



Victorian Aboriginal Legal Service Nuther-mooyoop to the Yoorrook Justice Commission: Family Violence

March 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 were 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 Baggarrook Women's Transitional Housing program.

Policy and Communications

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

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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.

This paper uses gendered language to refer to affected family members of family violence, as VALS recognises that family violence is a gendered phenomenon, most frequently and severely suffered by women. We recognise that family and domestic violence also takes a severe toll on trans and non-binary people, men and women in same-sex relationships, and in some cases is perpetrated by women against men. Aboriginal people of all genders are severely affected by family and sexual abuse and by the criminal legal system's response to it. This paper also chooses to use the language of affected family member and person using violence as the binary nature of victim/perpetrator doesn't reflect the complexity that so often arises with family violence incidents and can lead to misidentification.

SUMMARY OF RECOMMENDATIONS

Recommendation 1. An Aboriginal led public accounts and estimates committee should 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 Dhelk Dja, the National Plan to End Violence Against Women and their Children, and Victoria's 10-Year Plan for Change.

Recommendation 2. The Victorian Government must give full effect to the right of First Peoples to self-determine the family violence sector including access to legal supports, as it relates to First Peoples. This includes negotiating through the Treaty process, including through potential interim agreements, the transfer of decision-making power, authority, control and resources in that system to First Peoples. Transferring or creating decision-making power includes but is not limited to:

- system design
- obtaining and allocating resources
- powers of, and appointments to bodies or institutions, and
- accountability and oversight functions

Recommendation 3. The Victorian Government must extend the jurisdiction of Koori Courts to hear additional types of matters, including breaches of FVIOs.

Recommendation 4. The Umalek Balit program should be expanded to more locations beyond Melbourne, Mildura, Shepparton, Ballarat, and Heidelberg Magistrates' Court.

Recommendation 5. The Victorian Government must ensure the expansion of specialist family violence courts (SFVCs) to cover all 14 identified court locations as recommended by the Royal Commission.

Recommendation 6. All governments must ensure at least proportional funding should be allocated to ACCOs to deliver culturally safe, self-determined prevention and early help services immediately, with ultimate transfer of decision making and authority to be transferred through treaty negotiations.

Recommendation 7. Expansion and extension of funding for Dardi Munwurro's Ngarra Jarranounith program, which provides intensive residential support to at-risk men.

Recommendation 8. Support services should be integrated into family violence intervention orders to provide support, intervention and rehabilitation for users of family violence.

Recommendation 9. All governments must prioritise funding for ACCOs to deliver culturally appropriate community legal education aimed at increasing knowledge of what constitutes family violence and preventing it at an early stage, alongside resources and referral information for those experiencing family violence.

Recommendation 10. Establish an independent process for automatic reviews of Family Violence Safety Notices issued by police against Aboriginal women to ensure misidentification is identified as soon as possible.



Recommendation 11. The Victorian Government must establish multi-agency coordinated approach to address misidentification which is in line with Recommendation 41 of the Royal Commission into Family Violence, requiring Victoria to immediately work family violence services, legal organisations and community members to reduce (the risk of) misidentification in Victoria.

Recommendation 12. Police should commence mandatory and ongoing training around the impact of misidentification particularly for Aboriginal women and other marginalised communities, understanding the complexity and nuances of family violence, and with a cultural awareness module that is developed and delivered by specialist family violence ACCOs, including VALS.

Recommendation 13. There should be a broad ranging Royal Commission into the culture and misconduct of Victoria Police and the terms of reference should specifically refer to family violence and sexual assault.

Recommendation 14. The Victorian Government should implement a new independent police oversight body.

Recommendation 15. The Government must fund the design and implementation of Aboriginal restorative justice model for adolescents who use violence in the home. This model must be self-determined, developed and delivered by ACCOs with specialist family violence and legal expertise to ensure it is culturally safe, therapeutic and trauma informed, with adequate resources allocated to ACCOs and includes funding for evaluation.

Recommendation 16. The Victorian Government should request and facilitate the expansion of the Indigenous List of the Federal Circuit and Family Court of Australia to other locations across Victoria, to ensure that Aboriginal families, particularly those in rural and regional areas, have access to culturally appropriate court processes.

Recommendation 17. The Victorian Government should request and facilitate increasing the frequency of the Indigenous List of the Federal Circuit and Family Court of Australia at Melbourne from monthly to at least weekly.

DETAILED SUBMISSIONS

Introduction

VALS is disappointed that family violence has not been called as a standalone issue by the Yoorrook Justice Commission (**Yoorrook**). VALS strongly believes that the injustices Aboriginal children, young people and women have experienced both historically through colonial violence as well as contemporary family violence warrants its own dedicated focus. We strongly believe that there should be dedicated hearings held and evidence called on these issues. While the Royal Commission into Family Violence was held within the last 10 years, the numbers of Aboriginal women and children experiencing family violence, including those who have been murdered, continues to escalate.¹ The systemic injustice and discrimination being perpetrated by the state must be part of this truth telling process. We have raised this privately with Commissioners in December and are yet to receive a response. VALS was invited to raise our concerns relating to family violence within this most recent release of issues papers on health and healthcare, housing and homelessness and education, and we have taken up this opportunity.

