision-making as the primary approach.

Cultural safety in the Mental Health and Wellbeing Act

We welcomed the introduction of the cultural safety principle in the new *Mental Health and Wellbeing Act 2022* (Vic) and note it will be important to monitor the implementation of this principle.

Our lawyers have had some success in raising this principle in Mental Health Tribunal hearings, including by making submissions that compulsory treatment carries extra weight and can compound and exacerbate trauma and distress for First Nations clients who experience systemic injustice and disadvantage, and whose autonomy has been continuously taken away, for instance through being a victim of the Stolen Generation, the impact of colonisation and intergenerational trauma. IMHA has also had successful outcomes through provision of non-legal advocacy to First Nations consumers. However, these successful outcomes have been limited and cultural safety in mental health services and at the Mental Health Tribunal must continue to be improved. We note our support for the recommendations made by VALS to the review of compulsory treatment, including by creating a Koori engagement team and establishing a Koori list, creating more identified positions for Aboriginal Community Panel Members (and requiring hearings for First Nations consumers to include an Aboriginal Community Panel Member), and adopting a similar approach to Aboriginal Community Justice reports for consumer story and cultural information to be provided to the Tribunal.²⁷

We also note that, given the new Act came into operation on 1 September 2023, we anticipate there will be further useful insights and data by September 2024, at the one-year mark of the Act's implementation. This will include specific insights VLA can provide through our delivery of the opt-out model of independent non-legal advocacy, which VLA is delivering through our IMHA service, including dedicated First Nations non-legal advocates, and increased representation at the Mental Health Tribunal, which VLA is coordinating through a co-design process together with consumers, VALS and the Mental Health Legal Centre. We would be keen to engage further with the Yoorrook

²⁶ See Victoria Legal Aid, *Rights, respect and recovery: The future of mental health assessment and treatment in Victoria: VLA's response to the Independent Review of compulsory treatment criteria and alignment of decision-making laws* (2023), Available at: [Full Record \(via.vic.gov.au\)](https://www.vic.gov.au/full-record).

²⁷ VALS (2023). *Submission to the independent review of compulsory treatment criteria and alignment of decision-making laws*. Available [here](#).

Justice Commission where appropriate, based on the stories and evidence that continue to arise from working with consumers after the implementation of these reforms.

Implementation of public health responses over a police-first response

In addition, recent reforms in response to advocacy by First Nations individuals, communities and organisations, supported by VLA, to decriminalise public intoxication through the implementation of a public health response over a police first response are a critical first step to reduce the criminalisation of health-related issues. VLA supports prioritising the delivery of further health-based responses as an alternative to police contact and criminal legal system involvement. We note our support for the *Yoorrook for Justice* report recommendations regarding offences reform to decriminalise offences linked with disadvantage arising from mental health issues, as well as poverty, homelessness, disability, alcohol and drug use, and other forms of social exclusion, and emphasise that First Nations self-determination must be at the centre of design and implementation of any responses that prioritise health and personal recovery over punitive sanctions.

Improve data gathering and information sharing

We note there is a current lack of data, or limited data available, that measures the use of compulsory mental health treatment, including for First Nations consumers. Most available data is episode-based and does not provide insight into trends, the full picture of consumer experience including over-representation of First Nations and other consumers, the efficacy and cultural safety of programs, nor does it explore discrepancies in the use or duration of compulsory treatment within and between services. Co-produced reports could play a role in driving systems change, including mechanisms for review, quality improvement and improved accountability and regulation. However, we note increased data gathering must be balanced with experiences of information sharing. VLA client experience indicates that First Nations clients and consumers may be less likely to engage with community services if they know their information will be shared without their consent, and the associated high risks of discrimination.²⁸ It is important that data collection does not act as a barrier to inclusion and participation, and respects Indigenous Data Sovereignty and Governance.²⁹

Disability reforms

We were pleased to see cultural safety, substantive provisions that recognise the importance of culture and connection to Country for First Nations peoples' social and emotional wellbeing (including in disability action plans), and self-determination being a priority in the state disability plan;³⁰ however we note the complementary Disability Inclusion Bill lapsed and we await its re-introduction to parliament.

²⁸ For more detail, see Mine to share: VLA's Submission to the health information sharing legislative reform consultation (2020), p4-10.

²⁹ VALS (2022). *Submission on Victoria's Anti-Racism Strategy*, pp32-6. Available at: <https://www.vals.org.au/wp-content/uploads/2022/01/VALS-submission-Anti-Racism-Strategy.pdf>.

³⁰ [Inclusive Victoria: state disability plan \(2022–2026\) | vic.gov.au \(www.vic.gov.au\)](https://www.vic.gov.au)

Increased resourcing for First Nations service providers and dedicated roles to strengthen cultural safety in healthcare settings

ACCOs, Aboriginal Liaison Officers (**ALOs**)³¹ and other identified roles must be adequately resourced to meet demand and provide a genuine choice to First Nations people. We highlight the need for this investment across the sector to strengthen cultural safety.

