



Victorian Aboriginal Legal Service nuther-mooyoop to
the Yoorrook Commission in response to educational
inequalities

February 2024



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Background to the Victorian Aboriginal Legal Service

The Victorian Aboriginal Legal Service (VALS) is an Aboriginal Community Controlled Organisation (ACCO) with 50 years of experience providing culturally safe legal and community justice services to our people across Victoria.



In 2023, we're proud to launch the official logo of our 50th anniversary, 'Koori Woman of Justice'.

The artwork was designed by the deadly Natasha Corrigan, a Walabhul, Bundjalung, Dungidau/Dala and Jinibara artist born and living on Wurundjeri land.

In Natasha's words, the design is a representation of VALS' work over the past 50 years towards the Victorian Aboriginal Communities.

The colours used are a depiction of our Aboriginal flag. Aboriginal symbolisms are used to showcase the journeys made by community members and VALS

representatives, these symbols tell the story of our journey from one place to another or symbolically from one situation to another. They represent each person, family and organisation that has been and continue to be supported by VALS.

Legal Services


Our legal practice serves Aboriginal people of all ages and genders. Our 24-hour criminal law service is backed up by the strong community-based role of our Client Service Officers (**CSOs**). CSOs help our clients navigate the legal system and connect them with the support services they need.

Our **Criminal Law Practice** provides legal assistance and representation for Aboriginal people involved in court proceedings. This includes bail applications; representation for legal defence; and assisting clients with pleading to charges and sentencing. We aim to understand the underlying reasons that have led to the offending behaviour and ensure this informs the best outcome for our clients.

Our **Civil and Human Rights Practice** supports clients with consumer issues, infringements, tenancy issues, coronial matters, discrimination issues, working with children checks, employment matters and Personal Safety Intervention Orders.

Our **Aboriginal Families Practice** provides legal advice and representation to clients in family law and child protection matters. We aim to ensure that families can remain together and children are kept safe. We are consistent advocates for compliance with the Aboriginal Child Placement Principle in situations where children are removed from their parents' care.

Our **Wirraway Police and Prison Accountability Practice** supports clients with civil litigation matters against government authorities. This includes for claims involving excessive force or unlawful detention, police complaints, and coronial inquests (including deaths in custody).



Balit Ngulu is our dedicated legal practice for Aboriginal children providing support in criminal matters. Balit Ngulu is designed to be trauma informed and provide holistic support for our clients.

Community Justice Programs

Our Community Justice Programs (**CJP**) team is staffed by Aboriginal and Torres Strait Islander people who provide culturally safe services to our clients and community.

This includes the Custody Notification System, Community Legal Education, Victoria Police Electronic Referral System (**V-PeR**), Regional Client Service Officers and the Baggarook Women's Transitional Housing program.

Policy, Research and Advocacy

VALS informs and drives system change initiatives to improve justice outcomes for Aboriginal people in Victoria. VALS works closely with fellow members of the Aboriginal Justice Caucus and ACCOs in Victoria, as well as other key stakeholders within the justice and human rights sectors.

Acknowledgement

VALS pays our deepest respect to traditional owners across Victoria, in particular, to all Elders past, present and emerging. We also acknowledge all Aboriginal and Torres Strait Islander people in Victoria and pay respect to the knowledge, cultures and continued history of all Aboriginal and Torres Strait Islander Nations.

We pay our respects to all Aboriginal and Torres Strait Islander Elders who have maintained the struggle to achieve justice.

Across Australia, we live on unceded land. Sovereignty has never been ceded. It always was and always will be, Aboriginal land.

Contributors

Thanks to the following staff members who collaborated to prepare this submission:

- Tasmin Sandford-Evans, Policy, Research & Data Officer
- Emily Chauvel, Deputy Head, Policy Communications and Strategy Team
- Patrick Cook, Head, Policy Communications and Strategy Team
- Alex Walters, Principal Managing Lawyer, Civil and Human Rights Team
- Shiobhan Doyle, Managing Lawyer, Civil and Human Rights Team
- Grace Bushgens, Principal Managing Lawyer, Criminal Law
- Negar Panahi, Principal Managing Lawyer, Balit Ngulu



Note on Language

Throughout this document, we use the word 'Aboriginal' to refer to Aboriginal and/or Torres Strait Islander people, communities and organisations. VALS acknowledges that there are many Aboriginal people in Victoria who have Torres Strait Islander heritage, and many Torres Strait Islander people who now call Victoria home.

EXECUTIVE SUMMARY

Knowledge and the transmission of knowledge are key foundations of Aboriginal and Torres Strait Islander culture, and a key reason that our people maintain the oldest, continuous cultures on earth.

Education is a cornerstone for a fulfilled and informed life. For too long western Eurocentric understandings of knowledge and education have privileged their own understandings and world views over others, this includes the longest continuing cultures in the world, Aboriginal and Torres Strait Islander peoples.

The Yoorrook Justice Commission, and in turn treaty negotiations, have an opportunity to reframe our understanding of what a self-determined education system that celebrates and recognises Aboriginal ways of knowing, being and doing. To do this we must recognise the historic and contemporary injustices faced by Aboriginal children, young people and adults in the education system. Invasion brought a violent, depraved and dehumanising dispossession of Aboriginal peoples from their Country, where they were denied the ability to speak in their language, practice their traditional customs and observe cultural protocols.

Aboriginal knowledge is encoded in stories, songs, art, land, sea and sky.¹ There is an epistemological contrast between colonial knowledge, which is segmented and prioritises objectivity and universality, and Aboriginal traditional knowledge, which is integrated, relational and localised.² The privileging of their own knowledge system was part of how colonisers dehumanised Aboriginal people and justified the theft of Aboriginal land and genocide of Aboriginal people.

Article 5 of the UNESCO Universal Declaration on Cultural Diversity states that “all persons are entitled to quality education and training that fully respect their cultural identity” and highlights the importance of traditional languages.³ Dr Janine Gertz states in her PhD that sovereignty over language revitalisation programs is essential because “Language plays a pivotal role in demonstrating cultural and political difference and therefore cultural self-determination.”⁴ In this way, we can understand that it is not education itself that is important, but self-determined education that is vital to empowering our people and strengthening our communities. Our people have been funnelled through various models of colonial education for 236 years and it has failed to deliver for us because it is not designed to empower or strengthen us.

We need this formal truth telling process to make a change, as Dr Eddie Cubillo, a descendent of the Larrakia, Wadjigan and Central Arrente people, and Director, Indigenous Law and Justice Hub at the University of Melbourne Law School, provided in his evidence to Yoorrook and discussed the “toll of successive inquires with no response”, and questioned whether it was just a “deliberate strategy of distraction”.⁵ This must not be, as Mr Cubillo states, another example of the Government acting as


¹ Aboriginal Heritage Council, [Traditional knowledge](#)

² Fulvio Mazzocchi, [Why “Integrating” Western Science and Indigenous Knowledge Is Not an Easy Task: What Lessons Could Be Learned for the Future of Knowledge?](#) And Professor Martin Nakata, [The Cultural Interface](#).

³ UNESCO, [Universal Declaration on Cultural Diversity](#)

⁴ Janine Gertz, [Gugu Badhun sovereignty, self-determination, and nationhood](#).

⁵ Yoorrook Justice Commission, [Witness Outline – Eddie Cubillo](#)



though “the inquiry itself is the action addressing these systemic issues, rather than a preliminary exercise to inform evidence-based action.”⁶

VALS welcomed the recommendations for the Yoorrook Justice Report that was released in August 2023, and we support the calls for transformative change including the transfer of decision-making power, authority, control and resources to First Peoples in the child protection and criminal legal systems. At the time of writing, the Victorian government had not formally responded to the report, and there is no clear indication of when this can be expected. We hope this lack of transparency and accountability does not inform how this critical truth telling process can shape Victoria’s future for the better.

VALS’s nuther-mooyoop on education looks at the systemic barriers that Aboriginal children, young people and adults face in achieving educational success, alongside highlighting areas of promising practice and solutions.

Due to the limited timeframe provided to respond to this issue paper, we have not had capacity to seek new case stories from clients. Our Lotjpa team, which is funded by Yoorrook to provide independent legal advice to community members, will continue to assist community members who wish to tell their story to Yoorrook. We continue to call on the government to extend the timeframe of the Commission, so this truth telling process can be undertaken in a culturally safe and informed manner, and gives adequate space for community members and ACCOs to provide a response on critical systemic issues impacting Aboriginal peoples in Victoria.

⁶ Yoorrook Justice Commission, [Witness Outline – Eddie Cubillo](#)

SUMMARY OF RECOMMENDATIONS

Recommendation 1 The right of Aboriginal peoples to self-determination must be enshrined in relevant legislation, including the Victorian Charter of Rights and Responsibilities, the new Youth Justice Bill 2024, the Sentencing Act 1991, the Corrections Act 1968 and the Bail Act 1977.

Recommendation 2 The right of Aboriginal peoples to establish and control their educational systems and institutions, free from discriminations that is aligned to their cultural practices and protocols and in their own languages should be included in the Victorian Charter of Rights and Responsibilities, as per Article 14 of UNDRIP.

Recommendation 3 The Victorian Government should commit more resources and funding to meet its obligations under the National Agreement on Closing the Gap and Victoria's Marrung Education Strategy.

Recommendation 4 The Yoorrook Justice Commission should request VSIIDR data as it relates to Aboriginal children and young people's engagement with the education system, collated against integrated data sets on justice, health and human services.

Recommendation 5 Victorian government departments, including the Department of Education and Training, must develop data access and sharing agreements with and for ACCOs and Traditional Owners in their sector, as provided for under the Victorian Closing the Gap Implementation Plan.


Recommendation 6 As per the Productivity Commission's Closing the Gap Review Report, the Victorian Government should appropriately fund and resources Aboriginal Community Controlled Organisations and other relevant bodies to strengthen the technical capability of ACCOs and invest in Indigenous data infrastructure.

Recommendation 7 In accordance with IDS and IDG, government departments and entities – including the Department of Education and Training, Department of Families Fairness and Housing and DJCS, should enter into data access and data sharing agreements with ACCOs (including VALS) to ensure governance, choice and control over data about Aboriginal communities.

Recommendation 8 The Yoorrook Justice Commission should request evidence for the Department of Education regarding the educational experience of Aboriginal children and young people including numbers of Aboriginal students who; have Individual Learning Plans that are completed and being adhered to, are on behavioural plans, are on Flexible Learning Options, who have made a complaint about racial discrimination, who have been expelled or suspended, who have been diagnosed with learning difficulties and/or disability and/or mental health issues, are living in out-of-home care, and have been involved in the youth justice system.

Recommendation 9 As per the Productivity Commission's Closing the Gap Review Report, the Victorian Government should appropriately fund and resources Aboriginal Community Controlled Organisations and other relevant bodies to strengthen the technical capability of ACCOs and invest in Indigenous data infrastructure.

Recommendation 10 The use of solitary confinement in juvenile detention profoundly impacts educational outcomes for detainees. To prevent its use, the government must urgently commence



robust, transparent and inclusive consultations with the Victorian Aboriginal Community on the implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in a culturally appropriate way.

Recommendation 11 As part of the Treaty process, an Aboriginal led public accounts and estimates committee be established so that Ministers and Victorian Government departments and agencies are held to account on the implementation and adherence to all current agreements including Marrung: Aboriginal Education Plan 2016-2026, the Victorian Aboriginal Affairs Framework and the National Agreement on Closing the Gap.

Recommendation 12 Sustained funding to develop and deliver anti-racist training and resources that speaks to the experiences of Aboriginal peoples in Victoria regarding racial discrimination should be allocated to VEOHRC, in partnership with ACCOs and CALD community representative bodies. This training would be for duty holders under the Equal Opportunity Act and the Victorian Charter of Human Rights and Responsibilities, with resources and training modules made available online. The training should include information about obligations of duty holders, alongside best practice approaches to preventing racism before it happens. These resources must be culturally safe and trauma informed so it empowers community to know their rights and take action against discrimination.

Recommendation 13 For the *Equal Opportunity Act 2010* (EO) to be amended to reinstate and strengthen VEOHRC's powers to undertake inquiries, investigate serious matters that contravene the EO Act, with powers to compel and seek enforceable undertakings to issue compliance notices.


Recommendation 14 All Aboriginal children and young people involved in youth justice should be able to access culturally safe, quality and consistent education, and their transition to mainstream education must be supported.

Recommendation 15 Ensure that the Department of Education (DE) and the Department of Justice and Community Safety monitor and report on the transitions of Aboriginal children and young people from Secure Care and Youth Justice settings returning to mainstream education settings.

Recommendation 16 Children in isolation should be provided supports and services (including mental health services and cultural supports and services provided by ACCOs), and means by which to contact family, lawyers, independent oversight bodies, and ACCOs.

Recommendation 17 For Aboriginal children and young people to have access to culturally safe, consistent and quality education within the youth justice system.

Recommendation 18 To better support the safety, wellbeing and education attainment of Aboriginal children living in out-of-home care the Department of Families, Fairness and Housing to ensure equitable financial support for kinship and foster carers, including access to additional supports by strengthening the care allowance assessment and payment process, alongside increasing the baseline payment to be in line with cost of living. This process should involve conducting thorough and timely assessments to guarantee that both kinship and foster carers receive fair and equitable financial support.



Recommendation 19 For the Out-Of-Home-Care Education Commitment to be reviewed and to ensure that adequate educational supports are available for Aboriginal students in OOHC, ensuring they have access to assessment and specialist supports necessary, tailored to the individual learning needs of these students.

Recommendation 20 As detailed in recommendation 7, an Aboriginal led public accounts and estimates committee should be established. This committee should have oversight of the Marrung: Aboriginal Education Plan 2016-2026, and other agreements including VAAF and the Victorian Implementation Plan for Closing the Gap to ensure they are delivered to their full effect. This committee should have powers and mechanisms to address delays and inadequate development of essential educational plans, including Individual Education Plans.

Recommendation 21 The Government should adopt measures to increase awareness of racism, including reforms to the primary, secondary and tertiary education systems and public awareness campaigns.

Recommendation 22 For the Department of Education to mandate all schools report on actions taken to address racism and for this reporting to be incorporated into Marrung and the Victorian Aboriginal Affairs Framework.

Recommendation 23 For Victoria Police to cease the inappropriate use of PSIVOs as a behaviour management tool for Aboriginal children in schools immediately.

Recommendation 24 For the Department of Education to fund the development of an Aboriginal-led Restorative Practices model in education that includes resources and training for schools that is culturally safe, leveraging of.


Recommendation 25 For the Department of Education to develop alternative disciplinary measures that prioritise restorative models, counselling, and support over punitive actions like suspensions and expulsions.

Recommendation 26 For an independent, Aboriginal led external review the Department of Education be funded to look at the use of disciplinary actions including suspensions and expulsions of Aboriginal students.

Recommendation 27 Victoria Police must not institute any new police-in-schools program.

Recommendation 28 For the Department of Education to fund an independent review of the FLO guidelines and implementation to ensure alignment with the intended short-term nature of the program and establish clear criteria for determining when a student's needs cannot be met in mainstream schools.

Recommendation 29 For the Department of Education to fund an Aboriginal-led longitudinal study to look at the educational pathways of Aboriginal students, including movements between mainstream educational settings and FLOs, implementation and adherence to Individual Learning Plans, use of suspension and expulsion and other behavioural management tools, experiences of racism and overall educational attainment.



Recommendation 30 For the Department of Education to fund an independent evaluation of the school community safety order scheme, making the evaluation findings publicly available for transparency and accountability.

Recommendation 31 For the Department of Education to develop and implement, in partnerships with ACCOs and Disability Advocacy bodies, training and resources for educators to address biases related to race and disability and establish guidelines for how to provide education and support inclusively for all students to they have access to and engage with high quality, culturally safe and inclusive education.