As indicated previously,² we are concerned about the limited timeframe provided for truth telling in Victoria. Although the timeframe has been extended by 12 months, the process of truth telling and the creation of an official public record about historical and contemporary injustices should not be rushed. We reiterate our previous recommendations that the timeframe for Yoorrook should be extended.

Family violence and its impacts cut across every area of practice at VALS. Its repercussions extend to issues of child protection, frequently serving as a driving force behind the removal of Aboriginal children from their families. Family violence often arises in civil law proceedings, including cases involving tenancy disputes and debt issues, frequently stemming from relationship breakdowns. Within criminal matters for children, young people and adults that we support through our Criminal Legal Practice and Balit Ngulu, many clients navigate the complex terrain as both affected family members (**AFM**) and persons using violence (**PUV**) in instances of family violence. In our Aboriginal Families Practice, we provide legal assistance to respondents facing Family Violence Intervention Orders (**FVIOs**), while also providing legal assistance to community members affected by family violence through our Orange Door pilot program. Our Aboriginal Families practice additionally provides comprehensive legal services encompassing legal information, advice, assistance, and representation across family law, child protection, and family violence domains. For family violence matters, our commitment is exemplified through the Family Violence Early Resolution Service, where

¹ While the Victorian Government has claimed that all recommendations of the Royal Commission were implemented, we believe this milestone was achieved through selective interpretation of the recommendations. While VALS believes all Royal Commissions and similar inquiries should emulate the implementation monitor that was established for the Family Violence Royal Commission, future models should enable community to judge progress towards implementation. The Aboriginal Justice Caucus has long advocated for an Aboriginal Social Justice Commissioner to provide oversight of recommendations from Royal Commissions and inquiries relating to our people.

² VALS, [Nuther-mooyoop: Child Protection](#), (2022), p. 16; VALS, [Nuther-mooyoop: Criminal Legal System](#) (2022), p. 21; VALS, [Nuther-mooyoop: Education](#), (2024), p. 7.; VALS, [Nuther-mooyoop: Health](#), (2024), p. 17.

our legal experts collaborate with the courts and law enforcement to negotiate pre-court outcomes. This service has proven instrumental in saving numerous clients invaluable time, resources, and needless stress and trauma associated with protracted litigation battles.

As highlighted in the Victorian Aboriginal Legal Service submission to the Senate Inquiry into missing and murdered First Nations women and children³, systemic racism permeates all facets of Australian society, evident in the victim-blaming that occurs when an Aboriginal person is reported as missing or murdered, a phenomenon where the police and media often attribute a portion of the blame to the Aboriginal person. This victim-blaming is indicative of the ongoing colonial violence towards Aboriginal women and children, underscoring the deeply entrenched and systemic nature of racism in Australian culture. Furthermore, systemic racism, particularly within law enforcement agencies and the court system, compounds and perpetuates the cycle of violence and injustice. In her work, Darumbal and South Sea Islander journalist, lecturer and author Dr Amy McQuire emphasises the concept of a framework of disappearance, which extends beyond individual acts of violence to encompass the societal conditions facilitating extreme violence against Aboriginal women. Through labeling such cases as 'disappearances' and 'acts of disappearing', she underscores the collective responsibility of not only the users of family violence but also the police (for their failure to investigate), the media (for their silencing and dehumanisation), and the state (for its acquiescence).⁴

Indigenous Data Sovereignty⁵ (IDS) and Indigenous Data Governance⁶ (IDG) continue to be a key priorities for VALS and are fundamental to self-determination. We refer to our previous nuther-mooyoop's to the Yoorrook Justice Commission, which outlined critical legislative and policy reforms to ensure that Aboriginal communities can:

- (c) Exercise control over the manner in which data concerning Aboriginal individuals and communities is gathered, managed, interpreted and utilised; and
- (d) Access and collect data obtained about Aboriginal individuals and communities.⁷

In its Yoorrook for Justice Report, the Commission recommended that the Victorian Government must transfer decision-making power, authority, control and resources, to give full effect to the right of Aboriginal communities to self-determination in the criminal legal system and the child protection system.⁸ VALS strongly supports transformational change in both of these systems, which must include Aboriginal ownership and control of data. By ensuring Aboriginal leadership and autonomy in data management and decision-making processes, efforts to address family violence can be more

³ VALS, [Submission to the Senate Inquiry into missing and murdered First Nations women and children](#) (December 2022), p.4

⁴ University of Queensland Australia, [Disappearing Aboriginal Women: Speaking Back to Silences](#) (2022), p 2.

⁵ IDS refers to "the right of Indigenous peoples to exercise ownership over Indigenous Data. Ownership of data can be expressed through the creation, collection, access, analysis, interpretation, management, dissemination and reuse of Indigenous Data." See Indigenous Data Sovereignty Summit, Communique, 20 June 2018, p. 1.

⁶ IDG refers to "the right of Indigenous Peoples to autonomously decide what, how and why Indigenous Data are collected, accessed and used. It ensures that data on or about Indigenous peoples reflects our priorities, values, cultures, worldviews and diversity." Ibid.