For example, through our practice we often hear positive feedback from First Nations clients who have been connected with an ALO. ALOs support First Nations people staying in hospital, including helping them to engage with their treating teams, and ensuring First Nations people, and their families where relevant, are actively involved in their care. Our Mental Health Tribunal duty lawyers routinely see ALOs play a critical role in clients' recovery and in improving cultural safety in Mental Health Tribunal hearings. However, ALO roles can be over-worked, under-resourced and frequently disrespected or excluded from the healthcare team. Through our practice experience, we see that many services have one ALO not only for the hospital's mental health ward, but for the entire hospital. This imposes significant constraints on the level of support an ALO is able to provide to each First Nations inpatient. Additionally, some services have no ALO whatsoever. This includes Thomas Embling Hospital, a forensic detention facility, meaning First Nations clients who are being detained on secure treatment orders under the *Mental Health and Wellbeing Act 2022* (Vic), and those who are on custodial supervision orders under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) do not have a direct avenue for accessing culturally safe support.

Improve access to healthcare in custodial settings

In Victoria, First Nations people continue to make up more than 10% of the prisoner population, despite representing less than one per cent of the state's total population.³² Accordingly, healthcare policies in prisons and in police custody directly and disproportionately affect First Nations people, including people who are opioid dependent when they enter prison.

First Nations clients in prison and custodial settings report specific concerns, including that the delivery of healthcare and mental healthcare to First Nations people in prison, in police custody and on remand does not meet the level of care required to support good health and wellbeing outcomes,³³ as well as the denial of access to healthcare services to support their disability and/or mental health issue, and the lack of culturally appropriate and safe services.

Multiple Coronial Inquest findings have included consideration by medical experts of the appropriateness and efficacy of healthcare policies in custodial settings, and provided a detailed and publicly available description of a systematic approach to treating people, including First Nations people, and people who are opioid dependent when they enter prison. The findings emphasise the pain, suffering and harm – including in some cases death – that people experience in these settings because of the related policies. We consider the impact of these policies is potentially discriminatory, and note VLA's support for the recommendations from recent Inquest Findings that have highlighted

³¹ Noting we include the various types of roles that fall under this umbrella term, including Aboriginal Hospital Liaison Officers.

³² Sentencing Advisory Council sentencing statistics, Victoria's Indigenous Imprisonment Rates, last updated 4 November 2022.

³³ For further detail specific to mental healthcare, see *Roads to recovery: Building a better system for people experiencing mental health issues in Victoria* (2019), p38-40.

the urgent need to ensure that people who are in custody receive an adequate standard of healthcare to prevent this potential discrimination.

Without access to appropriate healthcare support in custodial settings, involvement in the criminal legal system will continue to amplify existing health inequality. We support First Nations-led evaluation and monitoring of the contractual arrangements between Corrections Victoria and providers of primary healthcare in prisons to ensure these services are culturally safe and are delivering the anticipated benefits for First Nations people in custody. We also support the *Yoorrook for Justice* report's endorsement of the recommendations from the independent cultural review of the adult custodial corrections system, to improve the delivery of healthcare for First Nations people in custody.

We also support close attention to the delivery of healthcare for First Nations people in police custody, with urgent changes required to improve healthcare for people in custody at the Melbourne Custody Centre. Through our work at the Bail and Remand Court, we have observed many First Nations clients, particularly women, being denied access to essential medical care. In one example, an ambulance was not called to assist a First Nations client, despite clear advice that urgent medical attention was required. Other examples from our practice further highlight the dangerous disregard for the health and wellbeing of First Nations people in custody that endures in custodial settings, despite the clear findings and recommendations of numerous coronial and review processes.

Chapter 2: Addressing systemic injustice related to housing and homelessness

“Home is beneficial to your health, and feeling safe at home helps your mental health and your overall wellbeing. Good housing means it’s not falling apart and easy to look after and cleaning. Home needs to be located close to shops, health services and transport.

A stable home is beneficial to my health. Safety needs to be seen as a serious priority with housing. There needs to be an emergency transfer for people who are facing serious threats to their safety, especially if someone’s life is in danger, that should be the highest priority. There needs to be a support to leave housing that is no longer safe.” Tiffany

Safe, stable and affordable housing is crucial for improving health and wellbeing, keeping parents and children together, avoiding offending, and promoting social and economic participation.³⁴ The right to housing is a fundamental human right under the International Covenant on Economic, Social and Cultural Rights, and protection from discrimination in relation to the provision of housing is covered under both Victorian and Federal anti-discrimination laws. Yet, we know that First Nations people experience various housing issues including homelessness,³⁵ overcrowding and poor housing conditions, as well as experiencing race-based discrimination as tenants.