Recommendation 32 For the Department of Education to work collaboratively with the Department of Health and the Department of Families, Fairness and Housing to ensure that all children have access to timely and culturally safe specialist assessments to support their access to equitable, inclusive and culturally safe education.

Recommendation 33 For the Department of Education to fund an Aboriginal LOOKOUT Program to support young people in out-of-home-care to access and engage with kindergarten and school.

Recommendation 34 For Victorian tertiary institutions to commit to integrating mandatory subjects around Aboriginal history, culture, and their intersections with relevant studies into academic curricula across areas of law, health, social work, education and political science.

Recommendation 35 For Victorian tertiary institutions to commit to eliminating systemic racism and discrimination by implementing anti-racist policies, fostering diverse and inclusive campus environments, and providing support for Aboriginal students and staff.

Recommendation 36 For the Victorian Government to commit to funding the expansion of Aboriginal-led Early Education Centres across the state.

Recommendation 37 Foster culturally responsive learning environments that recognise and respect diverse learning styles, implementing trauma-informed practices to address the effects of intergenerational trauma to create safe and supportive spaces for Aboriginal students.

Recommendation 38 Develop youth-relevant cultural understanding and safety content to further support progress towards culturally safe schools, ensuring that the Department of Education takes proactive steps in creating valuable resources for the youth.

Recommendation 39 For the Department of Education to work closely with ACCOs, particularly VAEAI and Aboriginal led early years centres, to develop Aboriginal educational resources for schooling, from early years to tertiary, including the teaching of traditional languages.

Recommendation 40 Within the context of state-wide treaty, for the First Peoples Assembly of Victoria, alongside ACCOs, to scope what a self-determined model of education should look like for Aboriginal students from early years through to tertiary.

Recommendation 41 For Yoorrook to consider mechanisms such as incentivisation of particular studies, including law, education, health, and social work to support the growth of an Aboriginal workforce.



Recommendation 42 Support the development of an Aboriginal history and law unit to be incorporated into the core curriculum (Priestly 11) of law degrees, collaborating with educational institutions to ensure that future legal professionals receive comprehensive education on Aboriginal cultural issues, contributing to a more culturally aware legal community.

DETAILED SUBMISSIONS

Introduction

VALS welcomes the opportunity to make a nuther-mooyoop to the Yoorrook Justice Commission in response to the schooling and tertiary education issues papers relating to injustices experienced by Aboriginal peoples in the education system. Our submission will also incorporate experiences of educational injustice in early years education.

Our nuther-mooyoop explores the intersecting factors that influence the engagement of Aboriginal children and young people with the education system. It encompasses Child Protection, Youth Justice, and disability, recognising the intersecting factors that can impact and contribute to the educational outcomes and attainment of Aboriginal children and young people.

In alignment with Yoorrook's inclusive approach, our nuther-mooyoop identifies challenges that have been informed by our legal team's experience supporting Aboriginal children and young people, but also puts forth practical solutions, shedding light on areas of promising practice. We offer solutions and promising practice to enable a more equitable and culturally inclusive education system. Specifically, our nuther-mooyoop aligns with Yoorrook's call for examples of good practice, innovative approaches, and successful models that could enhance the educational experiences of Aboriginal students. Our nuther-mooyoop addresses Yoorrook's invitation for proposals outlining systemic changes essential to rectify educational injustices within the school system and to establish robust State and school accountability, preventing the persistence or recurrence of such injustices.

Our nuther-mooyoop is based on nearly 50 years of expertise delivering culturally safe legal services for Aboriginal people in Victoria and advocating for change within a system marked by marginalisation, inequality, and racism. Since invasion, Aboriginal leaders and communities have resiliently opposed this injustice, a commitment that persists today. Yoorrook must unveil the truth about historic and contemporary educational disparities and their enduring consequences for Aboriginal individuals, families, and communities.

Yoorrook presents an opportunity for new levels of transparency about the education system and Aboriginal children and young people's experience and education attainment. This is influenced by competing factors including poverty, engagement with child protection and youth justice systems, disability and family violence. Our response presents an opportunity to elevate and recognise the work and voices of Aboriginal people with lived experience, leaders and activists, who have been fighting for justice for decades. Yoorrook has acknowledged the need to build on this incredible work, and VALS reiterates this call.

Truth telling and Treaty also present an opportunity to break away from the ongoing denial of Aboriginal self-determination and make concrete progress towards a self-determined, and self-governed system for Aboriginal peoples, including their engagement with education. To be free of racism and inequality that defines education for young people, we need to reimagine and rebuild the

system in a way that is decided by Aboriginal communities, for Aboriginal communities, because, as VALS CEO Nerita Waight advocates, “so our children can get the education they deserve”⁷.

A crucial emphasis in addressing systemic issues within the educational system and rectifying injustices lies in the pursuit of cultural safety. Our nuther-mooyoop highlights key areas where the current educational framework fails to ensure cultural safety for Aboriginal children and young people. Through the provision of concrete examples, we underscore the urgency of addressing these deficiencies. By prioritising cultural safety in education, we aim to institute systemic changes that foster an inclusive and equitable learning environment for all, particularly addressing and rectifying the longstanding injustices faced by Aboriginal peoples within the education system.

In combining these elements, the submission seeks to contribute practical insights and recommendations to the Yoorrook Justice Commission, fostering a clearer understanding of the intricate issues surrounding educational injustice in the Victorian early years, schooling and education system for Aboriginal people.

Historical Overview

The Bringing Them Home Report detailed the horrors of forced removal policies that resulted in the Stolen Generations⁸. In relation to the intersection with educational attainment, this inquiry found what limited education was provided, was aimed at children achieving a standard akin to a ten-year-old child, with a focus on domestic labour (cooking, cleaning) and manual labour effectively training them for a life of servitude and cheap labour⁹.

As evidenced in the Bringing Them Home Report,

I don't know who decided to educate the Aboriginal people but the standard was low in these mission areas. I started school at the age of eight at grade 1, no pre-school. I attended school for six years, the sixth year we attended grade 4, then after that we left school, probably 14 years old.¹⁰

and

... as I stood with my father beside my grade 8 teacher, he told her of my ambitions to study medicine, and she responded that I didn't have the brains to go on to high school... notwithstanding that I had always had an above average academic record through school.¹¹

⁷ VALS, Invasion Day Webinar: Treaty, 25 January 2024.

⁸ Australian Human Rights Commission, [Bringing Them Home, National Inquiry into the Separation of Aboriginal And Torres Strait Islander Children from Their Families](#) (1997), p. 50.

⁹ Ibid. p. 24.

¹⁰ Ibid. p. 148.

¹¹ Ibid p. 149.

These assimilationists and genocidal¹² policies and practices caused immeasurable and ongoing harm, suffering and trauma. This approach was not unique to Australia, with similar experiences for First Nation, Metis, and Inuit people in Residential Schools across Canada, which was found to be a mechanism for cultural genocide by the Truth and Reconciliation Commission¹³. In the decades following the Bringing Them Home Report, we have seen various iterations of strategies aimed at improving educational outcomes and attainment for Aboriginal children and young people. This includes 'Closing the Gap' which was initially launched as a campaign in 2007 and was then committed to by the Council of Australian Governments (COAG) in 2008, as part of a National Indigenous Reform Agreement between the Commonwealth, state, territory and local governments committing to work together to address the disadvantage experienced by Aboriginal peoples.¹⁴

This commitment is juxtaposed against other government decision making, including when former Premier Jeff Kennett announced that 55 Victorian schools were going to be closed in November 1992¹⁵. These school closures included Northland Secondary College (**Northlands**) which had a strong cohort of Aboriginal students attending, alongside Aboriginal aides, and extracurricular activities including an Aboriginal dance group, theatre productions and a music program. In the words of Alister Thorpe, a proud Gunai, Yorta Yorta, Gunditjmara and Wurundjeri Woi Wurrung man, who was in year seven at the Northlands at the time, and is now a Metropolitan member of the First Peoples' Assembly of Victoria and the Coordinator of the Indigenous Health Specialisation for the Master of Public Health at the University of Melbourne, the school "seemed to be thriving" at the time and that he was able to go to a school that encouraged Aboriginal students to "embrace their Aboriginality".¹⁶ After the school was closed, a number of students, teachers and parents campaigned and protested against the decision, including Aboriginal activist Dr Gary Foley, a proud Gumbainggir man, and Professor of the Moondani Balluk Indigenous Academic Unit at Victoria University. Dr Foley's son also attended Northlands too. They took a case to the Equal Opportunity Board and the Supreme Court alleging racial discrimination against the high proportion of Aboriginal kids at the school.

Irene Moss, the then Race Discrimination Commissioner wrote in a letter to premier Kennett,

It is worth noting that the Royal Commission [into Aboriginal Deaths in Custody] specifically acknowledged the important inroads being made by the very school which you [Premier Jeff Kennett] are planning to close... I am advised that in recent years the school has gained national reputation for its achievements in furthering the education aspirations of Aboriginal People and has become a source of pride amongst the Aboriginal community and amongst the local non-Aboriginal community. In the face of the continual documentation of the problems faced by Aboriginal People, it is important that the progress that is made and the positive achievements be recognized and supported.¹⁷

¹² Ibid.

¹³ Truth and Reconciliation Commission of Canada, [Honouring the Truth, Reconciling for the Future](#) (2015) , p. 3.

¹⁴ Australian Government, [Closing the Gap Report 2020](#) (2020), p. 6. Australian Government, [Closing the Gap 2008-2018 Introduction](#); NIAA, [Closing the Gap Report 2020](#), Overview.

¹⁵ Carolyn Webb, [Cabaret tells how loved Melbourne school was saved from Kennett closures](#), (The Age, April 24, 2021).

¹⁶ Ibid.

¹⁷ Koorie Web, ['Northlands', Letter from Irene Moss, Race Discrimination Commissioner to Premier Jeff Kennett](#), 2/12/1992.

The government fought against the findings of the Equal Opportunity Board and took the case to the Supreme Court, but their closure of the school was eventually found to be discriminatory, and eventually resulted in the school reopening in 1995.¹⁸

Oversight Mechanisms, Rights Protections and Overarching Agreements

The right to education, is a universal right as stipulated in Article 13, of the International Covenant on Economic, Social and Cultural Rights (**ICESCR**). Article 14 of the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**) clearly stipulates that Indigenous peoples globally have the right to establish and control their educational systems and institutions, free from discriminations that is aligned to their cultural practices and protocols and in their own languages.¹⁹

Currently there is no right to education stipulated in the *Charter of Rights and Responsibilities Act 2006* (Vic) (**The Charter**). This omission, alongside the need to include the right to Aboriginal self-determination in the Charter for which VALS has raised in all its previous nuther-mooyoop's to the Commission, must be addressed immediately. This right must be legislated in the Charter.

The State of Victoria also has a responsibility to provide “inclusive educational environments where students are treated with respect and dignity regardless of their attributes”.²⁰ The *Equal Opportunity Act 2010* (Vic)²¹ applies a positive duty to applicable organisations and the public sector to eliminate discrimination, sexual harassment and victimisation as much as possible. The *Racial Discrimination Act 1975* (Cth)²² protects against racial discrimination in many areas on public life, including education, alongside others.

The Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**OPCAT**) serves as an additional layer of protection, ensuring that educational environments in places of detention remain free from any form of mistreatment.²³ Despite this, the Victorian Government has missed the deadline to meet Australia's obligations to the United Nations anti-torture protocol, OPCAT. This delay undermines the effective protection of the rights and well-being of Aboriginal children and young people in the educational context of youth justice within Victoria. The use of solitary confinement, and in turn restrictions on their access to education poses significant threats to their safeguarding. Addressing this gap is crucial for upholding the principles of human rights and ensuring that educational environments are not only culturally sensitive but also free from any forms of mistreatment or harm.

¹⁸ Northland Secondary College, '[Northlands](#)', [Letter from Irene Moss, Race Discrimination Commissioner to Premier Jeff Kennett](#), (Webpage, 1992). Gary Foley, '[The Northland Narratives](#)'.

¹⁹ United Nations Department of Economic and Social Affairs. [UN Declaration on the Rights of Indigenous Peoples](#) (2007), p. 15.

²⁰ State of Victoria, Department of Education and Training, '[Equal Opportunity and Human Rights- Students](#)' (Webpage, 2023).

²¹ *Equal Opportunity Act 2010* (Vic), s15 and Division Three.

²² *Racial Discrimination Act 1975* (Cth), Sections 9,10 and the Schedule – International Convention on the elimination of all forms of racial discrimination.

²³ Tasmanian National Preventive Mechanism, '[About the Tasmanian NPM](#)' (Webpage, 2023).

Currently the National Agreement on Closing the Gap include targets focussed on education²⁴. These targets include:

- **Target 3:** Children are engaged in high quality, culturally appropriate early childhood education in their early years: By 2025, increase the proportion of Aboriginal children enrolled in early childhood education to 95 per cent - on track
- **Target 4:** Children thrive in their early years: By 2031, increase the proportion of Aboriginal and Torres Strait Islander children assessed as developmentally on track in all five domains of the Australian Early Development Census to 55 per cent - not on track
- **Target 5:** Students achieve their full learning potential: By 2031, increase the proportion of Aboriginal and Torres Strait Islander people (age 20-24) attaining year 12 or equivalent qualification to 96 per cent - not on track
- **Target 6:** Students reach their full potential through further education pathways: By 2031, increase the proportion of Aboriginal and Torres Strait Islander people aged 25-34 years who have completed a tertiary qualification (Certificate III and above) to 70 per cent- not on track
- **Target 7:** Youth are engaged in employment or education: By 2031, increase the proportion of Aboriginal and Torres Strait Islander youth (15-24 years) who are in employment, education or training to 67 per cent - not on track²⁵

Across all these targets there were improvements in Victoria in 2023, but nationally the latter four listed targets are not on track to be met²⁶. Overall, in 2023, eleven of the Closing the Gap targets were found not to be on track, with four on track²⁷. Press releases from both the Minister and Assistant Minister for Indigenous Australians press acknowledge that the gap is not closing. Those press releases spoke to the hope of the since rejected Voice to Parliament proposal, as the structural change required to shift these trajectories.²⁸ In February 2024, the Productivity Commission released a *Review of the National Agreement on Closing the Gap*, which found that “the Agreement risks becoming another broken promise to Aboriginal and Torres Strait Islander people.”²⁹ It is clear that the current avenues for reform are not working, the Commission has the opportunity to guide meaningful reform that will support Aboriginal children, young people, families and adults thrive.

Victoria’s Marrung Aboriginal Education Plan 2016-2026 (**Marrung**) vision is that:

Victoria will be a state where the rich and thriving culture, knowledge and experience of our First Nations peoples are celebrated by all Victorians; where our universal service systems are inclusive, responsive and respectful of Koorie people at every stage of their learning and development journey; and where every Koorie person achieves their potential, succeeds in life, and feels strong in their cultural identity.³⁰

²⁴ National Indigenous Australians Agency, [National Agreement on Closing the Gap](#) (2020), p. 19-23.

²⁵ Ibid.

²⁶ Productivity Commission, [Closing the Gap Information Repository Dashboard](#) (Webpage, 2023).

²⁷ Ibid.

²⁸ Minister for Indigenous Australians, '[New Data Shows Gap Not Closing](#)' (Webpage, 2023).

²⁹ Productivity Commission, 2024, [Review of the National Agreement on Closing the Gap](#): Study Report, Volume 1, Canberra. p3.

³⁰ State of Victoria (2016), Department of Education and Training, [Marrung Aboriginal Education Plan 2016-2026](#) (2016) p 5.

As evidenced in the remainder of our nuther-mooyoop, VALS does not see this being implemented, nor achieved. However, while self-determination is mentioned as a ‘principle’³¹ that underpins Marrung, and that access to education is a stepping stone to self-determination³², it doesn’t reflect the inherent rights of Aboriginal peoples to a self-determined education system that reflects and upholds Aboriginal rights to learn about history, cultures and traditional languages. There must be stronger accountability mechanisms to hold government to account for their failure to deliver on their commitments.