⁷ VALS, [Nuther-mooyoop: Criminal Legal System](#) (2022), p 7.

⁸ Yoorrook Justice Commission, [Yoorrook for Justice](#) (2023), Recommendations 1 and 2

responsive, respectful, and ultimately, more effective in promoting safety and well-being within Aboriginal communities.

The Victorian Government must be held to account for its existing commitments on family violence, including priorities set out in the National Agreement on Closing the Gap⁹, Dhelk Dja¹⁰, the National Plan to End Violence Against Women and their Children¹¹, and Victoria's 10-Year Plan for Change¹², while also adhering to international rights provisions that protect women and children from harm. Recognising the significance of international frameworks such as the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**), the Victorian Government must integrate these principles into policies and practices related to family violence prevention and response. There must be robust, transparent data, and monitoring mechanisms in place to ensure the effectiveness and progress of these initiatives. As part of the Treaty process, an Aboriginal led public accounts and estimates committee should be established so that Ministers and Victorian Government departments and agencies are held to account on the implementation and adherence to all current agreements.

Criminal legal responses are not an adequate response to eradicating family violence on their own, it requires a societal change to how we perceive and value the rights of women and children and how they should be protected from harm. As Professor Chelsea Watego stated in her expert evidence to the independent commission of inquiry into Queensland Police Service Responses to Domestic and Family Violence ("**Inquiry into Queensland Police Service Responses**"), Indigenous communities recognise that a police response to what is effectively a social problem does not prevent, treat or solve the issue of family violence in our communities.¹³

The prevailing family violence system in Victoria operates primarily as a reactive emergency measure, characterised by punitive measures towards PUVs, at the end of the line rather than a proactive, preventative approach. There is an urgent need to pivot focus towards the front end, prioritising early support mechanisms that comprehensively and holistically address the underlying causes of family violence.

In 2015 the Royal Commission into Family Violence delivered its final report comprising 227 recommendations. In January 2023, the Government declared that it had successfully implemented all 227 recommendations.¹⁴ Yet VALS and numerous other ACCOs remain steadfast in their belief that this work is far from complete. Despite the purported fulfillment of recommendations, family violence continues to exert a significant and detrimental impact on Aboriginal communities. The rates of family violence experienced by Aboriginal women and children only continue to escalate. Aboriginal women are 45 times more likely to experience family violence than non-Aboriginal women and 25 times more

⁹ Australian Government, [National Agreement on Closing the Gap](#) (2020)

¹⁰ Victoria State Government, [Dhelk Dja: Safe Our Way](#) (2019)

¹¹ Australian Government, [National Plan to End Violence against Women and Children 2022-2032](#) (2022)

¹² Victoria State Government, [Ending Family Violence: Victoria's plan for change](#) (2019)

¹³ *Independent Commission of Inquiry Into Queensland Police Service Responses to Domestic and Family Violence*, Transcript of Proceedings (Her Honour Judge Deborah Richards, 5 August 2022), p 14, para. 43-46.

¹⁴ Royal Commission into Family Violence, [Summary and recommendations](#) (2016)

likely to be killed or injured from family violence than non-Aboriginal women.¹⁵ There exists a pressing need for comprehensive examination and ongoing reform initiatives to achieve transformational change of systems addressing this deeply entrenched issue. It is imperative that relevant authorities, including the Yoorrook Justice Commission, prioritise the exploration of family violence and actively consider reforms that foster meaningful and sustainable progress within Aboriginal communities.

VALS has consistently advocated on family violence and the harms that the criminal legal system inflicts on Aboriginal and/or Torres Strait Islander AFMs. We refer to several VALS publications which address violence against our women and children and the way that government action too often creates, exacerbates and re- traumatises.

- [National Principles on Coercive Control](#), October 2022
- [Addressing Coercive Control Without Criminalisation – Avoiding Blunt Tools that Fail Victim-Survivors](#), January 2022
- [Submission to the Inquiry into Victoria’s Criminal Justice System](#), September 2021
- [Submission to the Victorian Law Reform Commission: Improving the Response of the Justice System to Sexual Offences](#), March 2021
- [Submission to Inquiry into Children of Imprisoned Parents](#), May 2022
- [Submission to the Senate Inquiry into Missing and Murdered First Nations Women and Children](#), November 2022

RECOMMENDATIONS

Recommendation 1. An Aboriginal led public accounts and estimates committee should 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 Dhelk Dja, the National Plan to End Violence Against Women and their Children, and Victoria's 10-Year Plan for Change.

Systemic racism and discrimination

VALS’ submission to the *Inquiry into missing and murdered First Nations women and children* captured the impact of discriminatory policing practices that include where Aboriginal women and children are reported missing, there is a lack of urgency and a “casual” approach¹⁶.

Colonisation continues to be an extremely violent experience for Aboriginal peoples, and police are on the frontline of that violence. As the Canadian Interim Report from National Inquiry into Missing and Murdered Aboriginal Women, Girls and 2SLGBTQQIA+ people, ‘Our Women and Girls Are Sacred’ (“Canadian Inquiry”) found, Indigenous women experience higher rates of violence as a direct result

¹⁵ State of Victoria (2021), Family violence reform rolling action plan 2020–2023: Aboriginal self-determination.