To address the two-way relationship between homelessness and legal issues, and the compounding effects of colonisation, intergenerational harm, racism and discrimination, we see a need to:

- Improve access to safe, affordable and quality housing, including through increased protection and promotion of rights, increasing the supply of social housing, and investing in housing solutions to support people involved, or at risk of involvement, in the criminal legal system, and
- Prevent evictions into homelessness, including protecting the rights of renters with complex vulnerabilities and First Nations renters where the principal renter passes away.

Improving access to safe, affordable and quality housing

Protecting and promoting rights in social housing

Many of the renters we assist live in social housing, and we see how stable, safe and appropriate social housing enables better life outcomes, including improved health and wellbeing. As outlined in VLA’s submission to the Yoorrook criminal justice investigation, First Nations people experiencing homelessness or with insecure or unstable housing are more susceptible to over-policing, and are also at increased risk of spending time in custody. Further, as outlined in VLA’s submission to the child protection investigation, inadequate housing is also linked with preventing First Nations children

³⁴ As we noted in our previous submission to the Yoorrook Justice Commission, homelessness and insecure housing have been found to play a significant role in preventing First Nations children from being reunified with mothers who are victim-survivors of family violence. See also, Australian Housing and Urban Research Institute (2019) [Improving housing and service responses to domestic and family violence for Indigenous individuals and families](#), 1.

³⁵ In Victoria, 17% of Aboriginal people sought assistance from a homelessness service in 2019, the highest rate of presentation for homeless assistance by Aboriginal people anywhere in Australia. Source: [Mana-na woorn-tyeen maar-takoort framework \(apo.org.au\)](#).

from being reunified with mothers who are victim-survivors of family violence, with delays in housing also impacted by permanency amendments.³⁶

Increasing the supply of long-term housing that is affordable for people on low incomes and has the right supports for people's needs must be a priority across all levels of government. This includes self-determined, tailored housing and support programs – directed at accessing and sustaining housing – that meet the diverse needs of First Nations people and communities. We note our support for the *Mana-na woorn-tyeen maar-takoort - Every Aboriginal Person Has A Home* framework's call for 5,000+ additional social housing units for First Nations people by 2036.

We welcome the recognition of, and extensive recommendations in, the Social Housing Regulatory Review Interim Report regarding the need for greater access to social housing and cultural safety for First Nations people. In particular, we welcome the recommendations to embed cultural safety in performance standards and creating accessible and culturally safe complaints and dispute resolution processes, as well as greater accountability through transparent data and reporting.

We understand the final Social Housing Regulatory Review report was delivered to the previous Minister for Housing in May 2022. Together with sector partners we have advocated for the report and recommendations to be published, and would support the Commissioners requesting access to this report. Sharing the report will help us to work together to ensure a renter-centred and effective social housing system in Victoria. It is our view that a regulatory system that prevents avoidable evictions and which provides effective means of resolving disputes, underpinned by human rights and accessible ways of enforcing them, will support a system responsive to the needs of Victoria's social housing renters, including First Nations Victorians.

First Nations rental rights in public housing towers

There are currently around 10,000 people living across 44 public housing towers in Naarm (Melbourne). We note our support for VALS' recommendation to seek disaggregated data about the number and percentage of First Nations people who will be affected by the government's urban renewal project to retire and redevelop all of the high-rise public housing estates by 2051.³⁷

The government has not committed to any public housing on any of the sites except Carlton, which has led to concerns management of sites will transfer to community housing providers. This increases the importance of the implementation of the Social Housing Regulation Review recommendations to strengthen the rights of community housing renters to ensure they have access to equal rights and protections as in public housing. In addition, public housing residents need to be adequately informed about their rights in the relocation process, including a legally enforceable right of return and access to independent legal and non-legal supports.

Access to private rental tenancies

For First Nations Victorians, the private rental sector has increased in significance in recent decades. The Aboriginal Private Rental Access Project (**APRAP**)³⁸ was commissioned by the Consumer Policy Research Centre and conducted by researchers at Swinburne University of Technology, on behalf of

³⁶ Victoria Legal Aid submission to the Yoorrook Justice Commission investigation into systemic injustice in the child protection system, 2023, available at:

<https://library.vla.vic.gov.au/firsttrms/fullRecord.jsp?recoListAttr=recoList&reco=63534>

³⁷ [Victoria's Housing Statement | vic.gov.au \(www.vic.gov.au\)](https://www.vic.gov.au/victoria-housing-statement)

³⁸ See: [Aboriginal Private Rental Access Project.](https://www.vic.gov.au/aboriginal-private-rental-access-project)

the Commissioner for Residential Tenancies, VLA and Aboriginal Housing Victoria, as a result of a recommendation of *Mana-na woorn-tyeen maar-takoort - Every Aboriginal Person Has A Home - Victorian Aboriginal Housing and Homelessness Framework*.³⁹

The final report was released in November 2022, and outlined the racism and discrimination First Nations people can experience in private rental tenancies. We support sustained commitment by relevant parts of government to implement the report recommendations and address the current barriers to private rental access and opportunities for First Nations people.