VALS supports the Yoorrook for Justice recommendations calling for urgent reforms to strengthen accountability, cultural competency and compliance with human and cultural rights.³³

Educational attainment and outcomes for Aboriginal children and young people

The Commission need only look at the 2022 Victorian Aboriginal Affairs Framework, which reports on the Victorian Aboriginal Affairs Framework, the Self-Determination Reform Framework and the Victorian Closing the Gap Implementation Plan, to see that educational attainment and outcome milestones for Aboriginal children and young people are not being met³⁴.

The contextual understanding of Aboriginal students’ engagement with and enjoyment of their learning, is not just evidenced by participation and educational attainment but the potential barriers and supports that are offered throughout their education. Data access and sharing agreements should be established between the Department of Education and Training, Department of Families Fairness and Housing and DJCS, and ACCOs (including VALS) to ensure governance, choice and control over data about Aboriginal communities. This should include access to data that includes not only attendance and attainment rates but also, data that provides a more holistic understanding and education journey of Aboriginal children and young people. For example, this could include the numbers of Aboriginal students who; have Individual Learning Plans that are completed and being adhered to, are on Flexible Learning Options, who have been expelled or suspended, who have made a complaint about racial discrimination, who have been diagnosed with learning difficulties and/or disability and/or mental health issues, are living in out-of-home care, and have been involved in the youth justice system. Schools should also be mandated to report on how they are making their school culturally safe, including whether their school has as a Reconciliation Action Plan and fly the Aboriginal flag. VALS encourages the Commission to compel this evidence as part of their inquiry into the systemic injustice experienced by Aboriginal people in the education system.

We note the Covid-19 pandemic and associated lockdown had a significant impact of educational engagement and attainment for Aboriginal children and young people, which is addressed in the Commission for Children and Young Peoples’ Inquiry into the educational experiences of children and

³¹ Ibid. p 4.

³² Ibid. p. 7.

³³ Yoorrook for Justice Report, recommendations 3 - 6

³⁴ Victorian Government, [Victorian Government Aboriginal Affairs Report 2022](#) (2022) p. 53-68.

young people into out-of-home-care, ‘Let us learn’³⁵. VALS supports this report, and the associated recommendations in full.

Self-determination and Indigenous data sovereignty

As detailed in VALS previous submissions to the Commission, alongside our nuther- mooyoop on health and our submission to the FOI Act Review³⁶, the concept of Indigenous data sovereignty (IDS) and Indigenous Data Governance (IDG) mandates that Aboriginal communities and Aboriginal Community Controlled Organisations (ACCOs) have a right to access and interpret information concerning Aboriginal individuals and communities, as well as the right to determine how the data is used and disseminated within mainstream society.³⁷ The authority and control over such data not only ensures that the information is understood in its appropriate context, but is also beneficial to ACCOs to ensure that the services and programs provided meet the demand and needs of Aboriginal communities.³⁸

In relation to data that specifically relates to education we are aware of the VSIIDR – the whole of Victorian Government approach to integrating person level data, which collates integrated data sets across justice, education, human services and health,³⁹ but VALS understands these data sets can only be released when asked for specifically, rather than proactively released by Government. This process should be reviewed and we encourage the Commission to compel these data sets as evidence.

The Productivity Commission’s Closing the Gap Review Report, released on 7 February this year, proposes that the National Agreement on Closing the Gap is amended to include IDS and IDG under Priority Reform 4 and commits governments to reform their existing data systems in line with Indigenous Data Governance principles, and to strengthen the technical capacity of ACCOs, alongside the data capability of governments and to invest in Indigenous data infrastructure. The second part of the reform proposed regarding Indigenous Data Sovereignty is to establish a Bureau of Indigenous Data.⁴⁰ VALS supports the Productivity Commissions recommendations around IDS and IDG.

Aboriginal data sovereignty and governance must be progressed through truth telling and Treaty. It is critical that steps are taken immediately to support the rights of Aboriginal people and communities, individually and collectively. We maintain and reiterate our recommendations relating to data sovereignty in our Nuther-mooyoop to the Yoorrook Justice Commission: Criminal Legal System, 2022, and refer to our nuther-mooyoop to the Commission on health injustice.

RECOMMENDATIONS

³⁵ Commission for Children and Young People, [Let us learn: Systemic inquiry into the educational experiences of children and young people living in out-of-home care](#) (2023) p. 52.

³⁶ VALS, [Submission to Inquiry into the Operation of the Freedom of Information Act 1982](#) (January 2024), p. 12.

³⁷ VALS, [Community fact sheet: Aboriginal Self-Determination](#)

³⁸ Ibid.

³⁹ Department of Health and Human Services, [Centre for Victorian Data Linkage Presentation, 24 May](#) (2019) p. 11.

⁴⁰ Productivity Commission, [Review of the National Agreement on Closing the Gap’ Report, Volume 1 – Study Report](#) (2024) p. 8.

Recommendation 1. The right of Aboriginal peoples to self-determination must be enshrined in relevant legislation, including the Victorian Charter of Rights and Responsibilities, the new Youth Justice Bill the Sentencing Act 1991, the Corrections Act 1968 and the Bail Act 1977.

Recommendation 2. The right of Aboriginal peoples to establish and control their educational systems and institutions, free from discriminations that is aligned to their cultural practices and protocols and in their own languages should be included in the Victorian Charter of Rights and Responsibilities, as per Article 14 of UNDRIP.

Recommendation 3. The Victorian Government should commit more resources and funding to meet its obligations under the National Agreement on Closing the Gap and Victoria's Marrung Education Strategy.

Recommendation 4. The Yoorrook Justice Commission should request VSII DR data as it relates to Aboriginal children and young people's engagement with the education system, collated against integrated data sets on justice, health and human services.

Recommendation 5. Victorian government departments must develop data access and sharing agreements with and for ACCOs and Traditional Owners in their sector, as provided for under the Victorian Closing the Gap Implementation Plan.

Recommendation 6. As per the Productivity Commission's Closing the Gap Review Report, the Victorian Government should appropriately fund and resources Aboriginal Community Controlled Organisations and other relevant bodies to strengthen the technical capability of ACCOs and invest in Indigenous data infrastructure.

Recommendation 7. In accordance with IDS and IDG, government departments and entities – including the Department of Education and Training, Department of Families Fairness and Housing and DJCS, should enter into data access and data sharing agreements with ACCOs (including VALS) to ensure governance, choice and control over data about Aboriginal communities.

Recommendation 8. The Yoorrook Justice Commission should request evidence for the Department of Education regarding the educational experience of Aboriginal children and young people including numbers of Aboriginal students who; have Individual Learning Plans that are completed and being adhered to, are on behavioural plans, are on Flexible Learning Options, who have made a complaint about racial discrimination, who have been expelled or suspended, who have been diagnosed with learning difficulties and/or disability and/or mental health issues, are living in out-of-home care, and have been involved in the youth justice system.

Recommendation 9 As per the Productivity Commission's Closing the Gap Review Report, the Victorian Government should appropriately fund and resources Aboriginal Community Controlled Organisations and other relevant bodies to strengthen the technical capability of ACCOs and invest in Indigenous data infrastructure.

Recommendation 10. The use of solitary confinement in juvenile detention profoundly impacts educational outcomes for detainees. To prevent its use, the government must urgently commence

robust, transparent and inclusive consultations with the Victorian Aboriginal Community on the implementation of the Optional Protocol to the Convention against Torture and other *Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)* in a culturally appropriate way.

Recommendation 11. As part of the Treaty process, an Aboriginal led public accounts and estimates committee be established so that Ministers and Victorian Government departments and agencies are held to account on the implementation and adherence to all current, and future relevant agreements including Marrung: Aboriginal Education Plan 2016-2026, the Victorian Aboriginal Affairs Framework and the National Agreement on Closing the Gap.

Key issues impacting educational attainment

Addressing racial discrimination

Aboriginal students experience of racism in schools is well documented, including the impact not only on the child's educational attainment but their health and wellbeing⁴¹. Yet, according to the 2023 Attitudes to School Survey Framework, as presented to AJC in October 2023, Aboriginal students in Victoria experienced racism in the current term 42 per cent more than non-Indigenous students and 36 per cent more in the previous 12 months from when the survey was conducted.⁴² Child Safe Standards require schools to "establish culturally safe environments where diverse and unique identities and experiences are respected and valued", alongside schools addressing all forms of racism.⁴³ Importantly these standards also establish that the school and its community must

acknowledge and appreciate the strengths of Aboriginal culture and understand its importance to the wellbeing and safety of Aboriginal children and students⁴⁴

It is clear from the survey results that these minimum standards are not being achieved for Aboriginal students in Victoria. In a study conducted looking at the effects of racism on the social and emotional wellbeing (SEWB) of Aboriginal children in 2019, the results showed that younger children exposed to racism were more likely to have emotional and behavioural difficulties, and other children had an increased risk of presenting hyperactive behaviour⁴⁵. All Aboriginal children involved in the study who had experienced racism increased risk of experiencing emotional difficulties including anxiety, withdrawal and internalisation of problems.⁴⁶ Schools have a duty to provide safe and accessible learning environments for all children, without racism being addressed there is a risk that the victims of discrimination will be found to be difficult or challenging in the classroom environment, due to their

⁴¹ VicHealth, '[Racism, racial discrimination, and child and youth health: a rapid evidence synthesis](#)' (2021) p. 9.

⁴² Attitudes to School Survey Framework, presented at AJC in October 2023

⁴³ Ibid

⁴⁴ Victorian Registration & Qualifications Authority '[Schools – culturally safe environments regulations](#)' (Webpage, 2023)

⁴⁵ Macedo, D M et al. "Effects of Racism on the Socio-Emotional Wellbeing of Aboriginal Australian Children." *International journal for equity in health* 18.1 (2019), p 6.

⁴⁶ Ibid

experiences of racism. Aboriginal children's right to access education is currently being negatively impacted by the racist society that they are living in. As an example of this, the recent failed Voice to Parliament Referendum saw a "tsunami of racism"⁴⁷ experienced by Aboriginal community, including Aboriginal students and their families within the school environment⁴⁸. The Victorian Equal Opportunity Commission reported that ten per cent of the complaints they receive from Aboriginal people is related to education.⁴⁹ The Call It Out Racism Register 202-2023 Report 'In Every Corner of Every Suburb' reported that six per cent of the reports of racism they received were from schools or other educational settings.⁵⁰

Aboriginal cultures and histories have overwhelmingly been overlooked and silenced in the curriculum and pedagogical approaches taught in schools, and negative stereotypes and deficit narratives continue to permeate the education system.⁵¹ This systemic racism and discrimination experienced by Aboriginal students in their schooling must be addressed, the potential to establish a self-determined Aboriginal educational system through treaty negotiations, could help address these issues as connection to culture, Country and community are recognised as protective factors.⁵²

Currently the resources available on the Department of Education and Training's [website](#) around racism is quite limited, compared with other jurisdictions which have resources that are age and developmentally appropriate, and target not just anti-racism but anti-prejudice and bias. There needs to be targeted resources developed by ACCOs and Aboriginal communities that reflect their specific experiences, as well as CALD communities, alongside the expertise of the Victorian Equal Opportunity and Human Rights Commission.

At a recent community forum held jointly by VALS and the Victorian Equal Opportunity and Human Rights Commission we heard from community members how challenging the process is to raise a complaint with the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), including where there had been experiences of racism and discrimination in schools. Community members shared how they didn't feel the process was culturally safe, but felt they had to continue along the process to try and protect their family from further harm. VALS acknowledges the commitment of the VEOHRC to improve access to, experience of and outcomes for those making a complaint so that it is a culturally safe experience and does not cause further harm and is working alongside VEOHRC to strengthen their approach.

⁴⁷ '[Statement of Our People and Country](#)' (2023)

⁴⁸ SBS NITV, '[Social Justice Commissioner Says Indigenous Students Are Facing Increased Racism After Referendum Result](#)' (Webpage, 2023)

⁴⁹ Victorian Equal Opportunity and Human [Rights Commission, Understanding the discrimination experienced by First Nations People 2022-2023 Data Report](#), (2023), p. 9.

⁵⁰ Jumbunna Institute for Indigenous Education and Research, '[In Every Corner of Every Suburb'. The Call It Out Racism Register 2022-2023](#), (2023), p. 32.

⁵¹ VicHealth, '[Racism, racial discrimination, and child and youth health: a rapid evidence synthesis](#)' (2021), p. 9.

⁵² Macedo, D M et al. "Effects of Racism on the Socio-Emotional Wellbeing of Aboriginal Australian Children." *International journal for equity in health* 18.1 (2019), p 7.

RECOMMENDATIONS

Recommendation 12: Sustained funding to develop and deliver anti-racist training and resources that speaks to the experiences of Aboriginal peoples in Victoria regarding racial discrimination should be allocated to VEOHRC, in partnership with ACCOs and CALD community representative bodies. This training would be for duty holders under the Equal Opportunity Act and the Victorian Charter of Human Rights and Responsibilities, with resources and training modules made available online. The training should include information about obligations of duty holders, alongside best practice approaches to preventing racism before it happens. These resources must be culturally safe and trauma informed so it empowers community to know their rights and take action against discrimination.

Recommendation 13: For the *Equal Opportunity Act 2010* (EO) to be amended to reinstate and strengthen VEOHRC's powers to undertake inquiries, investigate serious matters that contravene the EO Act, with powers to compel and seek enforceable undertakings to issue compliance notices.

Youth Justice

The intersection between youth justice and education reveals a complex interplay impacting the educational attainment for Aboriginal children in Victoria. Education, a cornerstone for childhood development and deterrent against involvement in the youth justice system, faces challenges exacerbated by inappropriate, unjust, harmful responses within the justice system. This is further compounded by the fact that children as young as 10 are being locked up, as VALS CEO Nerita Waight describes:

Every child should be free to go to school, have a safe home to live in and be supported to learn from their mistakes. But right now, courts are sending children as young as 10 years old to be locked away in prison. Prisons increase the likelihood that children will spend their life in contact with the legal system. Prisons do not rehabilitate children.⁵³

While VALS welcomes the government's announcement to raise the criminal age of responsibility to 12, and then to 14 with restrictions by 2027, as with previous VALS advocacy, the criminal age of responsibility should be raised to 14 without exceptions and the age of detention to 16.⁵⁴

Both the Aboriginal Justice Agreement and *Wirikara Kulpa – Aboriginal Youth Justice Strategy*, prioritise educational attainment as a means for decreasing the number of Aboriginal people entering the criminal legal system⁵⁵. Despite these commitments and strategies, the Annual Survey of Youth People

⁵³ Nerita Waight, Victorian Law Foundation, Legal Studies Recording, November 6, 2023.

⁵⁴ VALS, [Raising the Age of Criminal Responsibility](#) (2022), p 2.

⁵⁵ Victorian Aboriginal Justice Agreement, [Wirikara Kulpa – Aboriginal Youth Justice Strategy](#) (2022), p 12.

involved in Youth Justice 2019 found that 18 per cent of those in youth justice had a primary school level of education and that 65 per cent were not participating in education⁵⁶.