¹⁶ VALS, [Inquiry into missing and murdered First Nations women and children](#), p5

of the culture of impunity created by police and state actions. Violence against Aboriginal and Torres Strait Islander women in Australia, and is the case for Indigenous women in Canada, is not seen as sufficiently problematic to warrant procedurally thorough or timely investigation by police. The Canadian Inquiry found this creates a culture within which people can perpetrate violence, including family violence, against Indigenous women and know that they are safe from consequences¹⁷. This is a fundamental reason for Indigenous people experiencing domestic and family violence in the way that they do.

Senator Dorinda Cox stated that police believe Indigenous women lead inherently transient lives and that because of this it is most likely that missing Indigenous women had simply moved locality. This casual approach to missing Indigenous women often results in critical timeframes for investigation being missed, thus lowering the chances of discovering evidence about their whereabouts, as well as aptly noting that “the view that First Nations women’s lives don’t matter in this country is a hangover from colonisation”.¹⁸ Dr Amy McQuire points out the prevalence of ‘missing’ Aboriginal women in the archives, highlighting their absence from having names, or graves for their families to remember them, and underscores the false comfort embedded in the term ‘missing’, which suggests voluntary departure rather than acknowledging the violence perpetrated against them.¹⁹ Given many of the over 500 Aboriginal women that have gone missing or have died under suspicious circumstance since 2000 had experienced family violence and the failure of police to undertake proper and timely investigations, we encourage the Commission to seek an update on this inquiry and look at relevant submissions and evidence to Victoria.

As we have detailed in previous submissions, Aboriginal women are far less likely to seek assistance from police in circumstances of violence or report cases of abuse because of a mistrust of police. This justified mistrust stems from the deeply racist system that police operate within and the consistent failures by police to protect Aboriginal women. A 2020 Queensland study found that women’s reluctance to engage with police stemmed from “prior experience of an inappropriate response, feeling intimidated, experiences of racism and mistrust of the police in general”.²⁰ The justified mistrust of police who consistently fail to assist vulnerable cohorts when they are victims of crime is well documented. Professor Judy Atkinson made reference to community distrust of police in her book *Trauma Trails – Recreating Song Lines*.²¹ During her research, Elders of Aboriginal communities shared their pain and distress of being under-served by the protections of the police system and stories of women being laughed at when seeking help from police after being assaulted by their partners. It is impossible to trust a system when the police don’t take complaints seriously and where victims are silenced before they can even be heard. Contact with police system on either end of the criminal

¹⁷ Canadian Interim Report from National Inquiry into Missing and Murdered Aboriginal Women, Girls and 2SLGBTQIA+ people, ‘Our Women and Girls Are Sacred’.

¹⁸ Brooke Fryer, [Vanished: The unsolved cases of First Nations women](#) (News article, 28 June 2022).

¹⁹ Dr Amy McQuire, [The Act of Disappearing](#) (Webpage, 2022)

²⁰ ANROWS [Australia’s National Research Organisation for Women’s Safety] (2019), [Accurately identifying the “person most in need of protection” in domestic and family violence law](#) (Report, November 2020) 101.

²¹ Judy Atkinson, *Trauma Trails – Recreating Song Lines*, The Transgenerational Effects of Trauma in Indigenous Australia (Spinifex Press Pty Ltd, 2002).

process, either as a suspect or a victim, is unsafe for Aboriginal people and only fosters a distrust of police.

Family violence matters are attended to by police which raises the significant concerns in relation to police conduct in dealing with Aboriginal people. Research has established that Aboriginal people are disproportionately likely to be named on intervention orders, charged with breaches of intervention orders, and sentenced to prison for those charges.²² This overrepresentation is particularly acute for Aboriginal women, indicating that in many cases, these orders may involve misidentification of who are the users of family violence which we discuss further in this submission.

Given the structurally violent relationship between the Victorian Police Service and Aboriginal people, addressing the crises of family violence must necessarily involve a transformative shift from monitoring and changing the behaviour of Aboriginal people, to monitoring and changing state behaviour in self-determined systems.

Need for broader transformative change

The Yoorrook for Justice Report recommended that to address the injustices experienced by Aboriginal peoples there must be a self-determined approach involving the

“transfer of power, authority, and resources to First Peoples via the treaty process.”²³

While the focus of this report related to child protection and criminal legal systems, this transformative change is required across all legal systems, including civil and family law systems contending with family violence.

The Victorian Government’s announcement of its full implementation of all recommendations from the Royal Commission into Family Violence was made in the midst of clearly escalating rates of family violence. VALS find this statement to be deceptive and contrary to the intent of the Royal Commission, and the extent of reforms needed to address the scourge of violence against women and children. Since this announcement VALS has also seen the non-renewal or cutting of critical funding for ACCOs in family violence case management, and prevention and early intervention programs, as well as significant cuts to family violence departmental staff.²⁴ In many instances, funding was provided on a short-term basis, often described by the Victorian Government as funding for “trials.” This funding has been allowed to lapse by the decision of the Victorian Government. Such an approach undermines any progress made since the 2016 Royal Commission and puts at risk the lives of Aboriginal women and children.