Increasing access and removing barriers to housing for people with criminal history

In 2022-23, we observed that risk of homelessness was present for 16.3% of VLA's First Nations clients who received criminal law services compared to 9.8% for First Nations clients who had received only civil law or family law assistance. This increased to 18.5% for First Nations clients with disability.

We recommend that government work with Aboriginal Justice Caucus, VALS and the Magistrates Court of Victoria to strengthen cultural safety in the spent conviction order court application process and increase awareness of the scheme in First Nations communities. Barriers to accessing the scheme affects the realisation of the key objectives of the *Spent Convictions Act 2021 (Vic)*, which is to facilitate the rehabilitation of people with historical or minor convictions by reducing barriers to training, housing, employment and other opportunities. Having a conviction reduces job prospects and makes it more difficult to secure housing.

The operation of the spent convictions scheme was intended to remediate the legacy of criminal justice involvement for First Nations people. The scheme recognised that First Nations people are more likely to be impacted by criminal records for a range of reasons, including increased contact with the criminal justice system.⁴⁰ According to the data relating to the operation of the spent convictions scheme, only one application has been made by a First Nations person. While some convictions are spent automatically, without application to the court, this suggests that the intended benefits of the scheme are not reaching First Nations people. As a result, they may continue to experience the harmful impact of discrimination and exclusion associated with criminal history, including when accessing housing and other supports in the community.

Preventing evictions including into homelessness

Access to culturally safe and appropriate supports to help sustain tenancies

The majority of First Nations people rent, rather than own, their homes.⁴¹ Through our practice, and particularly given the current shortage of rental properties throughout Victoria, especially in regional Victoria, we regularly see cases where First Nations clients are facing eviction not only from their home, but also from their local community or Country, contributing to a long history of dispossession. Our overarching objective is to help renters avoid eviction, including into homelessness.

³⁹ See: [Mana-na woorn-tyeen maar-takoort - Every Aboriginal Person Has A Home](#).

⁴⁰ Attorney-General, Spent Convictions Bill 2020, Second Reading Speech (28 October 2020).

⁴¹ [Housing circumstances of First Nations people - Australian Institute of Health and Welfare \(aihw.gov.au\)](#).

In 2023, VLA assisted 911 First Nations clients at risk of homelessness. Through our practice experience, we note intersecting systems – including child protection, family violence, mental health, social security, the NDIS, justice and discrimination – need to be reformed to prevent and address, rather than contribute to and entrench, homelessness.

Through our tenancy duty lawyer service, we see that eviction proceedings are often successfully defended when a person has access to legal advice and representation. However, we also find that many disadvantaged renters receive legal advice for the first time in the days before their hearing. They often have not been able to access the tenancy services or social services that would enable them to maintain their tenancy. There are specific programs and services that assist First Nations renters, such as Aboriginal Tenancies at Risk. However, many First Nations renters do not know about what is available or how to access these services.

We consider there is a need for First Nations people at risk of homelessness and eviction to have access to the full range of appropriate and culturally safe supports they need to sustain their tenancy, including to address the ongoing harms of colonisation, intergenerational trauma and experiences of racism and discrimination on First Nations renters. These services should be coordinated, integrated and resourced to focus on early intervention, before there is an immediate risk of eviction, when it is easier for renters to engage and there are greater prospects of the tenancy being sustained. For some renters, this support will need to be long-term.⁴²

Eviction of First Nations renters

We regularly assist First Nations renters facing eviction for conduct that is often clearly linked to behaviour that is the result of, or connected with, intergenerational trauma, systemic injustice, racism and discrimination, including mental health, disability, family violence, substance dependence or fraught relationships within neighbourhoods.⁴³ For some housing providers, these legal proceedings are deployed to seek compliance, rather than taking a health and social based response by linking in with community supports.

These practices have a greater impact on First Nations people because of the over-policing and regulation of First Nations people, the disproportionate representation of First Nations people in the criminal legal, child protection and mental health systems as a result of intergenerational trauma and the fact that the majority of First Nations people rent rather than own their homes.⁴⁴

We have also worked on a number of cases where social housing providers commence eviction proceedings against family members following the death of the principal renter. The household members left behind have generally lived in the property for a number of years, sometimes since childhood, and have no other supports or options for alternative housing. Eviction results in homelessness, loss of kinship ties in the family, and loss of an important connection to home and community.