The Royal Commission into Aboriginal Deaths in Custody found that:

the high rates of Aboriginal deaths in custody was directly related to the underlying factors of poor health and housing, low employment and education levels, dysfunctional families and communities, dispossession and past government policies... [it] concluded that the most significant contributing factor bringing Aboriginal people into conflict with the criminal legal system was their disadvantaged and unequal position in the wider society⁵⁷

The overrepresentation of Aboriginal children and young people in Victoria's youth justice system is deeply troubling. Despite comprising only about 6% of young people aged 10–17 in Australia, a staggering 49% of those detained on an average day in 2020–21 was Aboriginal.⁵⁸ This stark disparity demands immediate attention, emphasising the critical need for systemic change. Furthermore, the inhumane conditions within the youth justice system intensify this concern. Aboriginal and other vulnerable teenage detainees at the Melbourne Youth Justice Centre in Parkville have been reported to being locked in solitary confinement for 22 hours a day.⁵⁹ Additional horrifying incidents such as an Aboriginal young person being subjected to a spit hood,⁶⁰ expose the appalling treatment Aboriginal young people are enduring in the Victorian youth justice system. These concerns are further echoed in the submission made by the VALS Nuther-mooyoop to the Yoorrook Justice Commission on the Criminal Legal System and captured in the Commissions' Yoorrook for Justice Report.⁶¹

It is also important to note that Victoria's youth justice facilities are undergoing regular lockdowns, where children are essentially put into solitary isolation, due to staffing shortages.⁶² It is completely unacceptable that this ever happens. This is hugely damaging for a range of reasons, including that such episodes are linked to reduced life expectancy, and it also disrupts the education of these children when they need it the most. VALS remains concerned that the culture within Corrections Victoria and the government more broadly has led to a casual response to this crisis where lockdowns are seen as unfortunate necessity that can be reduced over time, rather than a breach of human rights that must be urgently addressed. We are also concerned that Corrections Victoria prioritises staff wellbeing over the wellbeing of children in their care.

Victoria's discriminatory policing and judicial decision-making approaches such as the underutilisation of cautions and diversions contribute to the problem, and children under the state's care often experience inappropriate treatment, propelling them into contact with the criminal legal system.⁶³

⁵⁶ Ibid. p 20.

⁵⁷ Department of Justice and Regulation, Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody (2018), p 79.

⁵⁸ Australian Institute of Health and Welfare (AIHW), [Youth detention population in Australia 2022: Aboriginal and Torres Strait Islander people](#) (Webpage, 2023)


⁵⁹ Nick McKenzie, [Outrage at children locked in solitary confinement for 22 hours a day](#) (The Age, 6 March 2023)

⁶⁰ Adeshola Ore, [Aboriginal teenager had spit hood put on in adult prison in NT, in 'dehumanising' treatment](#), (The Guardian 9 November, 2023)

⁶¹ VALS, [Nuther-mooyoop to the Yoorrook Justice Commission: Criminal Legal System](#) (2022), p 6.

⁶² The Age, [Victoria's prisons a pressure cooker as staff recruitment falls short](#)

⁶³ VALS, [Victorian Aboriginal Legal Service Submission to the Inquiry into Victoria's Criminal Justice System](#) (2021), p 10.



Moreover, in various instances, the consideration of children's rights is lacking in decisions related to bail and sentencing for parents or family members. Additionally, decisions regarding policing and enforcement can inadvertently lead to the separation of children from their families, schooling and other crucial protective factors, leaving them more vulnerable to potential offending. Bail decision makers must consider several issues when making a decision about bail. This includes: all other options before detaining the child; the need to strengthen the child's relationships with family and carers; the importance of not interrupting the child's living arrangements, education, training or employment; the likely sentence if the child is found guilty of the offence; and the need to minimise the stigma resulting from detention.⁶⁴ We strongly advocate that reforms to the presumption against bail for children will be removed entirely in the proposed *Youth Justice Bill* and enacted at the same time or sooner than the *Bail Amendment Bill*.⁶⁵ Refer to VALS advocacy regarding bail in our criminal justice submission to the Commission alongside our public position papers⁶⁶.

Education is essential for children's overall development and is a key protective factor against becoming involved in the youth justice and criminal legal systems. As well as preparing children for their adult life and helping to break cycles of socio-economic disadvantage, school can be "a key source of structure, motivation and socialisation".⁶⁷ Almost all Aboriginal children under 18 sentenced to youth detention have recorded school refusal.⁶⁸

The potential detrimental impact of justice system interventions and quasi-judicial, punitive approaches to school discipline, including culturally unsafe practices such as the presence of police in schools, inappropriate use of intervention orders, and disproportionate expulsions and exclusions, on children's educational engagement is a critical concern for VALS. Our observations emphasise the significant risk that arises when Aboriginal children become disengaged from the school environment, leading to increased involvement with the youth justice system. Specifically, the concern extends to the risk of inadvertently criminalising Aboriginal children through punitive measures within the educational system. These punitive approaches, which may lack cultural sensitivity and understanding, can exacerbate the disconnection between Aboriginal students and the educational process. This disconnection, when coupled with punitive measures, not only hinders academic progress but also elevates the likelihood of these children coming into contact with the criminal legal system. Therefore, it is imperative to address these issues with a nuanced and culturally informed approach to ensure the educational system serves as a supportive environment rather than inadvertently contributing to the overrepresentation of Aboriginal children in the youth justice system. The subsequent sections of this submission delve into the specific challenges posed by punitive measures and the importance of adopting alternative, culturally sensitive strategies, with a more detailed exploration of the adverse effects of police presence, intervention orders, and expulsions/exclusions discussed throughout the paper.

⁶⁴ VALS, [Fixing Victoria's Broken Bail Laws](#) (2022), p 6.

⁶⁵ VALS, Poccum's Law: The Blueprint for Bail Reform (2023), p 1.

⁶⁶ VALS, [Fixing Victoria's Broken Bail Laws](#) (2022)

⁶⁷ Commission for Children & Young People, [Our youth, our way: Systemic inquiry into the over-representation of Aboriginal children and young people in Victoria's youth justice system](#) (2021), p 382.

⁶⁸ Ibid.

Prisons are not appropriate places for children. These institutions only further criminalise children, rather than rehabilitate, and exasperate systemic inequalities including educational attainment. We will continue to collectively work to progress recommendation two of the Yoorrook for Justice Report which called for a self-determined criminal legal system for Aboriginal peoples⁶⁹. VALS' commitment to tirelessly advocate until every Aboriginal child can freely attend school, reside in a safe home and family, and receive the guidance needed to navigate life's challenges remains steadfast.⁷⁰

The inhumane conditions pervasive within the youth justice system significantly deteriorate the mental health of Aboriginal children and young people. The system's punitive, violent, and abusive treatment perpetuates trauma, leaving lifelong impacts on its victims, particularly within the Aboriginal community where historical injustices compound present-day experiences. This is exacerbated by limited access and contact with family, kin and cultural connections and access to education. We refer to our advocacy with the Human Rights Law Centre and Flat Out for the need to make prison phone calls free, as a mechanism to support the meaningful connection between children and parents that will in turn support the social and emotional wellbeing of children and young people. Recognising education as a fundamental human right, it is crucial to stress the importance of keeping young people engaged in learning, irrespective of whether they are incarcerated. The Australian Human Rights Commission refer to education as more than facts and equations but "it's the process of developing yourself, your ability to reason and make your own judgments, to empathise and socialise, and understand the world around you as well as your place in it."⁷¹ Without a concerted effort to address these educational disparities within the youth justice system Aboriginal children and young people will face significant challenges upon release to reintegrate into mainstream education system, which puts them at greater risk of re-offending and will have limited opportunities to pursue employment or re-engage in education at a later stage.

The failure of the youth justice system to provide adequate care that is free from harm and abuse is on the public record⁷², both through Yoorrook's inquiries and many previous Royal Commissions, including the Royal Commission into Aboriginal Deaths in Custody, alongside former staff, or whistleblowers, who have raised concern about the conditions, including Aboriginal young people being detained in adult prison, and therefore not able to access schooling, and being held in solitary confinement.⁷³ Their accounts underscore a disturbing practices within the youth justice system, wherein isolation practices are utilised excessively, impeding youths' access to education and exacerbating their already vulnerable circumstances. The punitive nature of these measures not only breaches their human rights, it impedes their capacity for rehabilitation alongside their access to access to education. The foundation of effective learning—engagement, support, and a conducive environment—is compromised by the prevalent use of isolation. This is why OPCAT must be

⁶⁹ Yoorrook Justice Commission, [Yoorrook for Justice Report](#) (2022), p 26.

⁷⁰ VALS, [Victorian Aboriginal Legal Service will continue our hard work to keep children out of the criminal legal system](#) (Webpage, 2023)

⁷¹ Australian Human Rights Commission, [Let's talk about education](#) (Webpage, 2023)

⁷² Commission for Children and Young People, [The same four walls inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system](#) (2017), p 64.

⁷³ Nick McKenzie, [Outrage at children locked in solitary confinement for 22 hours a day](#) (The Age, 6 March, 2023) .

implemented. This failure to adhere to international standards underscores the pressing need for comprehensive reforms in the youth justice system, particularly in addressing the disproportionate impact on Aboriginal children and young people. Addressing these issues is crucial for breaking the cycle of educational inequality that persists within Victoria's youth justice system.

Children and young people in Youth Justice and Secure Care settings in Victoria are provided with education through Parkville College, a specialist Victorian Government school that provides education in these settings across five campuses.⁷⁴ The Commission for Children and Young People heard that educational interventions in these settings are most beneficial when they are consistent, student voice is encouraged and valued, educators adopt strengths-based approaches and individualised learning, and children and young people are supported to transition back to school or other alternative education settings.⁷⁵ The Commission for Children and Young People in the Our Youth Our Way Report indicated they heard that Parkville College had inadequate resourcing to support Aboriginal students in their learning and more classroom support was needed for young people in the Aboriginal education program, and that there were not enough Aboriginal staff to deliver this support.⁷⁶

Aboriginal children are frequently served very poorly by the education system in Victoria.⁷⁷ Aboriginal students are at a higher risk of disengaging from school and expelled from schools at a disproportionate rate.⁷⁸ This is a significant contributor to the overrepresentation of Aboriginal children in the youth justice system as echoed in our submission to the Inquiry into Victoria's criminal legal system.⁷⁹ Significant reforms must be implemented that prioritise the educational engagement of incarcerated children and young people, providing them with the tools and support to continue their educational pathway upon release. Data from the Yoorrook for Justice Report found in a recent survey of Aboriginal children and young people in the Victorian youth justice system revealed concerning educational trends. 65 per cent of the surveyed population were not participating in education, indicating significant barriers or challenges hindering their access to educational opportunities. Furthermore, 18 per cent had a primary school education, emphasising a notable gap in educational attainment within the group.⁸⁰ This data further solidifies the educational disadvantage children in the youth justice system are experiencing.

⁷⁴ Victoria State Government, [Secure Care Services](#) (Webpage, 2023)

⁷⁵ Commission for Children and Young People, [Let us Learn Systemic inquiry into the educational experiences of children and young people in out-of-home care](#) (2023), p 37.

⁷⁶ Commission for Children and Young People, [Our Youth Our Way: Systemic inquiry into the over-representation of Aboriginal children and young people in Victoria's youth justice system](#) (2021), p 32.

⁷⁷ Commission for Children and Young People, [Let us Learn Systemic inquiry into the educational experiences of children and young people in out-of-home care](#) (2023), p 40.

⁷⁸ Commission for Children and Young People, [Our youth, our way: Systemic inquiry into the over-representation of Aboriginal children and young people in Victoria's youth justice system](#) (2021), p 382.

⁷⁹ VALS, [Victorian Aboriginal Legal Service Submission to the Inquiry into Victoria's Criminal Justice System](#) (2021) p 91.

⁸⁰ Yoorrook For Justice, [Report into Victoria's child protection and criminal justice systems](#) (2023), p 316.

RECOMMENDATIONS

Recommendation 14. All Aboriginal children and young people involved in youth justice to be able to access culturally safe, quality and consistent education, and their transition to mainstream education is supported.

Recommendation 15. Ensure that the Department of Education (DE) and the Department of Justice and Community Safety monitor and report on the transitions of Aboriginal children and young people from Secure Care and Youth Justice settings returning to mainstream education settings.

Recommendation 16. Children in isolation should be provided supports and services (including mental health services and cultural supports and services provided by ACCOs), and means by which to contact family, lawyers, independent oversight bodies, and ACCOs. This should be equivalent to the prison law service offered by NSW Legal Aid.

Recommendation 17. For Aboriginal children and young people to have access to culturally safe, consistent and quality education within the youth justice system.

Child Protection

Out-of-Home-Care – System failure for young people to get adequate education.

As with the intersection with the criminal legal system, recognising the intersection between child protection and education is crucial when shedding light on educational inequities and injustice experienced by Aboriginal people. Approximately 1 per cent of children in Australia are living in the out-of-home-care (OOHC) system, and Aboriginal children are overrepresented, one in every 18 Aboriginal children and young people are in OOHC.⁸¹ One in nine Aboriginal children under the age of one are removed from their parents by the state in Victoria.⁸² This alarming trend, which was further evidenced in the Commission's inquiry into systemic injustice in Child Protection, underscores the urgency of addressing educational inequality, especially for Aboriginal children and young people in OOHC. Additionally, children in the OOHC system are overrepresented in reports of missing children, making up 53 per cent of such reports.⁸³ Within this broader context, the OOHC education system becomes a significant concern, exposing a failure to ensure sufficient educational support for young people within this system. Data received from the Department of Education demonstrated that

⁸¹ Australian Policy Online, [Children and Youth Reported Missing from Out-of-Home Care in Australia](#) (Webpage, 2021)

⁸² Matthew Bach, [One in Nine Indigenous Babies Are Taken from Their Parents in Victoria](#). the System Is Failing, The Guardian (newspaper article, 7 November 2022)

⁸³ Australian Policy Online, [Children and Youth Reported Missing from Out-of-Home Care in Australia](#) (Webpage, 2021)

educational outcomes for Aboriginal children and young people in care are lower than Aboriginal children not in care and non-Aboriginal children and young people in care⁸⁴.

The educational outcomes for Aboriginal children and young people in care, are deeply intertwined with the cycle of poverty and disadvantage. Yoorrook's findings have already illuminated the concerning pattern where Aboriginal family members taking on caring responsibilities for children not living with their parents, lack proper support. Kinship care placements are the preferred placement where children cannot live with their parent(s), as per the Aboriginal Child Placement Principle as this keeps Aboriginal children with family and connected to their community and culture.⁸⁵ These kinship carers, receive lower payments than foster carers, as highlighted by recent reviews from EY Sweeney and the Victorian Auditor General's Office (**VAGO**)⁸⁶. The CCYP found carers faced many challenges to support children and young people staying engaged in education. Adequate financial and other supports to carers, such as service navigation assistance and training opportunities, are critical to maintaining stable placements and encouraging educational engagement for children and young people in their care. Yet, carers are under increasing financial strain, especially Aboriginal kinship carers. The Victorian Aboriginal Child Care Agency (**VACCA**) found that 50 per cent of its carers live below the poverty line⁸⁷. This concerning statistic, further echoed through in the Commission's Yoorrook for Justice report, underscores the profound financial strain experienced by carers within Aboriginal communities, indicative of broader systemic inequities in caregiving support and socio-economic conditions.⁸⁸ Inadequate financial support, and lack of awareness about available supports, hampers kinship carers' ability to provide essential resources and educational supports opportunities, perpetuating the disadvantages faced by these vulnerable individuals within the broader context of poverty and systemic inequities. Addressing these challenges is crucial for breaking the cycle and promoting better educational outcomes for Aboriginal children and young people in care.

The State, who holds a non-delegable duty to all children in out of home care is failing to ensure they maintain consistent engagement with their schooling. We know many of the young people we support are disengaged from school and see high levels of school refusal. CCYP found that children in residential care had the highest absences from school, with 79 per cent recorded as chronically absent in 2022, compared to 40 per cent and 59 per cent of children and young people living in foster care and kinship care.⁸⁹ It's disheartening to see how the educational gaps persist for children in care, particularly hitting hardest among those in residential care, painting a stark reality that disproportionately impacts Aboriginal children within the OOHC system.

A responsible and supportive approach, akin to that of a good parent, would involve taking every step to maintain engagement with, and support re-engagement where necessary. VALS strongly asserts

⁸⁴ Commission for Children and Young People, [Let us Learn Systemic inquiry into the educational experiences of children and young people in out-of-home care](#) (2023), p 88.