Transformative change is long overdue and must involve long term sustainable funding and resources being transferred to ACCOs to deliver family violence supports that are therapeutic, culturally safe and

²² Douglas H and Fitzgerald R (2018) The domestic violence protection order system as entry to the criminal justice system for Aboriginal and Torres Strait Islander people. *International Journal for Crime, Justice and Social Democracy* 7(3): 41-57. 40 Some of the material in this section is drawn from VALS (2022), *Addressing Coercive Control Without Criminalisation: Avoiding Blunt Tools That Fail Victim-Survivors*.

²³ Yoorrook Justice Commission (2023), *Yoorrook for Justice Report*, p6.

²⁴ Jewel Topsfield, [‘Family violence roles axed in public service purge’](#), *The Age*, September 24, 2023

trauma informed. Any meaningful reform is hampered by short term funding across the spectrum of services. Any plans to address family violence progressed by government and government agencies must prioritise an Aboriginal-led service response for community, from early intervention, prevention and specialist therapeutic family violence intervention supports and case management. While the Victorian Government has made welcome commitments to Aboriginal self-determination in various documents and plans, including in the *Strong Foundations* plan, ACCOs with specialist family violence services and legal supports must lead how this commitment is actualised and demonstrated. Specialist ACCOs including VALS must be equitably funded to provide supports to community members experiencing family violence. Access to legal supports is a critical component of an integrated and coordinated approach to ensuring Aboriginal women and children are safe and that the users of family violence are held accountable and get the support they need.

RECOMMENDATIONS

Recommendation 2. The Victorian Government must give full effect to the right of First Peoples to self-determine the family violence sector including access to legal supports, as it relates to First Peoples. This includes negotiating through the Treaty process, including through potential interim agreements, the transfer of decision-making power, authority, control and resources in that system to First Peoples. Transferring or creating decision-making power includes but is not limited to:

- system design
- obtaining and allocating resources
- powers of, and appointments to bodies or institutions, and
- accountability and oversight functions

Family Violence Intervention Orders

A Family Violence Intervention Order (FVIO) is a legally enforceable document designed to provide comprehensive protection for individuals, their children, and their property.²⁵ An FVIO aims to prevent the occurrence of family violence by imposing specific conditions on the respondent. These conditions may include directives to cease harmful behaviours, refrain from contacting or communicating with the protected person, and maintaining a distance from them.²⁶ It is important to note that while a family violence order is initially a civil matter, violating its conditions is elevated to a criminal offence.

²⁵ Magistrates' Court of Victoria, [Family Violence Intervention Orders](#) (Webpage, 2022).

²⁶ Magistrates' Court of Victoria, [Family Violence Intervention Orders](#) (Webpage, 2022).

Culturally appropriate court process for FVIO

In the context of FVIO, it is crucial to address the specific challenges faced by Aboriginal people within mainstream courts. For Aboriginal people, mainstream courts can be inaccessible and alienating.²⁷ As Yoorrook has been made aware of, Victoria's court system is difficult to navigate and culturally unsafe for Aboriginal people. In response, specialist sentencing courts including Koori court have been established to address these issues.²⁸ The Aboriginal Justice Outcomes Framework, stipulates the needs of Aboriginal people should be met through a more culturally informed and safe system²⁹ due to the high levels of mistrust towards the law and government. This translates into unmet legal need and intensifying disadvantage and exclusion from the justice system, and avoidance and delay in seeking assistance because of shame, lack of knowledge and fear of repercussions.³⁰ This can therefore result in avoidance and delays in accessing support related to FVIO.

Koori Court uses cultural strength and knowledge of Elders and Respected persons to support the decision making of a Magistrate or Judge to make an appropriate decision for sentencing. It takes time and effort and involves the individual person considering their circumstances and being held accountable to the court, themselves, and the community.³¹ Aboriginal Elders or Respected persons may give cultural advice to help the Magistrate make a judgement that is more culturally appropriate and helps reduce the likelihood of offending.³²

To be eligible for Koori Court, the offence must be within the accepted range of offences that can be heard. The court does not deal with sexual assault matters or breach of family violence intervention orders; however, it will hear about family violence if it forms an offence, or as part of someone's personal history.

The Yoorrook for Justice report heard recommendations from the Parliamentary Inquiry into Victoria's criminal justice system to expand the locations of Koori Court and for the government to consider extending the Koori Courts' jurisdiction to hear additional types of criminal matters, including breaches of FVIO.³³ In response to the Royal Commission into family violence³⁴ Mildura Magistrates Koori Court commenced hearing contraventions of intervention order matters (**Mildura Pilot**)³⁵. The Mildura Pilot allowed for breaches of FVIOs to be heard in the Mildura Koori Court, rather than the mainstream Magistrates' Court, providing AFMs and people who use violence with a more culturally appropriate response to reduce the impacts of family violence, as well as improving court users'

²⁷ Australian Law Reform Commission, [Pathways to Justice — an Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples](#) (2017), p 328.