⁴² VLA submission to Social Housing Regulatory Review, p7. Available at:

https://library.vla.vic.gov.au/firstvlaRMSPublic/docs/Corporate/VLA_Submissions/Social_Housing_Review_Submission.pdf

⁴³ For example, we have previously assisted a First Nations woman who has been affected by complex trauma which manifested in hoarding behaviours. After her community housing provider applied for a possession order in response to the ongoing issues with hoarding, the anxiety related to these proceedings caused the hoarding behaviours to increase. See Lydia's case, p18, available at: [vla-submission-it-starts-in-the-home-march-2020.docx \(live.com\)](#)

⁴⁴ [Housing circumstances of First Nations people - Australian Institute of Health and Welfare \(aihw.gov.au\)](#).

In the first instance, this could be addressed by social housing providers adopting a preference for transfers of tenancy to surviving long term household members rather than eviction in circumstances where the principal renter passes away. We have successfully assisted several clients to obtain creation of tenancy orders from VCAT in these circumstances, which allows the tenancy to be transferred to the remaining family members by making submissions that eviction from the property would result in a loss of connection to community and Country for the evicted household.⁴⁵

However, whether the VCAT Member determining the matter considers the submissions compelling is reliant on their understanding and acceptance of matters of cultural significance. In order to ensure that First Nations renters' unique connection to Country and community are properly considered, we recommend that the law should specifically identify and direct Members to take into account matters that are of cultural significance for First Nations people under section 91T of the *Residential Tenancies Act*. This would also uphold the human rights of First Nations people and be consistent with section 19(2) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

Protecting and promoting the rights of renters to ensure evictions are an option of last resort

Victorian tenancy law currently fails to adequately recognise the distinct cultural connection between First Nations peoples and their homes, as well as the historical and ongoing consequences of dispossession.⁴⁶ A clear, publicly available **eviction prevention framework for social housing providers** should be developed and published, setting out how all social housing providers will make and progress decisions to evict. This framework should:

- Require timely referrals to services, including legal assistance
- Provide practical guidance on compliance with the Human Rights Charter
- Be co-designed with First Nations renters, social landlords and service providers, and
- Ensure eviction is a last resort at all stages of the eviction process.

In addition, there is a need to amend the *Residential Tenancies Act 1997* (Vic) to ensure evictions are an option of last resort, and to recognise the distinct cultural connection between First Nations peoples and their homes. This should include amending the 'reasonable and proportionate' test, introduced by the *Residential Tenancies Amendment Act 2018* (Vic) to ensure eviction is an option of last resort,⁴⁷ including an additional mandatory consideration regarding the renter's relationship to the rented premises, the land it is situated on or near and the local community, as well as specifically, in the case of First Nations people, any cultural or familial connections to their home.⁴⁸

⁴⁵ When considering a creation of tenancy application, VCAT must have regard to a number of factors as set out in section 91T of the *Residential Tenancies Act 1997* (Vic), which includes determining whether the person would suffer severe hardship if the tenancy was not made. Whether the member determining the matter considers the submissions as compelling is reliant on their understanding and acceptance of matters of cultural significance.

⁴⁶ Under section 330 of the *Residential Tenancies Act 1997* (Vic) in deciding whether or not to make a possession order, the Tribunal must consider whether it is reasonable and proportionate to do so, having regard to the considerations listed in section 330A. These considerations do not include any reference to the renter's relationship to the home, land or local community. In practice, our lawyers often make submissions to the Tribunal that this connection should be considered under section 330A(j) which provides that the Tribunal must consider any other matter the Tribunal considers relevant. However, this leaves it to the Tribunal to determine the relevance or otherwise of our clients' connection to their home.

⁴⁷ Cf p9, [Joint response to SHRR interim report UPDATED 10.3.22.pdf \(vla.vic.gov.au\)](#).

⁴⁸ This could include adding the following criteria for consideration where the rental provider is a social housing provider: (1) the specific obligations of the social housing provider, under the Housing Act, performance standards, and its own policies,

Chapter 3: Addressing systemic injustice in the education system

“I want to share my story because I believe a lot of lives get ruined by not having access to housing and education. Health isn’t just medication, it is access to education and new skills, doesn’t matter what age. I love learning.” Tiffany

First Nations people have the right to access education without discrimination and with respect to their right to cultural identity and the principle of self-determination.⁴⁹ Under Federal and Victorian law, it is unlawful to discriminate against someone based on race in the provision of education.

Despite this, we know from our practice experience and from working closely with our partners including VALS and other ACCOs that First Nations people continue to experience direct and indirect discrimination on the basis of their race, and other intersecting attributes such as disability, age, sex and gender, across all areas of public life, including in the education system.

Informed by our practice and client experience, we consider there is a need to:

- **Prevent racism and discrimination in education and tertiary education settings**
- **Reform the child protection system to improve educational outcomes for First Nations children in care**, including:
 - Reinstating the Children’s Court’s ability to make orders in the best interests of children without time limits on reunification
 - Improving Child Protection internal review processes so children can seek reviews of case plans in a timely manner
 - Ensuring the Commission for Children and Young People is fully resourced to undertake its new legislated advocacy function to support individual young people to raise, and seek resolution of, issues related to the child protection and care systems.
- **Amend the *Worker Screening Act 2020 (Vic)*** to make clear that a Working With Children Check is not required to complete a practical placement that does not involve direct contact with children.