⁸⁵ VALS, [Nuther-mooyoop to the Yoorrook Justice Commission: Child Protection](#) (2022), p 26.

⁸⁶ Department of Families, Fairness and Housing, [Strong carers, stronger children](#) (Webpage)

⁸⁷ Commission for Children and Young People, [Let us Learn Systemic inquiry into the educational experiences of children and young people in out-of-home care](#) (2023), p 28.

⁸⁸ Yoorrook Justice Commission, [Yoorrook for Justice Report](#) (2023), p 189.

⁸⁹ Commission for Children and Young People, [Let us Learn Systemic inquiry into the educational experiences of children and young people in out-of-home care](#) (2023), p 30.

that child protection practitioners and residential care workers must proactively take measures to support school engagement and advocate for the fulfilment of educational needs for all children in OOHC. VALS strongly advocates that additional funding and resources be allocated to meet the unique needs of Aboriginal children and young people in OOHC to support their engagement with and attainment of education. To do this we call for a review of the Out-Of-Home-Care Education Commitment⁹⁰, which is a partnering agreement between the Department of Health and Human Services, The Department of Education and Training, the Catholic Education Commission of Victoria, Independent Schools of Victoria, VACCA and The Centre for Excellence in Child and Family Welfare to better support the educational achievements of children in out-of-home-care through a coordinated approach, as currently we do not believe it is being adequately implemented.

The Yoorrook Commission has already heard of the traumatic and damaging impacts on Aboriginal children entering OOHC, from multiple placement breakdowns to experiences of abuse and harm. The disruption to a child's education due to placement breakdowns must also be acknowledged, where they might have to change schools, leaving some level of connection and community and having to start again poses significant risk to school disengagement and refusal. Stronger supports must be made available that recognise the risks posed at these transition periods, alongside the well-established transition periods from kinder to prep, from primary school to high school.

Failure to engage children with appropriate services not only constitutes a fundamental failure of the state's parental responsibility but also has far-reaching, lifelong implications. Such failures can increase the likelihood of unemployment, economic marginalisation, and misuse of alcohol and other substances.⁹¹ Moreover, they contribute to persistent mental health issues and heighten the risk of involvement with the criminal legal system.⁹² Research into the process of 'care-criminalisation' emphasises the way that experiences with OOHC contribute to increased involvement with criminal legal systems. This includes earlier engagement with the criminal legal system, the criminalisation of behaviours that would not result in a criminal legal system response in a family setting, increased likelihood of remand, and reduced use of diversionary or other supports, creating circumstances where involvement in OOHC uniquely contributes to criminal legal system involvement, and involvement in both systems come to exacerbate each other. Research has highlighted how the absence of holistic and therapeutic responses and models of care as compounding these intersections for Aboriginal young people.⁹³

In addition to these concerns, it is crucial to underscore the significance of addressing the developmental needs of children in OOHC. Access to early health and developmental assessments is paramount in ensuring their well-being and long-term success. Without adequate support in this regard, children may face compounded challenges in their growth and adaptation to their

⁹⁰ State of Victoria (Department of Education and Training and Department of Health and Human Services), '[OUT-OF-HOME CARE EDUCATION COMMITMENT](#)' (2018)

⁹¹ Australian Institute of Family Studies (AIFS), '[Supporting young people leaving out-of-home care](#)' (2026), p 6.

⁹² Ibid.

⁹³ Jumbunna Institute of Indigenous Education and Research, '[Inquiry into high level of first nations people in custody and oversight and review of deaths in custody](#)' (2020), p. 49.

circumstances. Moreover, the absence of culturally competent training among child protection practitioners further exacerbates these issues, particularly concerning Aboriginal children and their families. Culturally safe and supportive practices are indispensable for positively engaging children with services and upholding standards of care that address their unique backgrounds and requirements. Therefore, investing in comprehensive training and access to essential assessments is essential for promoting the holistic development and welfare of children in out-of-home care.

RECOMMENDATIONS

Recommendation 18. To better support the safety, wellbeing and education attainment of Aboriginal children living in out-of-home care the Department of Families, Fairness and Housing to ensure equitable financial support for kinship and foster carers, including access to additional supports by strengthening the care allowance assessment and payment process, alongside increasing the baseline payment to be in line with cost of living. This process should involve conducting thorough and timely assessments to guarantee that both kinship and foster carers receive fair and equitable financial support.

Recommendation 19. For the Out-Of-Home-Care Education Commitment to be reviewed and to ensure that adequate educational supports are available for Aboriginal students in OOHC, ensuring they have access to assessment and specialist supports necessary, tailored to the individual learning needs of these students.

Experiences of Aboriginal children and young people in the education system.

The following sections look at areas in which we believe influence the educational experiences and attainment of Aboriginal children and young people.

Individual Education Plans

The educational disparities faced by Aboriginal students are exacerbated by the inadequate implementation of Marrung. This plan mandates government schools to develop timely Individual Education Plans (IEPs), Career Action Plans, and Transition Plans for every Aboriginal student. However, a concerning trend is observed among Aboriginal students in OOHC, where these essential plans are either not completed promptly or are insufficiently utilised and followed up on. The 2016 systemic inquiry, "Always, Was Always Will Be Koorie Children," led by the Commission for Children and Young People, revealed significant shortcomings in policy compliance by the Department of Health and Human Services (DHHS) and the Department of Education and Training (DET) concerning Aboriginal children in OOHC. This non-compliance negatively impacts the educational, cultural, and overall well-

being of Aboriginal children.⁹⁴ Instances were reported where IEPs for young individuals in residential care were neglected for extended periods, up to 4-5 months, despite their lack of school attendance or engagement during that time, further exacerbating the educational inequality faced by Aboriginal students. In CCPY Education inquiry report they share Department of Education data that indicates that 94% of Aboriginal children and young people had an Individual Learning Plan in the period of 2018-2022⁹⁵, but there were concerns about the implementation of these plans⁹⁶.

RECOMMENDATIONS

Recommendation 20. As detailed in recommendation 7, an Aboriginal led public accounts and estimates committee should be established. This committee should have oversight of the Marrung: Aboriginal Education Plan 2016-2026, and other agreements including VAAF and the Victorian Implementation Plan for Closing the Gap to ensure they are delivered to their full effect. This committee should have powers and mechanisms to address delays and inadequate development of essential educational plans, including Individual Education Plans

Cultural Safety in Education

Racism in schools

The Commission for Children and Young People, in their systemic inquiry into the educational experiences of children and young people in out-of-home-care heard from many stakeholders that Aboriginal children and young people in OOHC face additional barriers to educational engagement due to culturally unsafe practices, including racism, in education settings.⁹⁷ Racism and discrimination create a hostile environment that hinders Aboriginal children and young people's educational experience. In primary schools, 22 per cent of Aboriginal children in years four to six reported experiencing bullying in 2020.⁹⁸ This undoubtedly perpetuates a hostile, unsafe and negative school atmosphere impeding Aboriginal primary school children's ability to learn and thrive. Furthermore, in the CCYP education inquiry children and young people spoke about experiences of bullying and stigma from their peers and teachers because they are in care, with inadequate responses from schools to address the bullying. This was common for Aboriginal students who spoke about their experiences of racism in schools.⁹⁹ When children are subjected to discriminatory behaviour, it not only affects their self-esteem but also creates a barrier to engaging fully in the learning process. The inadequate

⁹⁴ Commission for Children and Young People, [Always was Always will be Koori children: Systemic inquiry into services provided to Aboriginal children and young people in OOHC](#) (2016), p 85.

⁹⁵ Commission for Children and Young People, [Let us Learn Systemic inquiry into the educational experiences of children and young people in out-of-home care](#) (2023), p 262.

⁹⁶ Ibid.

⁹⁷ Ibid. p.444

⁹⁸ Government of Victoria, [Victorian Government Aboriginal Affairs Report 2022](#) (2022), p 61.

⁹⁹ Commission for Children and Young People, [Let us Learn Systemic inquiry into the educational experiences of children and young people in out-of-home care](#) (2021), p 65.

responses from schools to address racist bullying, further perpetuates the problem, leaving Aboriginal students without the support they need. The Victorian Government acknowledge experiences of racism negatively impact the educational outcomes and wellbeing of Aboriginal children and young people.¹⁰⁰

The 2023 Attitudes to School Survey (AtoSS), an annual survey of students in Victorian Government schools indicated 26 per cent of Victorian Koorie students indicated they had experienced racism in school in the past 12 months.¹⁰¹ Clearly highlighting the substantial portion of Aboriginal children facing a hostile educational environment.

This discrimination and bullying contribute to educational inequity by creating additional obstacles for Aboriginal students. It's crucial for schools and the educational system to address these issues promptly and effectively. Cultivating a safe and inclusive environment for Aboriginal students to ensure educational equity and the well-being of Aboriginal children in schools.

Victoria's Charter of Human Rights and Responsibilities underscores 20 basic rights that promote freedom, respect, equality, and dignity for all individuals, regardless of their background.¹⁰²

Public authorities, including Victorian government schools, have a positive duty to ensure the human rights outlined in the Charter are protected and upheld. Any limitations on human rights, even those designed to uphold the safety of others, must be reasonable, justifiable, and proportionate.

Bullying, discrimination, harassment, vilification, victimisation, and other forms of inappropriate behaviour targeting Aboriginal students or groups based on their attributes cannot be tolerated. Schools must implement appropriate measures consistent with the Student Engagement Policy and the Bullying Prevention and Response Policy to address and respond to instances of such behaviour. By doing so, schools can create a more culturally safe environment.

RECOMMENDATIONS

Recommendation 21. The Government should adopt measures to increase awareness of racism, including reforms to the primary, secondary and tertiary education systems and public awareness campaigns.

Recommendation 22. For the Department of Education to mandate all schools report on actions taken to address racism and for this reporting to be incorporated into Marrung and the Victorian Aboriginal Affairs Framework.

¹⁰⁰ Department of Education, [The State of Victoria's Children – Aboriginal Children and Young People](#) (2020), p 45.

¹⁰¹ Department of Education: Addressing Racism in Schools Aboriginal Justice Forum – 66 – October 2023

¹⁰² Department of Education and Training, Victoria, [Equal Opportunity and Human Rights for Students](#) (Webpage, 2023)

Need for restorative practices models, not personal safety intervention orders

Personal Safety Intervention Orders (PSIOs), typically issued by the Magistrates' Court or the Children's Court, are legal measures designed to protect individuals, such as the 'protected person', from potential harm posed by the 'respondent'.¹⁰³ However, within the school context, managing these orders reveals underlying challenges contributing to educational inequality, particularly for Aboriginal students who may face disproportionate impacts.

These orders can arise from various situations within the school setting, such as conflicts between students or teachers. When such incidents involve Aboriginal students, they often bring to light broader systemic issues that impact their educational experiences. Examined within the framework of the Commission for Children and Young People systemic inquiry¹⁰⁴, a case study draws attention to the educational experiences of an Aboriginal student whose verbal outburst resulted in the imposition of an IVO by the school principal. The catalyst for this legal intervention was a report from a residential care worker outlining the incident. This case exemplifies how Aboriginal children in OOHC may encounter punitive legal interventions impacting their education and schooling, interventions that might not have been implemented if the child were residing with a parent. The noticeable discrepancy in advocacy and tolerance underscores the disadvantage experienced by Aboriginal children in care, which can lead to criminalisation.

VALS' lawyers have also raised concerns that Victoria Police frequently make PSIO applications against children based on incidents that take place between school students. The effect of these applications and Orders is to exclude the respondent child from school. Our lawyers have reported that they frequently see PSIO applications against our young clients based on a singular incident that was isolated and did not escalate. This immediate legal escalation only acts to further withdraw the child from the protective factors like education.

PSIOs impose serious restrictions on people subject to them. PSIOs are inappropriate for use against children who lack the capacity to fully grasp the problems with their conduct, the reasons for their Order, or the nature of the restrictions against them and they are in effect criminalising children. Research demonstrates that the negative educational impacts of traumatic stress experienced by students can be mitigated through schools and their school staff employing more informed and sensitive approaches in responding to students' challenging behaviours.¹⁰⁵ VALS is also concerned that PSIOs can be imposed on children under the age of 14, where *doli incapax* would apply to any subsequent breach (which is a criminal offence), such that in most instances, a child would unlikely receive a conviction. We therefore see applications to obtain PSIOs against children under the age of 14 as a profound waste of court resources, alongside the potential harm caused to all parties involved, without dealing with the issues at hand.

¹⁰³ Department of Education and Training, Victoria, [Intervention Orders](#) (Webpage, 2024)

¹⁰⁴ Commission for Children and Young People, [let us Learn Systemic inquiry into the educational experiences of children and young people in out-of-home care](#) (2023), p 73.

¹⁰⁵ Fernandez E (2019) 'Working towards better education for children in care: longitudinal analysis of the educational outcomes of a cohort of children in care in Australia', Oxford Review of Education, Vol. 45, No. 4, 481-501, p. 495.

Less intrusive diversionary options should be used whenever possible. This includes school safety plans and health-based support plans, which can tackle issues arising between children in educational settings. In a case brought to attention through VALS submission Inquiry into Victoria's criminal legal system¹⁰⁶, VALS represented a respondent child who was subject to a PSIO. VALS became concerned upon learning from the prosecutor that the government school attended by both the protected person and respondent indicated that they were unable to implement a school safety plan to keep the children separated without an additional PSIO. This indicates a worrying overreliance on intrusive and punitive interventions by the legal system for managing children's behaviour, rather than being used as a last resort. As highlighted in VALS submission into the inquiry into Victoria's criminal legal system there is no substantive evidence to indicate that involving police or the legal system succeeds in changing a child's behaviour through punitive measures.¹⁰⁷

In discussions surrounding restorative practices in schools, positive outcomes are observed from the use of Restorative Justice and Restorative Practices, as highlighted in the systematic literature review titled "Use of Restorative Justice and Restorative Practices at School".¹⁰⁸ Among the 19 studies examined, four studies indicate that a whole school-oriented restorative approach fosters the development of alternative methods to punitive and exclusionary discipline. This approach sometimes integrates both punitive and restorative disciplinary responses, resulting in a reduction in the use of disciplinary sanctions such as suspensions and expulsions, while also promoting fairer disciplinary practices. Furthermore, certain restorative justice programs and interventions are implemented in school settings to prevent, manage, and address bullying and other forms of violence. Eight studies emphasise the decrease in instances of aggression, violence, and bullying within schools that have adopted restorative approaches and practices. This reduction contrasts with schools employing punitive disciplinary systems and zero-tolerance policies.¹⁰⁹

RECOMMENDATIONS

Recommendation 23. For Victoria Police to cease the inappropriate use of PSIOs as a behaviour management tool for Aboriginal children in schools immediately.

Recommendation 24. For the Department of Education to fund the development of an Aboriginal-led Restorative Practices model in education that includes resources and training for schools that is culturally safe, similar to what has been developed in the Justice sector.

Expulsions & Alternatives

¹⁰⁶ VALS, [Victorian Aboriginal Legal Service Submission to the Inquiry into Victoria's Criminal Justice System](#) (2021), p 84.

¹⁰⁷ Ibid.

¹⁰⁸ Lodi E, Perrella L, Lepri GL, Scarpa ML, Patrizi P. [Use of Restorative Justice and Restorative Practices at School: A Systematic Literature Review](#). Int J Environ Res Public Health. 2021 Dec 23;19(1):96.

¹⁰⁹ Ersteno Lodi et al, [Use of Restorative Justice and Restorative Practices at School: A Systematic Literature Review](#) (2021)

VALS is concerned that schools are employing punitive approaches to address trauma related behaviour, rather than working with the student and their family to ensure a culturally safe learning environment is provided and any additional learning needs are addressed. Suspensions and expulsions pose an obvious threat to the engagement of Aboriginal children with the education system, which in turn raises the likelihood they will become engaged in offending behaviours, and potential to become involved with the youth justice system.