²⁸ Yoorrook Justice Commission, [Yoorrook for Justice](#) (2023), p 344.

²⁹ Victorian Aboriginal Justice Agreement, [Goal 3.1: The needs of Aboriginal people are met through a more culturally informed and safe system](#) (Webpage).

³⁰ Victorian Aboriginal Justice Agreement, [Goal 3.1: The needs of Aboriginal people are met through a more culturally informed and safe system](#) (Webpage).

³¹ VALS, Royal Commission into Family Violence Submission paper from the Victorian Aboriginal Legal Service (2015).

³² Magistrates Court of Victoria, [Koori Court](#) (Webpage, 15 August 2023).

³³ Yoorrook Justice Commission, [Yoorrook for Justice](#) (2023), p 345.

³⁴ Royal Commission into Family Violence, [Summary and recommendations](#) (2016) , p 86.

³⁵ Victorian Aboriginal Justice Agreement, [Family violence orders in Koori Courts](#) (Webpage)

perceptions of the court system in turn helping to reduce recidivism.³⁶ It is recommended by VALS to expand the Mildura Pilot and commence hearing contraventions of FVIOs in additional Magistrates Koori Court locations, thereby extending the culturally appropriate response for AFMs and individuals involved in family violence to other regions of Victoria.

An additional area of promising practice aimed at enhancing cultural safety within the court process, particularly concerning family violence, is the Koori Family Violence and Victims Support Program – Umalek Balit. The aim of Umalek Balit is to enable the court to provide a more culturally safe response to Aboriginal people in family violence proceedings by employing Koori family violence practitioners who have specialist cultural and family violence knowledge, aiming to help keep families safe from further family violence. This is accomplished by building the court’s knowledge of Koori people, histories, and cultures and understandings of the dynamics of family violence in Koori communities; providing culturally appropriate support, information, and referral services to Koori peoples at court; improving the court’s capacity to engage with Koori respondents in family violence matters, including providing referrals to appropriate support services; and increasing the Koori community’s confidence in the courts and the justice system more broadly.³⁷ Umalek Balit has experienced a 30% increase in case load from the first quarter of 2021, along with a staggering 500% rise in case load, compared to the same period in 2023.³⁸ This data suggests a significant upward trend in the demand for services provided by Umalek Balit, indicating a pressing need for continued support and resources to meet the increasing demands for culturally safe responses to family violence within Aboriginal communities. Umalek Balit is currently available at Melbourne, Mildura, Shepparton, Ballarat and Heidelberg Magistrates’ Court.³⁹ The recommendation is to expand the Koori Family Violence and Victim’s Support Program within the Magistrate’s Court, coupled with potential increased funding to adequately address the escalating demand for culturally safe responses to family violence within Aboriginal communities.

RECOMMENDATIONS

Recommendation 3. The Victorian Government must extend the jurisdiction of Koori Courts to hear additional types of matters, including breaches of FVIOs.

Recommendation 4. The Umalek Balit program should be expanded to more locations beyond Melbourne, Mildura, Shepparton, Ballarat, and Heidelberg Magistrates’ Court.

³⁶ Victorian Government, [Reforming the courts response to family violence](#) (Webpage, December 2023).

³⁷ Magistrates Court Victoria, [Umalek Balit Information Sheet](#) (2020).

³⁸ Victorian Aboriginal Justice Agreement, [Koori Family Violence and Victim’s Support Program](#) (Webpage, 2023).

³⁹ Australian Government, [Specialist Family Violence Courts and Family Violence Contact Centre](#) (Webpage, 2021).

Expanding specialist family violence courts

Specialist family violence courts (SFVCs) are designed to facilitate accessible justice for individuals impacted by family violence while prioritising their safety and well-being. With a focus on increasing accountability among users of family violence and promoting behavioural change, specialist family violence courts feature Magistrates trained specifically in handling family violence cases and equipped to issue counselling orders, such as men's behaviour change programs. Moreover, they boast a dedicated registrar proficient in family violence matters, ensuring efficient case management and timely resolution. These courts offer a holistic support system, including family violence applicant and respondent practitioners, police prosecutors, outreach workers, and lawyers with specialised training, who collaborate to provide comprehensive assistance to survivors. Notably, specialist family violence courts possess the capacity to hear intervention order cases concurrently with other legal matters, ranging from criminal pleas and bail applications to family law disputes and victims of crime applications related to family violence. In essence, specialist family violence courts represent a crucial mechanism for enhancing the protection of AFMs and fostering a culture of accountability within communities.⁴⁰

VALS call for the expansion of SFVCs, echoing the recommendations set forth by the Royal Commission, which advocated for the establishment of SFVCs across 14 court locations. While funding has been secured for the initial five court sites, there remains a need to allocate resources and support to extend this vital initiative to the remaining nine courts. It is noteworthy that several of these identified locations already have elements of the specialist family violence model in operation, including specialised staff trained to address family violence cases.⁴¹ By expanding the reach of SFVCs, communities can bridge gaps in access to justice, enhance AFM support services, and bolster efforts to hold PUVs accountable. The fulfilment of the Royal Commission's recommendations stands as a pivotal step towards creating safer and more resilient communities where AFMs of family violence can find the comprehensive assistance and protection they deserve.