Preventing racism and discrimination in schools and tertiary education

We note our support for the recommendations outlined in the *Bringing them home* report, National Agreement on Closing the Gap, Victorian Aboriginal Affairs Framework and the recent Commission for Children and Young People’s ‘Let us Learn’ inquiry, which found First Nations children and young

whether the housing provider has made all reasonable efforts to transfer, relocate or otherwise secure alternative accommodation for the renter; (2) whether the order is sought as an avenue of last resort; and (3) abolishing the notice to vacate for successive breaches of duty through the removal of ss 91ZP, 142ZH, 206AX and 207ZB of the *Residential Tenancies Act*. Further, residential tenancies legislative provisions should be introduced that require compliance orders to be worded as specifically as possible, and to be limited to a period of six months before lapsing. Only where subsequent orders are needed should there be discretion for compliance orders to be extended for a period of up to twelve months.

⁴⁹ *International Covenant of Economic, Social and Cultural Rights* (ICESCR) 1966, art 1, 12, 13 (ratified by Australia 10 December 1975), *International Covenant on Civil and Political Rights* (ICCPR) 1966, art 1, 27 (ratified by Australia 13 August 1980), Declaration on the Rights of Indigenous Peoples 2007, *Racial Discrimination Act* Cth (1975), s 9.

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people in the child protection system experience barriers, including racism, that are preventing them from achieving the same educational outcomes as other students.⁵⁰ These recommendations include the need for self-determination and cultural safety within school, addressing the experience of racism for First Nations students, and the need for stronger governance and accountability mechanisms.

Reforming the child protection system to improve educational outcomes for First Nations children in care

First Nations children face hurdles to equitable education access by virtue of their stark over-representation in the child protection system. The *Let us Learn* inquiry reiterated issues of longstanding concern to VLA's child protection lawyers, including:

- **Placement instability:** where children living in out-of-home-care (OOHC) are moved frequently, disrupting their social and emotional connections; and
- **Very high levels of educational disengagement for children living in residential care** (a type of OOHC placement where a child lives in a unit with up to three other children and support workers).

As highlighted in our submission on systemic injustice in child protection and noted in the *Yoorrook for Justice* report,⁵¹ due to legislative changes known as 'the permanency amendments' there has been an increase in First Nations children on Care By Secretary Orders (CBSO) granting sole parental responsibility to DFFH⁵² without court oversight of placement or care decisions. Our lawyers see that children on CBSOs are moved between placements at worryingly high rates, which has detrimental impacts on their sense of stability and security, contributing to reducing school attendance. Our practice experience and publicly available research suggests that children who have experienced a higher number of placements are also more likely to have involvement with the youth justice system.⁵³ The *Let us Learn* inquiry adds to our concerns about short placements and the efficacy of the residential care system, which has also been strongly linked to criminalisation of children in care.

Among transformational changes to the child protection system, we have previously recommended reforms to the law to allow for more flexible orders which would grant more court oversight including where children will be placed and flexible contact conditions to ensure cultural and familial connections can be kept intact. We also recommend changes to DFFH's review procedures so that people can seek changes to their case plans (which have taken on a greater significance for children

⁵⁰ The report found children and young people in out-of-home care experience substantially higher rates of disengagement from school compared to the general student population. In 2022, the attendance rate for students in care in secondary school was eight per cent lower and their chronic absence rate was 17 per cent higher. Further, substantially fewer students in care progressed to year 12 compared to other students. In 2022, the apparent retention rate of students in care progressing to year 12 was only 25 per cent, compared to 82 per cent of students in the general population. Finding 4, p37, <https://ccyp.vic.gov.au/assets/Publications-inquiries/let-us-learn/CCYP-Education-inquiry-report-FINAL.pdf>

⁵¹ *Yoorrook for Justice*, p222, <https://www.parliament.vic.gov.au/4a7cfa/globalassets/tables-paper-documents/tables-paper-7455/yoorrook-for-justice-report-into-victorias-child-protection-and-criminal-justice-systems.pdf>.

⁵² Both VLA's practice experience and publicly available data shows that First Nations children are over-represented on CBSOs. See Victoria Legal Aid (2020) *Achieving Safe and Certain Homes for Children: Recommendations to Improve the Permanency Amendments*; Victoria Legal Aid (2022) *Submission to the Yoorrook Justice Commission and Commission for Children and Young People (2019) In Our Own Words: Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system*, 91.