In Victoria, Aboriginal students accounted for 6.5% of all students expelled in 2019, though they made up only 2.3% of the student population.¹¹⁰ This is in line with international evidence that suspension, expulsion and exclusion are used by schools far more often against children from racial minority backgrounds.¹¹¹

Koorie Youth Council's Ngaga-Dji Report, released in 2018 shared the voices and experiences of Aboriginal children and young people in the youth justice system, one young person shared their experience of school, where expulsions and modified timetables led to disengagement,

Every school I've been to kicked me out. Expelled in Grade One, Grade Two, Grade Four and Year Seven. At one school they told me to come in from 9am-11am. At the next one they said, "Just come in on Tuesdays." I got so behind it was impossible. They didn't want me, so it was better for everyone that I stopped trying. I never got reading and writing so there was no point in staying. Most of my mates dropped out too¹¹²

CCYP found that the education system's failure to understand trauma, contributed to educational disengagement. It often meant there were inappropriate responses to trauma related behaviours, which sometimes contributed to escalation in the school's response. On occasion, a lack of empathy and understanding from teachers of the trauma that students had experienced could discourage them from attending school.¹¹³ A 17-year-old Aboriginal child at Parkville exemplifies this issue stating how "Kids who get into fights or act crazy in school need help from the adults but instead they get kicked out and then there's nothing for them."¹¹⁴ The Commission found children and young people in care to be more likely to be subject to exclusionary and restrictive practices in schools. This was evident from the following data: In 2022, students in care were five times more likely to be expelled from school than students in the general student population. In 2022, 12 per cent of students in care were on a modified timetable. Of those, 22 per cent were Aboriginal students in care.¹¹⁵

¹¹⁰ Sullivan et al, '[Schools are unfairly targeting vulnerable children with their exclusionary policies](#)', Australian Association for Research in Education (2020)

¹¹¹ Justice, [Challenging Report \(2020\)](#)

¹¹² Koorie Youth Council, [Ngaga-Dji Report](#) (2023) p 19.

¹¹³ Commission for Children and Young People, [Let us Learn Systemic inquiry into the educational experiences of children and young people in out-of-home care](#) (2023), p 29.

¹¹⁴ Calla Wahlquist, '[I Always Feel Sad Here': Children Tell of Life inside Victoria's Youth Detention Centres](#) (25 April 2017) The Guardian

¹¹⁵ Commission for Children and Young People, [Let us Learn Systemic inquiry into the educational experiences of children and young people in out-of-home care](#) (2023), p 32.

VALS is of the view that steps should be taken to both reduce the disproportionate use of expulsions against Aboriginal students, and to reduce their use overall. A pilot scheme from the Northern Territory, administered by the North Australian Aboriginal Justice Agency, provides an important model for good practice in this area that includes restorative practices approach, as highlighted in VALS submission to the inquiry into Victoria's criminal legal system¹¹⁶.

Good Practice Model: Peer Panel/Student Court Pilot at the North Australian Aboriginal Justice Agency

NAAJA's Peer Panel/Student Court pilot program for young people was the first of its kind in Australia. The purpose of the program was to provide an alternative to existing responses to problematic behaviour and conduct at school that may constitute low level offending. The diversionary restorative justice program was trialled at Sanderson Middle School and Palmerston Senior College.

"The concept involved participants waiving their right to be suspended from school or referred to the police and agreeing to plead guilty to agreed facts and have the case heard and determined by their peers (who are trained Peer Panel students in years 9, 10 and 11). At Peer Panel hearings, students were appointed to various 'real life' court roles, including the prosecution, defence counsel, court staff and members of the jury. An adult Co-ordinator oversaw the hearing. The Peer Panel jury asked restorative justice questions of the Participant, the Participant's family and the victim (if relevant) and retired to determine the appropriate outcome (the sentence or penalty)."¹¹⁷

The purpose of the Student Court is to offer an alternative to suspensions and legal involvement for addressing problematic behaviour in schools. It aims to foster long-term behavioural changes, promote accountability, and empower youth through restorative justice principles and leadership development. By addressing underlying issues and holding participants accountable, the court seeks to improve public safety by reducing problematic behaviour among young people.¹¹⁸

¹¹⁶ VALS, [Victorian Aboriginal Legal Service Submission to the Inquiry into Victoria's Criminal Justice System](#) (September 2021), p. 93.

¹¹⁷ NAAJA, ['Proposal to establish a Student Court program in the Northern Territory'](#) (2018)

¹¹⁸ Ibid.

RECOMMENDATIONS

Recommendation 25. For the Department of Education to develop alternative disciplinary measures that prioritise restorative models, counselling, and support over punitive actions like suspensions and expulsions.

Recommendation 26. For an independent, Aboriginal led external review the Department of Education be funded to look at the use of disciplinary actions including suspensions and expulsions of Aboriginal students.

Police in classrooms

In recent years, Victoria Police have looked to relaunch a police-in-schools scheme which aims at putting officers in classrooms to rebuild their relationship with the community, as highlighted in previous VALS advocacy¹¹⁹. The last formal program for police in schools was scrapped in 2005, although officers have continued with informal visits in the time since at the discretion of local stations.¹²⁰ Putting police in classrooms is not culturally safe and contributes to educational inequality for Aboriginal people. Any proposals by Victoria Police to reintroduce officers in classrooms raises concerns about the impact on children's welfare and the potential diversion of resources from genuine efforts to build trust in policing. Furthermore, the punitive approach associated with placing police in the school environment creates a greater risk of criminalising children, and this will most likely impact Aboriginal children and young people. Research in the US suggests this very issue, that police involvement in school incidents increases the likelihood of criminalisation and that this is a racialised phenomenon, with "black children more likely to be suspended or expelled even in preschool in the US."¹²¹

The absence of a state-wide police-in-schools scheme in Victoria since the discontinuation of the Police Schools Involvement Program in 2006 is notable. Despite this, youth offending has continued to decline, and Victoria maintains the lowest youth offender rate in Australia, except for the ACT¹²². The lack of clear evidence supporting the positive impact of police in schools suggests that this policy proposal may lack a foundation in proven effectiveness.

Education and engagement with schooling play a crucial role in protecting children from entering the criminal legal system. However, the presence of police officers in schools can compromise the sense of safety for many Aboriginal children, potentially leading to increased disengagement. The idea that

¹¹⁹ VALS, [Victoria must abandon proposal to put police in classrooms](#) (Webpage, 2021)

¹²⁰ Rachel Clayton, [Victoria Police looking to relaunch schools program in plan to bolster community ties](#), ABC News, 5 May 2021

¹²¹ Diana Johns (2018), [Why police in schools won't reduce youth crime in Victoria](#) (Webpage, 2018)

¹²² Diana Johns (2018), [Why police in schools won't reduce youth crime in Victoria](#) (Webpage, 2018)

every behavioural issue might be treated as a criminal offense in a school environment with police can create an atmosphere of fear and hinder the educational experience for these children.

Schools must remain a safe space for Aboriginal children, an environment threatened by the presence of police in classrooms. This sentiment resonates with the need to safeguard the educational and overall well-being of Aboriginal children.

We highlighted in a media release regarding this proposal:

The Victorian Government has committed in the Aboriginal Justice Agreement to reduce young Aboriginal people's interactions with the criminal legal system by improving access to diversion programs and other community initiatives. Putting police in classrooms would have the opposite effect and increase the over-policing of Aboriginal youth... Education and engagement with schooling is a crucial protective factor for children at risk of coming into the criminal legal system. The presence of police officers would mean schools are no longer a safe space for many Aboriginal children, and would perversely increase the likelihood of disengagement.¹²³

As VALS CEO, Nerita Waight advocates

Schools need to be a safe space for Aboriginal children, and that's not possible with police in classrooms threatening to treat every behavioural issue as a criminal offence. Victoria is gradually recognising that police are not the answer to every social problem, and reducing police involvement in the response to public drunkenness or mental health issues. Behavioural issues in school are no different, and putting police in classrooms would be a huge step backwards. The Government condemned the idea of police in schools when it was proposed by the Opposition in 2018, and they should do the same today.¹²⁴

International evidence supports the argument against having police in schools, indicating that their presence leads to more interactions with the criminal legal system for children. Schools with embedded police officers are more likely to refer students to law enforcement for minor behavioural issues, perpetuating a cycle that disrupts the educational journey and potentially contributes to the over-policing of certain communities. This disproportionately affects minority youth, and has led to criminalisation of, and police violence against, African-American children in the United States.¹²⁵

We are also concerned with initiatives of Victoria Police to show up at community events and establish relationships with Aboriginal children by letting them sit in police cars and flash the cars lights. Such activities have obvious appeals to young children, but they do not understand the potential such engagement has for allowing police to target them into the future. Aboriginal communities and parents should be enabled to make far better informed decisions about how police interact with their children.

In summary, the push to reintroduce police in classrooms in Victoria, despite the lack of evidence for its positive impact, raises concerns about cultural safety, inequality in education, and the potential

¹²³ VALS, [Statement: Victoria must abandon proposal to put police in classrooms](#) (Webpage, 2021)

¹²⁴ Ibid.

¹²⁵ Anya Kamenetz, ['Why there's a push to get police out of schools'](#) (Webpage, 2023)

harm to the well-being of Aboriginal children. Efforts should focus on building trust through genuine community engagement rather than resorting to ineffective and harmful measures.

RECOMMENDATIONS

Recommendation 27. Victoria Police must not institute any new police-in-schools program.

Flexible Learning Options (FLO)

A Flexible Learning Option (**FLO**) is an education setting that supports students at risk or already disengaged from education.¹²⁶ FLOs can benefit young people who have had extensive disruptions to their education, and who often feel safer and more supported than in other schools.¹²⁷ The guidelines stipulate students at risk of disengagement should be attending FLOs only in instances where their needs are not able to be met in mainstream school and should only be used as a short-term option.¹²⁸

Despite the intended short-term nature of FLOs, there is a growing concern regarding the extended stay of Aboriginal children in alternative schools. The initial purpose of FLOs, providing a supportive environment for students at risk or disengaged from mainstream education, is compromised when Aboriginal children, do not transition out as intended. This prolonged enrolment not only deviates from the guidelines but also raises questions about the effectiveness of these alternative settings in meeting the specific needs of Aboriginal youth. The risk lies in the potential dilution of the educational quality these programs aim to provide, emphasising the pressing need for a reevaluation of the approach to ensure that FLOs truly serve as short-term interventions for at-risk students, aligning with their original purpose.

The Navigator Program is a Department of Education-funded program that supported disengaged children and young people, including those in OOHC, to return to education.¹²⁹ However, CCYP detailed in their 'Let Us Learn' Report that 80 per cent of Aboriginal students who accessed the Navigator program exited prior to completing the program, with only 20 per cent successfully completing the program.¹³⁰ This is compared to 26 per cent of non-Aboriginal students in care successfully completing the program¹³¹. This signals a pressing need for a more culturally sensitive and targeted approach to re-engagement initiatives, emphasising the importance of tailoring strategies to the specific needs and experiences of Aboriginal youth.

¹²⁶ Department of Education and Training Victoria, [Flexible Learning Options Policy](#) (Webpage, 2023)

¹²⁷ Commission for Children and Young People, [Let us Learn Systemic inquiry into the educational experiences of children and young people in out-of-home care](#) (2023), p 285.

¹²⁸ Department of Education and Training, Victoria, [Flexible Learning Options](#) (Webpage, 2023)

¹²⁹ Department of Education and Training, Victoria, [Navigator Program](#) (Webpage, 2024)

¹³⁰ Commission for Children and Young People, [Let us Learn Systemic inquiry into the educational experiences of children and young people in out-of-home care](#) (2023), p 296.

¹³¹ Data provided by DE to the Commission on 31 May 2022, 11 and 14 August 2023

RECOMMENDATIONS

Recommendation 28. For the Department of Education to fund an independent review of the FLO guidelines and implementation to ensure alignment with the intended short-term nature of the program and establish clear criteria for determining when a student's needs cannot be met in mainstream schools.

Recommendation 29. For the Department of Education to fund an Aboriginal-led longitudinal study to look at the educational pathways of Aboriginal students, including movements between mainstream educational settings and FLOs, implementation and adherence to Individual Learning Plans, use of suspension and expulsion and other behavioural management tools, experiences of racism and overall educational attainment.

School Community Safety Orders

The Victorian Parliament passed the *Education and Training Reform Amendment (Protection of School Communities) Bill 2021* in June 2021, creating a scheme that allows school principals to issue orders banning adults from entering a school or imposing conditions on how they can attend or engage with the school.

Excluding parents from engaging with their children's education risks the students themselves becoming disengaged from their schooling. In particular, there is a clear need for safeguards against schools issuing orders against parents who persistently advocate for their children's needs. This runs a significant risk of isolating these children with complex needs and ultimately leading them to disengage from the education system. This poses significant concern for Aboriginal children and parents, who are both more likely to need to advocate for themselves and, in the absence of proper cultural awareness training and other safeguards at the school, more likely to be perceived as aggressive or unreasonable.

VALS opposed the legislation in the form it was passed,¹³² because of the need for significantly expanded safeguards to ensure that school community safety orders are not misused. Our concerns about the scheme include:

- **Natural justice issues:** there are shortcomings in the procedural fairness afforded to people being excluded from schools by these orders, and the legislative language creates very wide scope for school principals to issue orders.
- **Inappropriate decision-makers:** school principals are not well placed or qualified to make judgements about the behaviour of adults engaging with the school, and not adequately trained to make quasi-judicial decisions limiting parents' behaviour.
- **Conditions on exclusion orders:** the legislation provides broad discretion for school principals to impose behavioural obligations on parents and other adults, for example to

¹³² VALS, [VALS' Position on Proposed School Orders Misrepresented by the Andrews Government](#)

participate in education sessions, with the only alternative being to disengage from their children's schooling.

The scheme is governed by Ministerial Guidelines, and VALS calls for the Department of Education to fund an independent evaluation of the school community safety order scheme, making the evaluation findings publicly available for transparency and accountability.

RECOMMENDATIONS

Recommendation 30. For the Department of Education to fund an independent evaluation of the school community safety order scheme, making the evaluation findings publicly available for transparency and accountability.

Disability


The data on disability rates within the Aboriginal community paints a concerning picture of inequity, highlighting the urgent need for comprehensive support and intervention. With disability being twice as prevalent among First Nations individuals compared to the general population, comprising 38% of First Nations adults and 22% of children¹³³, it underscores the disparities faced by Aboriginal people in Australia. These statistics not only reflect a stark reality but also emphasise the critical importance of access to culturally safe disability assessments and support services, which directly impact school engagement. Currently, First Nations children with disabilities encounter significant challenges in education, with 11% not attending school and 10% requiring specialised classes or time off.¹³⁴ Early assessments are pivotal in identifying and addressing the needs of Aboriginal students, yet access remains limited. The data also reveals the overrepresentation of First Nations individuals in the prison system, with an unknown percentage reporting disabilities upon entry. This disparity underscores broader inequalities in education and social support systems, emphasising the urgent need for targeted interventions and systemic changes to ensure equitable access to education and support services for Aboriginal communities in Australia.

The findings of the Royal Disability Commission highlight how culturally safe and inclusive schools serve as critical building blocks, not only for positive educational outcomes but also for helping Aboriginal children avoid interaction with justice and child protection systems. They play a pivotal role in guiding Aboriginal children toward adulthood free from violence, abuse, neglect, and exploitation.¹³⁵ When Aboriginal students are denied access to such culturally safe and inclusive educational environments, it not only impedes their academic progress but also increases the risk of

¹³³ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [First Nations people with disability](#) (2021), p 70.

¹³⁴ Ibid.

¹³⁵ Ibid, p.67



their involvement in systems that perpetuate harm. Addressing these disparities is essential for creating a more just and equitable educational landscape for Aboriginal students.