RECOMMENDATIONS

Recommendation 5. The Victorian Government must ensure the expansion of specialist family violence courts (SFVCs) to cover all 14 identified court locations as recommended by the Royal Commission.

⁴⁰ Magistrates' Court of Victoria, [Specialist Family Violence Courts](#) (Webpage, 2023).

⁴¹ Magistrates' Courts of Victoria, [Specialist Family Violence Courts](#) (Webpage, 2023).

Culturally safe supports and services for both AFM and PUVs and support services built into orders of FVIO

The Yoorrook for Justice report highlighted the need for culturally safe and self-determined systems. They found that a:

Lack of trust in mainstream services, and continued bias in service delivery across multiple systems, underscores the need for urgent and equitable funding for ACCOs to deliver culturally safe, self-determined prevention and early help services. ACCOs know how to work in ways that work best for First Peoples families, taking the time to build relationships of trust, mutual respect, and support.⁴²

Moreover, the report heard how diversion and alternative responses can and do work. Such programs allow judicial officers to adjourn matters while defendants meet the conditions of the diversion plan which might include apologising or undertaking community work, counselling or an educational course. If the conditions are met, the matter is ended with no finding of guilt or criminal record.⁴³ This emphasis on diversion and alternative responses highlights the importance of providing culturally safe supports and services for both AFMs and PUVs of family violence. A rehabilitative ethos centred around diversion, education, and services needs to be aligned specifically towards family violence, emphasising the provision of culturally safe supports and services for both AFMs and PUVs within the context of addressing and preventing instances of family violence.

Yoorrook reported on the benefits of Dardi Munwurro's Ngarra Jarranounith program, a 16-week intensive residential program designed to support at-risk men in adopting positive behaviours and strengthening cultural connections. This program is accessible to men who have Family Violence Intervention Orders and those who have been charged with family violence offenses within the previous 12 months.⁴⁴ Deloitte conducted a cost-benefit analysis of Dardi Munwurro's men's healing program, revealing its effectiveness in addressing underlying factors contributing to contact with the criminal justice system, such as poor mental health and trauma.⁴⁵

While the Royal Commission into Family Violence heard there are a number of supports available for people coming out of prison after serving a sentence, there is a significant need for supports for people released on bail and at risk of reoffending without proper support.⁴⁶ The Royal Commission also highlighted the significance of working with PUVs to facilitate their acknowledgment of responsibility, modification of behaviours, and addressing specific risk factors contributing to their use of violence, including exploring various program models and delivering proven interventions, with any expansion of PUV interventions aiming to complement rather than undermine existing efforts to ensure accountability for violence against women and children.⁴⁷

Consequently, there is a pressing need for support services to be integrated into family violence intervention orders at the civil stage. This integration would enable AFMs and PUVs to receive the

⁴² Yoorrook Justice Commission, [Yoorrook for Justice](#) (2023); Victorian Aboriginal Child Care Agency, Submission 77, 107.

⁴³ Yoorrook Justice Commission, [Yoorrook for Justice](#) (2023), p 347.

⁴⁴ Yoorrook Justice Commission, [Yoorrook for Justice](#) (2023), p 348.

⁴⁵ Yoorrook Justice Commission, [Yoorrook for Justice](#) (2023), p 348.

⁴⁶ VALS, Royal Commission into Family Violence Submission paper from the Victorian Aboriginal Legal Service (2015), p 11.

⁴⁷ Royal Commission into Family Violence, [Summary and recommendations](#) (2016), p.10.

necessary support, intervention, and rehabilitation before family violence intervention orders escalate into criminal matters potentially leading to incarceration. This measure would aim to address cycles of reoffending and the factors that undermine rehabilitation for individuals transitioning out of prison or on bail. Professor Chelsea Watego highlights how incarceration exacerbates the problem of family violence, stating “we know these men return to our neighbourhoods and our communities often more violence than what they were when they went in because of the violence of incarceration”.⁴⁸

RECOMMENDATIONS

Recommendation 6. All governments must ensure at least proportional funding should be allocated to ACCOs to deliver culturally safe, self-determined prevention and early help services immediately, with ultimate transfer of decision making and authority to be transferred through treaty negotiations.

Recommendation 7. Expansion and extension of funding for Dardi Munwurro’s Ngarra Jarranounith program, which provides intensive residential support to at-risk men.

Recommendation 8. Support services should be integrated into family violence intervention orders to provide support, intervention and rehabilitation for users of family violence.

Community Legal Education

Yoorrook heard from VACCA the need for urgent and equitable funding for ACCOs to deliver culturally safe, self-determined prevention and early help services.⁴⁹ This particularly applies for family violence, due to the lack of funding for culturally safe family violence services and community legal education, making it very difficult for Aboriginal people to recognise when they are being subjected to components of family violence, such as coercive control.⁵⁰

As an example, it is often difficult for AFMs to recognise coercive control as abuse or to be aware that there are legal avenues for responding to it. This challenge is more acute for Aboriginal people, who are often not reached by generalist legal and family violence education. Funding needs to expand both specialist community-run and generalist community legal education to address this barrier to AFMs accessing support.⁵¹ Coercive control is not always adequately responded to by police, courts, family violence services and others. This is an issue which needs to be addressed through better family violence education and community legal education (CLE), including specific culturally safe education for Aboriginal people, as well as improved training for police, judges and those working in the sector.