⁵³ Sentencing Advisory Council (2019) 'Crossover Kids': Vulnerable Children in the Youth Justice System, Report 1: Children who are known to Child Protection among Sentenced and Diverted Children in the Victorian Children's Court, 69 – 72: The Sentencing Advisory Council found that approximately one in two children who have involvement with youth justice have experienced five or more placements.

on CBSOs and include where children are placed and attend school). These procedures should be supported by active provision of information in age-appropriate language to children about how to request a change to their case plan instead of expecting children to find and understand processes in the Child Protection Manual or on the DFFH website.

Finally, we urge that an ongoing independent oversight of residential care be enabled through the CCYP's new functions.⁵⁴

Amending the *Worker Screening Act 2020 (Vic)* to remove a key barrier to completing tertiary education

We also see the barriers the *Worker Screening Act* can place on First Nations tertiary students and apprentices in being able to complete the practical placement component of their course, and the subsequent barriers to employment this creates.

Many degrees and certificates that include a practical placement component will require a Working With Children Check in order for the student to complete a placement (and hence their course), even where the student does not intend to work in a role that would meet the definition of 'child-related work' under the *Worker Screening Act* and where their placement itself does not involve working with children in any way.

For overpoliced First Nations communities, these types of requirements reinforce the impact of that over-policing, and unnecessarily limit professional work opportunities. While the *Worker Screening Act* regime plays a valuable protective role, we consider it is not necessary if a person is seeking training to work in roles that do not involve children and entrenches First Nations disadvantage by increasing barriers to employment.

We would support the *Worker Screening Act* to be amended to make clear that a Working With Children Check is not required to complete a practical placement that does not involve direct contact with children.

⁵⁴ See: *Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Bill 2023 (Vic)*, Division 3.

Annexure 1: About Victoria Legal Aid

Who are we?

Victoria Legal Aid (**VLA**) is a statutory authority established under the *Legal Aid Act 1978 (Vic)*. We are responsible for providing non-legal advocacy, information, advice, and assistance in response to a broad range of legal problems. We provide statewide assistance to people every day and night in courts and tribunals in Victoria across both federal and state jurisdictions. VLA is funded by both state and federal governments. As a statutory agency, we are part of government.

What do we do?

We assist people with legal problems in a range of areas including mental health, discrimination, disability, tenancy, fines, social security, immigration, guardianship and administration, debt, assistance for victims of crime, criminal law, family breakdown, child protection and family violence. We do this through our specialist legal teams and allied professionals, working with our legal assistance sector partners in the private profession, community legal centres, and Aboriginal community-controlled organisations.

In 2022-23, VLA assisted 86,321 unique clients, provided 78,751 in-house duty lawyer services, and responded to 138,969 requests for assistance through Legal Help. During the same period, VLA assisted 6,783 First Nations clients.

Why do we do it?

In line with our values – fairness, care, courage and inclusion – VLA provides services and coordinates the provision of non-legal and legal information to improve access to justice, and to support people to develop stronger legal capability and have a voice in the legal problems they face.

We also pursue systemic change to address injustices by advocating to reform laws and systems to improve equality for clients and the community. The *Legal Aid Act* requires us to pursue innovative means of providing legal aid to reduce the need for individual legal services.

We seek to intervene early to improve access to justice for First Nations clients and consumers, and to prevent adverse social and economic outcomes for clients, consumers and communities.

Our clients

Who our clients are



These figures do not include clients seen by a private practitioner or who accessed information services.

* Examples include children and young people, people experiencing homelessness, people in custody and immigration detention, and psychiatric patients.

** Based on the Australian Bureau of Statistics definition of people from culturally and linguistically diverse backgrounds. Includes people who speak a language other than English at home and people who were born in a non-English speaking country.

Annexure 2: List of past submissions

VLA has previously made detailed recommendations to address the systemic injustice we see in relation to health and healthcare, including disability, mental health and wellbeing, housing and homelessness, and education in the following reports.

Mental health reform

- Rights, respect and recovery: The future of mental health assessment and treatment in Victoria (2023)⁵⁵
- Act for change: A Mental Health and Wellbeing Act that realises the vision for change (2021)⁵⁶
- Mine to share: Submission to the health information sharing legislative reform consultation (2020)⁵⁷
- Your story, your say: Consumers' priority issues and solutions for the Royal Commission into Victoria's Mental Health System (2020)⁵⁸
- Intersections between mental health and the legal system and the impacts for people and communities (2019)⁵⁹
- Roads to recovery: Building a better system for people experiencing mental health issues in Victoria: submission to the Royal Commission into Victoria's Mental Health System (2019)⁶⁰

Disability reform, including intersecting education reform

- Submission in response to the Exposure Draft: Disability Inclusion Bill (2022)⁶¹
- Lead the Way: A Victorian Disability Act that promotes inclusion and equality. Submission to the Victorian Disability Act Review (October 2021)⁶²
- National Legal Aid submission to Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2022)⁶³

⁵⁵ Rights, respect and recovery: The future of mental health assessment and treatment in Victoria (2023). Available at <https://library.vla.vic.gov.au/#record/65133>.