As the First Peoples Disability Network shared in the Koorie Youth Council's Ngaga-Dji Report,

Systemic barriers and an absence of support for young people with disability is placing them on a pathway into imprisonment instead of learning and education. In light of this, any recommendations for addressing the rate at which Aboriginal young people come into contact with the criminal legal system and for improving youth detention must acknowledge this reality and incorporate means for identifying and supporting the needs of young people with a disability at all stages of the child's development.¹³⁶

Bias, especially the phenomenon of 'diagnostic overshadowing,' further exacerbates educational inequalities.¹³⁷ If educators and educational systems are influenced by biases related to race and disability, Aboriginal students may be disproportionately affected. Misdiagnoses or underestimations of the educational needs of Aboriginal students with disabilities can lead to inadequate support and resources, hindering their academic progress.

The revelation of higher rates of 'exclusionary discipline' for Aboriginal students, particularly those with disabilities¹³⁸, points to systemic issues within the education system. Unjust disciplinary practices can contribute to a cycle of disengagement, disproportionately affecting the educational journey of Aboriginal students. Such disparities not only impede their academic success but also contribute to a broader pattern of educational inequality.

In recognising the intersecting factors, including disability, the commission underscores the urgent need to address these issues to dismantle systemic barriers and promote an educational landscape that is truly equitable and inclusive for Aboriginal students. By doing so, we can work towards closing the gap in educational outcomes and providing all Aboriginal students with the opportunities and support they need to succeed.

¹³⁶ Koorie Youth Council 2018, [Ngaga-Dji Report](#) (2018), p 47.

¹³⁷ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Final Report - Volume 9, First Nations people with disability \(Report, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, \(2023\)\)](#), (2023), p.67

¹³⁸ Ibid.

RECOMMENDATIONS

Recommendation 31. For the Department of Education to develop and implement, in partnerships with ACCOs and Disability Advocacy bodies, training and resources for educators to address biases related to race and disability and establish guidelines for how to provide education and support inclusively for all students to they have access to and engage with high quality, culturally safe and inclusive education.

Recommendation 32. For the Department of Education to work collaboratively with the Department of Health and the Department of Families, Fairness and Housing to ensure that all children have access to timely and culturally safe specialist assessments to support their access to equitable, inclusive and culturally safe education.

Systemic Discrimination in tertiary education

Aboriginal people face systemic discrimination in tertiary education, manifesting in stark disparities in retention and completion rates compared to their non-Aboriginal counterparts. In 2011, first-year Aboriginal university students had a retention rate of 67.6 per cent, significantly lower than the 79.2 per cent rate observed among all other domestic students. The overall completion rates for Aboriginal university students were 22 per cent less than those for non-Aboriginal students.¹³⁹ These disconcerting statistics are compounded by the observations made by the CCYP, highlighting how low expectations and limited support in earlier education adversely impact the aspirations of Aboriginal children and young people to pursue higher education.¹⁴⁰ Moreover, systemic discrimination and racism entrenched within educational institutions contribute to the creation of hostile environments for Aboriginal students. A lack of cultural safety in curricula and teaching materials exacerbate a sense of exclusion and marginalisation. Additionally, intergenerational wealth disparities and limited access to resources further compound the challenges faced by Aboriginal students, making it more arduous for them to engage in tertiary education. This complex web of factors underscores the existence of educational injustice, impeding the academic pursuits and opportunities for advancement of Aboriginal individuals in the tertiary education landscape.

Dr. Eddie Cubillo, a proud a Larrakia, Wadjigan and Central Arrernte man, who is Director of the Indigenous Law and Justice Hub at the University of Melbourne's Law School, provided evidence to Yoorrook where he spoke to the identified gaps in understanding the unequal position of Aboriginal people and the prevalence of systemic racism within the criminal legal system, highlighting pervasive

¹³⁹ Department of Education, [Review of higher education access and outcomes for Aboriginal and Torres Strait Islander people: Final report](#) (2012), p 113.

¹⁴⁰ Commission for Children and Young People, [Let us Learn Systemic inquiry into the educational experiences of children and young people in out-of-home care](#) (2023), p 65.

issues that extend beyond law enforcement.¹⁴¹ Dr. Cubillo also shared his experience of systemic and blatant racism, discrimination, bias working within the legal and academic professions.¹⁴²

Eliminating systemic discrimination and biases within tertiary education are essential steps toward creating environments where Aboriginal students can thrive. Dr Cubillo presented at the 2023 Wingarra Djuraliyin: Public Lecture on Indigenous Peoples and Law, where he reflected:

As a country, we need to acknowledge that the places settlers/non-Indigenous Australians have built for themselves were established by, and are sustained by, racial violence. Institutions can be unrelenting in their viciousness towards sovereign Black bodies, and this viciousness includes the silence of colleagues, their privilege and their 'unconscious biases'.¹⁴³

Supports like the LOOKOUT Program are critical to ensure that Aboriginal children and young people complete their schooling and are supported to undertake higher education.

RECOMMENDATIONS

Recommendation 33. For the Department of Education to fund an Aboriginal LOOKOUT Program to support young people in out-of-home-care to access and engage with kindergarten and school.

Recommendation 34. For Victorian tertiary institutions to commit to integrating mandatory subjects around Aboriginal history, culture, and their intersections with relevant studies into academic curricula across areas of law, health, social work, education and political science.

Recommendation 35. For Victorian tertiary institutions to commit to eliminating systemic racism and discrimination by implementing anti-racist policies, fostering diverse and inclusive campus environments, and providing support for Aboriginal students and staff.

Areas of Promising Practice; moving towards a more self-determined education system for Aboriginal students

Connection to culture

Early Years Education

VALS is disappointed that the Yoorook Justice Commission did not include early years education as part of their inquiry into education. The early years are instrumental in moulding social, emotional, and intellectual well-being, necessitating a comprehensive approach. Cultural safety and a strong connection to one's culture are pivotal components, aligning with the Target Three of the National

¹⁴¹ Yoorook Justice Commission, [Witness Outline – Eddie Cubillo](#)

¹⁴² Yoorook Justice Commission, [Witness Outline – Eddie Cubillo](#)

¹⁴³ University of Sydney, (2003) [Wingarra Djuraliyin: Public Lecture on Indigenous Peoples and the Law.](#)

Agreement on Closing the Gap, emphasising high-quality culturally appropriate early childhood education.

In Victoria, the shortage of Aboriginal early years kindergartens is a notable concern, but initiatives like Bubup Wilam and Yappera Children’s Service Co-Operative Ltd stand out for their positive impact. Bubup Wilam, as an Aboriginal Child and Family Centre, is dedicated to cultivating a strong sense of identity and self-determination among Aboriginal children, families, and staff. Notably, it offers wrap-around services to support families and children facing challenges related to trauma, social issues, or developmental delays¹⁴⁴. Similarly, Yappera Children’s Service Co-Operative Ltd has been instrumental in providing high-quality, culturally grounded, and holistic health and education programs tailored specifically for Aboriginal children¹⁴⁵. These positive outcomes underscore the importance of such initiatives in addressing the need for culturally sensitive and comprehensive early years education options, promoting the well-being and development of Aboriginal children in Victoria.

The provision of wrap-around culturally safe care is not only a means of immediate support but a strategic investment in preventing issues that may emerge later in life. By addressing the unique needs of families during the crucial early stages, these initiatives contribute to early intervention, offering assistance that is proactive and preventative in nature. The significance of supporting families earlier cannot be overstated, as it becomes a cornerstone for building resilience, mitigating the impacts of trauma, social challenges, and developmental delays. As we advocate for the expansion of the Yoorook Justice Commission's focus to include early years education, it becomes evident that early support and help are not merely responsive measures but key elements in fostering the well-being and success of Aboriginal families and children, laying the foundation for stronger, more empowered communities in the future.

RECOMMENDATIONS

Recommendation 36. For the Victorian Government to commit to funding the expansion of Aboriginal-led Early Education Centres across the state.

Schooling

As we’ve established in our nuther – mooyoop, cultural safety and a strong connection to one’s culture, Country, community and kin are integral components for the optimal development and academic success of Aboriginal students.

¹⁴⁴ [Bubup Wilam for Early Learning Aboriginal Child and Family Centre](#) (Webpage, 2023)

¹⁴⁵ [Yappera Children's Service Inc](#) (Webpage, 2023)

For Aboriginal learners to excel at school, it is vital that schools are culturally supportive and responsive learning environments.¹⁴⁶ This means acknowledging, respecting, and incorporating Aboriginal cultures into the curriculum, teaching methods, and overall educational approach.

Cultural safety and connection to culture is a critical foundation that supports Aboriginal children to be confident learners and makes schools more inclusive of Aboriginal students and their aspirations.¹⁴⁷ When students see their culture represented and valued in the educational context, it fosters a positive sense of identity, belonging, and self-worth, which are crucial for academic engagement and success.

Culturally responsive learning environments play a pivotal role in acknowledging and respecting diverse learning styles. These environments are trauma-informed, a crucial aspect for Aboriginal young people who have experienced the profound effects of intergenerational trauma. Recognising the impact of historical trauma on Aboriginal communities, trauma-informed approaches in education prioritise creating safe and supportive spaces. By incorporating trauma-informed practices into the educational framework, schools can provide culturally sensitive support, fostering a sense of safety and trust for Aboriginal young people. This not only contributes to academic success but also addresses the holistic well-being of students. Nationally, holistic education models based on Aboriginal knowledge systems that involve a young person's family and community and consider broader factors such as cultural connection, emotional wellbeing and economic wellbeing have proven successful.¹⁴⁸

An example of a culturally safe learning environment is Worawa College.

Worawa College

Worawa College is an example of a boarding school for Aboriginal girls which has had positive affect on Aboriginal young people's engagement with education, through championing cultural safety and providing a supportive learning environment. Worawa's holistic model of education focuses on physical, social, spiritual, cultural and emotional wellbeing to bring each student to her full potential. Students have access to education, pastoral care, primary health care, psychologists, sports associations and work experience, and are taught independent living skills.¹⁴⁹

An example of this commitment is demonstrated through Worawa Aboriginal College's attendance policy, which underscores its dedication to student engagement and support. The policy, known as the Student Attendance Monitoring and Management policy, sets out clear attendance requirements and management strategies. Students demonstrating consistent lateness or class avoidance may be required to attend interviews with key school officials or the Student Review Committee (SRC), which determines strategies to improve attendance. Parents and guardians are

¹⁴⁶ State of Victoria, [Victorian Aboriginal Affairs Framework 2018–2023](#) (2019), p 38.

¹⁴⁷ Ibid.

¹⁴⁸ Children's Ground, [Children's Ground in Kakadu West Arnhem: final evaluation – 2013 to 2017](#) (2019), p 5.

¹⁴⁹ Commission for Children and Young People Victoria, [Our youth, our way - Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system](#) (2021), p 403.

promptly notified by the Principal as necessary. Worawa further enhances student well-being through its dedicated support staff, including a School Nurse, Head of Boarding and Student Well-being, and visiting health professionals from Monash Children's Hospital and Caraniche.

This proactive approach aligns with the college's holistic model, emphasising cultural safety and well-being. By integrating Aboriginal cultures into the curriculum and providing culturally sensitive support services, Worawa fosters an inclusive learning environment. The college's success, evidenced by high attendance rates and academic achievements, underscores the effectiveness of its approach. Consulting with Aboriginal communities is pivotal in designing culturally safe schooling options that meet students' diverse needs and aspirations. Through such initiatives, educational institutions can create environments where Aboriginal students thrive academically and culturally. Worawa College has demonstrated successful outcomes, as evidenced by high attendance rates reported in its 2019 annual report. The data indicates an 87% attendance overall and 90% attendance in Year 12. Additionally, in 2019, 100% of Worawa's Year 12 students successfully completed their qualification. Of the Year 12 graduates, 80% were successful in gaining admission to tertiary institutions.¹⁵⁰

Worawa College provides an example of why educational reform is required to create culturally safe schooling options for Aboriginal students. To achieve true cultural safety, consultation should be undertaken with Aboriginal young people to design schooling options that meet their needs, and with local communities to avoid a 'one size fits all' approach.¹⁵¹

Reservoir East Primary School

Reservoir East Primary School Reservoir East Primary School was recognised for 'Outstanding Koorie Education' in the 2022 Victorian Education Excellence Awards. The school is committed to encouraging a strong sense of belonging and identity for their Aboriginal students and strives to provide a "culturally competent, responsive and inclusive learning space reflective of Aboriginal culture and peoples"¹⁵². They have implemented Initiatives to improve the educational outcomes of Aboriginal students place a strong emphasis on Aboriginal students have a voice in decision-making and are guided by the Marrung Education Plan. They have also invested in developing an Aboriginal workforce at the school which includes education support staff, teaching staff and an Indigenous Liaison Officer. This all fosters and facilitates a strong connection to the Aboriginal community. The school is well-regarded as culturally safe for Aboriginal students and their families. The commitment they have shown in implementing a culturally safe learning environment is

¹⁵⁰ Worawa Aboriginal College, [Annual report 2019](#) (2019), p 12.

¹⁵¹ Commission for Children and Young People, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system* (2021), p 33.

¹⁵² Victorian Government, [Aboriginal Affairs Report, 2022](#). (2022), p 59.

highlighted through the significant increase in enrolments of Aboriginal students in the past 5 years, which has grown from 10 to 65 Aboriginal students, a 550 per cent increase and represents over 30 per cent of the student population.¹⁵³

Reservoir East Primary School's approach was championed by the Victorian government in their most recent Victorian Aboriginal Affairs Report in 2022, so the solutions are known as to what schools need to do to be culturally safe and inclusive, the Department just needs to be stronger at guiding and enforcing best practice so all Aboriginal students in Victoria can excel.

RECOMMENDATIONS

Recommendation 37. Foster culturally responsive learning environments that recognise and respect diverse learning styles, implementing trauma-informed practices to address the effects of intergenerational trauma to create safe and supportive spaces for Aboriginal students.

Recommendation 38. Develop youth-relevant cultural understanding and safety content to further support progress towards culturally safe schools, ensuring that the Department of Education takes proactive steps in creating valuable resources for the youth.

Inclusive School Curriculum

Schools teaching Aboriginal history and culture

The National Curriculum encompasses a comprehensive framework designed to set consistent educational standards across Australia, aiming to enhance learning outcomes for all students. It includes subjects and cross-curricular priorities, such as Aboriginal Histories and Cultures, which are integrated across learning areas to provide students with a holistic understanding of Australia's diverse heritage and cultures. To ensure the effective delivery of culturally safe education aligned with these standards, it is imperative for the Department of Education to actively support schools in implementing inclusive teaching practices. This support can involve providing resources, professional development opportunities, and guidelines tailored to fostering cultural safety and understanding among educators. By prioritising the creation of culturally safe learning environments, the Department of Education can empower schools to deliver education that respects and reflects the identities, histories, and cultures of Aboriginal students, thereby promoting equitable and enriching educational experiences for everyone. This aligns with Marrung's priority areas and actions, particularly in creating a positive climate for learning and development, building community engagement, fostering professional leadership, and achieving excellence in teaching, learning, and

¹⁵³ Victorian Government, [Aboriginal Affairs Report](#), 2022 (2022), p 67.

development at all stages. Furthermore, it aligns with the National Agreement on Closing the Gaps targets, ensuring that children engage in high-quality, culturally appropriate education from early childhood through to further education pathways and employment, ultimately leading to improved outcomes for Aboriginal students and communities.