⁵⁶ Act for change: A Mental Health and Wellbeing Act that realises the vision for change. Submission (2021). Available at <https://library.vla.vic.gov.au/#record/60291>.

⁵⁷ Mine to share: Submission to the health information sharing legislative reform consultation (2020). Available at <https://library.vla.vic.gov.au/#record/58253>.

⁵⁸ Your story, your say : Consumers' priority issues and solutions for the Royal Commission into Victoria's Mental Health System (2020). Available at <https://library.vla.vic.gov.au/#record/57695>.

⁵⁹ Intersections between mental health and the legal system and the impacts for people and communities : Submission to the Productivity Commission's Inquiry into the Economic Impact of Mental Ill-Health (2019). Available at <https://library.vla.vic.gov.au/#record/53008>.

⁶⁰ Roads to recovery : Building a better system for people experiencing mental health issues in Victoria : submission to the Royal Commission into Victoria's Mental Health System (2019). Available at <https://library.vla.vic.gov.au/#record/53354>

⁶¹ Submission in response to the Exposure Draft: Disability Inclusion Bill (2022). Available at <https://library.vla.vic.gov.au/#record/63180>.

⁶² Lead the Way: A Victorian Disability Act that promotes inclusion and equality. Submission to the Victorian Disability Act Review (October 2021). Available at <https://library.vla.vic.gov.au/#record/60840>.

⁶³ National Legal Aid submission to Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2022). Available at <https://library.vla.vic.gov.au/firstrms/fullRecord.jsp?recnoListAttr=recnoList&recno=63334>.

- Addressing discrimination to prevent violence, abuse, neglect and exploitation: Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2020)⁶⁴

Criminal justice and child protection reform

- Submission to independent cultural review of the adult custodial corrections system (2022)⁶⁵
- Our youth, our way - Inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system (2021)⁶⁶
- Submission to the Inquiry into the Use of Cannabis in Victoria (2020)⁶⁷
- Child Information Sharing Scheme Ministerial Guidelines: Submission to the Department of Health and Human Services and Department of Education and Training (2018)⁶⁸
- People living with an acquired brain injury using their experiences of the criminal justice system to achieve systemic change (2016)⁶⁹

Housing reform

- Joint legal assistance sector response to the Interim Report of the Social Housing Regulation Review (2022)⁷⁰
- It starts with a home: Making evictions the option of last resort in Victoria. Submission to the Social Housing Regulation Review (2021)⁷¹
- Submission to the Victorian Homelessness Inquiry (2020)⁷²
- Victorian Ombudsman investigation into the treatment of public housing tenants in lockdown: coordinated legal assistance in response to emergencies (2020)⁷³

⁶⁴ Addressing discrimination to prevent violence, abuse, neglect and exploitation: Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2020). Available at <https://library.vla.vic.gov.au/firsttrms/fullRecord.jsp?recnoListAttr=recnoList&recno=57061>.

⁶⁵ Submission to independent cultural review of the adult custodial corrections system (2022). Available at <https://library.vla.vic.gov.au/#record/61181>.

⁶⁶ Our youth. our way - Inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system (2021). Available at <https://library.vla.vic.gov.au/#record/60598>.

⁶⁷ Submission to the Inquiry into the Use of Cannabis in Victoria (2020). Available at <https://library.vla.vic.gov.au/#record/57744>.

⁶⁸ Child Information Sharing Scheme Ministerial Guidelines: Submission to the Department of Health and Human Services and Department of Education and Training (2018). Available at <https://library.vla.vic.gov.au/firsttrms/fullRecord.jsp?recnoListAttr=recnoList&recno=49733>.

⁶⁹ VLA Submission: People living with an acquired brain injury using their experiences of the criminal justice system to achieve systemic change (2016). Available at <https://library.vla.vic.gov.au/#record/46499>.

⁷⁰ Joint legal assistance sector response to the Interim Report of the Social Housing Regulation Review (2022). Available at <https://library.vla.vic.gov.au/firsttrms/fullRecord.jsp?recnoListAttr=recnoList&recno=61659>

⁷¹ It starts with a home: Making evictions the option of last resort in Victoria. Submission to the Social Housing Regulation Review (2021). Available at <https://library.vla.vic.gov.au/firsttrms/fullRecord.jsp?recnoListAttr=recnoList&recno=60656>.

⁷² Submission to the Victorian Homelessness Inquiry (2020). Available at [vla-submission-it-starts-in-the-home-march-2020.docx \(live.com\)](https://library.vla.vic.gov.au/firsttrms/fullRecord.jsp?recnoListAttr=recnoList&recno=59143).

⁷³ Victorian Ombudsman investigation into the treatment of public housing tenants in lockdown: coordinated legal assistance in response to emergencies (2020). Available at <https://library.vla.vic.gov.au/firsttrms/fullRecord.jsp?recnoListAttr=recnoList&recno=59143>