Teaching Aboriginal languages in schools

Across Australia there are over 250 Aboriginal languages including 800 dialects, with each language specific to a certain region and people¹⁵⁴. Aboriginal peoples were forbidden to speak their traditional languages on missions and reserves, as a result of this many Aboriginal languages across Australia, but particularly in Victoria are now lying dormant¹⁵⁵. This was part of the genocidal approach of colonisation, but we are witnessing incredible strength and resilience in communities revitalising languages again in Victoria, being led by VAEAI. For Aboriginal people, speaking in your traditional language is an integral part of being strong in your identity, connected to your culture, Country and community, and in turn improves social and emotional wellbeing, as seen with the bi-lingual model in the Northern Territory.¹⁵⁶

A number of schools in across Victoria have chosen to teach their local Aboriginal language to students. Thornbury Primary School teaches Woiwurrung, the language of the Wurundjeri people from prep to Year 6¹⁵⁷. This promotes cultural understanding, awareness and respect amongst students and the broader school community for Aboriginal people, cultures, and language. Their language program has been praised and received the 2019 Victorian Education Excellence Award.¹⁵⁸

Eight schools on Gunditjmarra Country, in the southwest of Victoria are delivering the Gunditjmarra Culture and Language in Schools program, by embedding Aboriginal culture and language into their schools through local language curriculum¹⁵⁹. The schools work with local KESOs, Gunditj Mirring Traditional Owners Aboriginal Corporation and the Victorian Curriculum and Assessment Authority to develop a comprehensive curriculum program with an 'on Country' component.

We encourage the Commission to invite initiative to speak to the outcomes and impact of this initiative.

Jajoo Warrngara

[Jajoo Warrngara](#) is an Aboriginal-led online educational resource, developed by the Sharing Stories Foundation. This platform serves as a transformative tool for educators, offering an opportunity to integrate Aboriginal perspectives into the curriculum. By utilising the resources (which includes

¹⁵⁴ Australian Institute of Aboriginal and Torres Strait Islander Studies, '[Languages Alive](#)' (Webpage)

¹⁵⁵ Ibid.

¹⁵⁶ Jane Simpson, "[Why more schools need to teach bilingual education to Indigenous children](#)" (Webpage, 2017)

¹⁵⁷ Victorian Aboriginal Education Association Inc. (VAEAI), '[Thornbury Primary School Woiwurrung Language Program](#)' (Webpage)

¹⁵⁸ Victorian Aboriginal Education Association Inc. (VAEAI), '[Thornbury PS praised for Koorie education](#)' (Webpage)

¹⁵⁹ Victorian Government, '[Victorian Aboriginal Affairs Framework 2022](#)' (2022), p 61.

lessons produced by local communities across Australia), students can learn about the unique history and cultures of the oldest continuing cultures on the planet and their connections to the land, sky, sea and waterways. The program also addresses topics like colonisation and the often-neglected Frontier Wars, fostering critical reflection among students. Notably, Jajoo Warrngara aims to create an educational landscape where young Aboriginal children and young people feel recognised and valued, contributing to the establishment of culturally safe classrooms.¹⁶⁰ Given the limited representation of Aboriginal educators at just 2%¹⁶¹, platforms like Jajoo Warrngara play a crucial role in equipping teachers to deliver meaningful lessons that meet national curriculum standards while promoting respect for First Nations cultures and creating a cohesive and inclusive learning environment for all students.

Narragunnawali – Reconciliation Action Plans in Schools

The Department of Education needs to provide greater training and resources to support schools in providing culturally safe education for Aboriginal students. This includes resources like Reconciliation Australia's Narragunnawali platform so schools can develop their own Reconciliation Action Plan (RAPs).¹⁶² Doing so not only aligns with the National Agreement on Closing the Gaps education targets and Marrung's priority areas but also ensures that Aboriginal students feel respected, included, and supported in their educational journeys. RAPs serve as formal commitment to reconciliation, outlining how schools or early learning services will strengthen relationships, respect, and opportunities within classrooms, across institutions, and with the broader community. Through the Narragunnawali platform, educational institutions can develop RAPs to register and expand upon existing initiatives or embark on their reconciliation journeys. By utilising RAPs, schools can foster a more culturally safe learning environment by embedding Aboriginal perspectives, histories, and cultures into the curriculum and school practices. This structured framework promotes understanding, respect, and recognition of Aboriginal cultures and histories among students, staff, and the wider community, contributing to meaningful and systematic approaches to reconciliation within educational settings. Ultimately, mandating or strongly encouraging the use of such platforms by the Department of Education can lead to a more inclusive and culturally safe learning environment for Aboriginal students.

¹⁶⁰ Jack Latimore, "[After The Voice, teachers urged to focus on Indigenous history in classroom,](#)" The Age (Webpage, January 11, 2024)

¹⁶¹ Australian Institute for Teaching and School Leadership (AITSL), "[The Impact of Aboriginal and Torres Strait Islander Educators,](#)" (Webpage, July 2021)

¹⁶² Reconciliation Australia, "[Narragunnawali - Reconciliation in Schools and Early Learning,](#)" (Webpage, 2021)

Māori Education Approaches in New Zealand

Another example of working towards connection to culture in education is through teaching Aboriginal history within the classroom. The Productivity Commission found in its 2022 report that some Aboriginal students ‘do not see their identities, cultures, and knowledges reflected in what they are learning’.¹⁶³ This sentiment is further echoed in CCYP’s ‘*Our youth, our way*’ Report, where Aboriginal children and young people told the Commission that they “wanted the educational curriculum to reflect the true history of colonisation and to value Aboriginal people’s experiences and culture”.¹⁶⁴ This underscores the need for educational systems to promote a curriculum that respects and reflects Aboriginal communities. When Aboriginal culture is acknowledged, taught and celebrated in schools, Aboriginal children and young people are more likely to feel seen, safe and comfortable to engage in learning.¹⁶⁵

New Zealand is paving the way for promising practices in cultural safety within classrooms by implementing promising practices such as integrating Aotearoa New Zealand’s histories into the educational curriculum. Notably, starting from 2023, Te Takanga o Te Wā and Aotearoa New Zealand’s histories will be integral components of all kura and schools’ marau ā-kura and local curriculum¹⁶⁶. The curriculum includes a strong focus on understanding the unique bicultural nature of New Zealand society and recognising that Māori history is the foundational and continuous history of Aotearoa New Zealand Curriculum content also focuses on the diverse histories of the peoples of Aotearoa New Zealand.¹⁶⁷ This forward-looking initiative signifies a proactive commitment to providing students with a more comprehensive and culturally inclusive learning experience.

In addition to integrating Aotearoa New Zealand’s histories into the educational curriculum, New Zealand has taken further steps to promote cultural safety and inclusivity by establishing dedicated learning pathways for Māori education. Two prominent examples of these pathways are Te Wānanga o Aotearoa¹⁶⁸ and Māori education – mātauranga¹⁶⁹. Te Wānanga o Aotearoa serves as a key institution offering Māori-focused education and training programs across a wide range of subjects, from language and cultural studies to vocational training and higher education. It plays a crucial role in supporting the revitalisation and promotion of Māori language and culture while providing educational opportunities for learners of all backgrounds. Furthermore, Māori education – mātauranga encompasses the broader concept of Māori knowledge, encompassing traditional wisdom, cultural practices, and indigenous ways of knowing and learning. This holistic approach recognises the significance of Māori perspectives and knowledge systems in shaping New Zealand’s educational landscape.

¹⁶³ Productivity Commission, [Review of the National School Reform Agreement: Study Report](#) (2022), p 37.

¹⁶⁴ Commission for Children and Young People, [Our youth, our way: Systemic inquiry into the over-representation of Aboriginal children and young people in Victoria’s youth justice system](#) (2021) p 399.

¹⁶⁵ VACCA, [Inquiry into the state education system in Victoria, September](#) (2023), p 8.

¹⁶⁶ Aotearoa New Zealand’s Histories and Te Takanga o Te Wā [Education in New Zealand](#) (Webpage, 11 February 2023)

¹⁶⁷ Curriculum Centre, [Aotearoa New Zealand’s histories](#) (Webpage, 2023)

¹⁶⁸ Te Wānanga o Aotearoa, [Te Whare](#) (Webpage)

¹⁶⁹ New Zealand Ministry for Culture and Heritage Te Manatu Taonga, Māori Education – Mātauranga, [Te Ara Encyclopedia of New Zealand – Te Ara Encyclopedia of New Zealand](#) (Webpage, 6 October 2021)

These dedicated learning pathways not only empower Māori children and young people to connect with their cultural heritage but also contribute to fostering greater cultural understanding and appreciation among all students. By incorporating Māori perspectives and knowledge into the educational framework, New Zealand continues to lead in promoting cultural safety and inclusivity within its classrooms, ensuring that all learners have access to a rich and diverse learning experience reflective of the nation's unique cultural identity.

Victoria can draw valuable insights from New Zealand's proactive approach to cultural safety and a self-determined Maori model in education. This includes considering an emphasis on incorporating Aboriginal history and culture within the curriculum. New Zealand's commitment to recognising Māori history as foundational and continuously acknowledging the diverse histories of its peoples provides a constructive model. Incorporating a similar focus on the rich and diverse history and culture of Australia's Aboriginal people would enhance cultural understanding and inclusivity in the Victorian educational system, fostering a more comprehensive and culturally responsive learning experience for Aboriginal students.

RECOMMENDATIONS

Recommendation 39. For the Department of Education to work closely with ACCOs, particularly VAEI and Aboriginal early years centres, to develop Aboriginal educational resources from early years to tertiary, including the teaching of traditional languages.

Recommendation 40. Within the context of state-wide treaty, for the First Peoples Assembly of Victoria, alongside ACCOs, to scope what a self-determined model of education should look like for Aboriginal students from early years to tertiary.

Support Aboriginal students into legal education

Addressing educational inequality for Aboriginal students, particularly in the realm of legal education, is critical for dismantling historical barriers and fostering true inclusivity. Dr. Eddie Cubillo, Senior Indigenous Fellow at Melbourne Law School, emphasises the need for the development of an Aboriginal history and law unit to be incorporated into the core curriculum of law degrees.¹⁷⁰ He also suggests ongoing professional education to develop cultural capability among lawyers. Presently, the number of Aboriginal lawyers remains disproportionately low, underscoring the urgent need to build a more diverse legal workforce that reflects the broader community. VALS offer vital pathways for Aboriginal individuals to pursue legal careers, providing volunteer roles, internships, mentorship, support, and tailored programs to navigate the challenges within the legal profession.

¹⁷⁰ Yoorrook for Justice, [Transcript of Eddie Cubillo](#)

Historically, Aboriginal communities have experienced systemic discrimination, including limited access to quality education, perpetuating disparities in academic achievement. To rectify this injustice, concerted efforts must provide tailored support mechanisms for Aboriginal students aspiring to pursue tertiary education, including legal studies. By acknowledging unique cultural contexts and historical legacies, educational institutions can implement targeted initiatives such as mentorship programs, culturally relevant curriculum, and increased financial assistance. These measures empower Aboriginal students to overcome barriers to educational attainment and contribute to breaking the cycle of inequality. Increasing Aboriginal representation in legal education not only addresses historical injustices but also paves the way for a more equitable and diverse legal profession, fostering a society where educational opportunities are accessible to all, regardless of cultural background.

One of the ways to address the structural inequity of the legal system, is to increase the number of Aboriginal lawyers, the Victorian government should incentivise Aboriginal students undertaking legal studies, alongside social work, health studies and education so to support the growth of an Aboriginal workforce in the areas of which there is such disparity, as evidenced by the National Agreement on Closing the Gap. Consideration should be given as to a guarantee of employment if they choose to work at an ACCO.

RECOMMENDATIONS


Recommendation 41. For Yoorrook to consider mechanisms such as incentivisation of particular studies, including law, education, health, and social work to support the growth of an Aboriginal workforce.

Cultural components in legal education and training.

Institutional racism and bias must be addressed through education for new lawyers and within the courts. Cultural awareness training in the legal system, particularly in the context of courts in Victoria, plays a significant role in promoting fair and equitable justice outcomes for Aboriginal peoples. It helps address biases, improves communication, and fosters a more comprehensive understanding of the cultural factors influencing education. The absence of such training can contribute to systemic issues and perpetuate injustice within the education system.

Dr. Eddie Cubillo, Senior Indigenous Fellow at Melbourne Law School, provided evidence to Yoorrook regarding the necessity of cultural competence for everyone working in the criminal legal system in relation to First Peoples.¹⁷¹ However, evidence presented to Yoorrook raises concerns about the

¹⁷¹ Outline of Evidence of Dr Eddie Cubillo, 15 December 2022, 6–8 [30]–[41]; Transcript of Dr Eddie Cubillo, 15 December 2022, 520– 522 [10]–[19]; VALS, Submission to the Inquiry into Victoria’s Criminal Justice System (2021) 257–261 (‘VALS Inquiry Submission’).



impact of systemic racism and the level and consistency of cultural understanding among judicial officers. Legal services and advocates have described significant gaps in knowledge about the unequal position of First Peoples in Victoria, encompassing historical and contemporary causal factors contributing to offending, as well as effective strategies to meet the needs of First Peoples. This highlights the imperative for comprehensive measures to address these knowledge gaps and enhance cultural understanding within the criminal legal system. Dr. Eddie Cubillo additionally recommended for the development of an Aboriginal history and law unit to be incorporated into the core curriculum of law degrees. Additionally, ongoing professional education is suggested to foster cultural capability among lawyers. This holistic approach is essential to promote a comprehensive understanding of Aboriginal cultural issues within the legal community.¹⁷²

We refer the Commission to our recommendations pertaining to legal education and training in our submission to the Inquiry into Victoria's criminal legal system.¹⁷³

RECOMMENDATIONS

Recommendation 42. Support the development of an Aboriginal history and law unit to be incorporated into the core curriculum (Priestly 11) of law degrees, collaborating with educational institutions to ensure that future legal professionals receive comprehensive education on Aboriginal cultural issues, contributing to a more culturally aware legal community.

¹⁷² Report into Victoria's Child Protection and Criminal Justice Systems (5 September 2023) Yoorrook For Justice, Outline of Evidence of Dr Eddie Cubillo, 15 December 2022, 6–8 [30]–[41].

¹⁷³ VALS, [Victorian Aboriginal Legal Service Submission to the Inquiry into Victoria's Criminal Justice System](#), September 2021.

Annex A: VALS relevant policy and research work

Submissions

- Submission to [Inquiry into Children of Imprisoned Parents](#) – May 2022
- [Submission to the Inquiry into Victoria's criminal legal system](#) – September 2021

Community Factsheets

- Community Factsheet, [The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#) (OPCAT) (2022)
- Community Factsheet, [Fixing Victoria's Broken Bail Laws](#) (2022)

Annex B: witnesses that Yoorrook should compel to give evidence

Education

- Minister for Education
- Minister for Early Years
- Secretary for Education
- Deputy Secretary, Early Childhood Education
- Deputy Secretary, School Education Programs and Support
- Deputy Secretary, Schools and Regional Services
- Aboriginal Commissioner for Children and Young People

Youth Justice

- Minister for Youth Justice
- Deputy Secretary Youth Justice
- Teachers who have worked in youth prisons

Child Protection

- Minister for Child Protection Children
- Secretary of DFFH
- Deputy Secretary Children and Families

Disability

- Minister for Disability

CCYP

- Aboriginal Commissioner for Children and Young People

VALS notes that we believe there is value in calling former Ministers to give evidence. Current Ministers have often not been in the portfolio for a substantial period of time and can therefore avoid significant scrutiny. They also have responsibilities to cabinet and their Government which conflict with providing the most useful evidence possible. Former Ministers may have overseen decisions where the implications and outcomes are now well known, allowing for an in-depth analysis of what went wrong with the decision-making and are less likely to have responsibilities that conflict with providing useful evidence.

Annex C: information, documents and data that Yoorrook should subpoena



Data relating to Aboriginal children and young people in early years, schooling and tertiary education including:

- Individual Learning Plans that are completed and being adhered to
- Behaviour plans
- Flexible Learning Options
- Who have made a complaint about racial discrimination
- Who have been expelled or suspended
- Who have been diagnosed with learning difficulties and/or disability and/or mental health issues
- Who are living in out-of-home care
- Who are involved in the youth justice system
- Additional VSIIIDR data as it relates to Aboriginal children and young people's engagement with the education system, collated against integrated data sets on justice, health and human services.