⁴⁸ *Independent Commission of Inquiry Into Queensland Police Service Responses to Domestic and Family Violence*, Transcript of Proceedings (Her Honour Judge Deborah Richards, 5 August 2022), p. 15, para. 9-12.

⁴⁹ Yoorrook Justice Commission, [Yoorrook for Justice](#) (2023); Victorian Aboriginal Child Care Agency, Submission 77, 107.

⁵⁰ VALS, [Addressing coercive control without criminalisation](#) (2022), p 16.

⁵¹ VALS, [Addressing coercive control without criminalisation](#) (2022), p 34.

If these types of reforms are introduced, the civil protection framework will provide a sufficient basis for early intervention to protect women affected by coercive control.⁵²

Balit Ngulu staff have shared insights revealing that a significant majority of the children and young individuals they support have been directly impacted by family violence, either as the PUV or as AFM. This underscores the urgent need for additional resources and intervention strategies. In response, VALS is actively pursuing funding opportunities for its Strengthening Me, Strengthening Us program, which aims to provide crucial support and empowerment mechanisms for those affected by family violence. Furthermore, VALS is advocating for funding to support the implementation of Healthy and Respectful Relationships programs led by ACCOs across the state. These programs not only address the immediate impact of family violence but also work towards cultivating healthier relationship dynamics and fostering a culture of respect within communities. By investing in these initiatives, VALS aims to address the root causes of family violence and create safer, more supportive environments for Aboriginal individuals and families across Victoria.

Proper funding for CLE would enable VALS and other ACCOs to deliver (CLE) on respectful relationships, family violence, sexual violence, sexting, consent and the risks of exploitation and the criminal legal process in a culturally appropriate, trauma informed, age-appropriate and gender-sensitive manner to adults and children, and to create culturally appropriate resources. CLE could be delivered widely, including to children at schools, youth centres and youth detention facilities, to women at women's refuges, and to men and women on remand or serving sentences in custodial settings. Resources could be co-created with community members and used, in turn, in the delivery of CLE to other community members.⁵³

RECOMMENDATIONS

Recommendation 9. All governments must prioritise funding for ACCOs to deliver culturally appropriate community legal education aimed at increasing knowledge of what constitutes family violence and preventing it at an early stage, alongside resources and referral information for those experiencing family violence.

⁵² VALS, [Addressing coercive control without criminalisation](#) (2022), p 22.

⁵³ VALS, [Submission to the Victorian Law Reform Commission Project: Improving the Response of the Justice System to Sexual Offences](#) (2021), p 7.

Criminal responses to family violence

The Commission has already heard extensive evidence of the injustices experienced by Aboriginal people when family violence is criminalised. The Yoorrook for Justice Report properly acknowledges that the current and historical responses to family violence, which exist within the sphere of highly reactive criminal, cause significant ongoing harm to Aboriginal people without addressing any root issues⁵⁴.

While a self-determined criminal legal system is being negotiated through Treaty processes, we bring the following issues to the Commission's attention which require urgent reform.

Ongoing misidentification of AFMs

VALS remains deeply concerned about the current criminal legal responses to family violence, particularly regarding the misidentification of Aboriginal women as the users of violence in family violence situations by Victoria Police. We refer to our previous advocacy⁵⁵ on this issue and reiterate our concerns that this is part of the systemic discrimination, ongoing colonial violence and injustice experienced by Aboriginal women.

Yoorrook for Justice acknowledges that Aboriginal women are frequently misidentified as the users, instead of AFMs, of family violence by Victoria Police⁵⁶. The report touches on the cultural issues within Victoria Police that lead to the injustices experienced by many Aboriginal women who report family violence.⁵⁷

Police and courts continue to take action against AFMs instead of users of family violence with alarming frequency, despite the Royal Commission into Family Violence making recommendations aimed at changing police practice to minimise the risk of misidentification⁵⁸, and the implementation of those recommendations being considered 'complete'. Through VALS Aboriginal Families practice, we know that misidentification is common in regional areas where families are known to police.

An indication as to the level of misidentification is that in 2020, 79.4 per cent of Aboriginal women listed as the respondent had previously been recorded as an AFM, and there'd been a 44 percent rise in Aboriginal women being listed as a respondent in Family Violence reports from 2016-2020.²⁰

Research has identified a consistent set of risk factors which raise the likelihood of misidentification. Broadly, they relate to whether police perceive an AFM as fitting the stereotype of an 'ideal victim' – with the effect that already marginalised women are much more likely to be subjected to misidentification. Aboriginality is also a significant risk factor in its own right and in VALS experience, misidentification is an issue that affects Aboriginal men as well. Systemic and institutionalised racism, often expressed through Police stereotypes about Aboriginal men and women and the prevalence of

⁵⁴ Yoorrook Justice Commission, [Yoorrook for Justice](#) (2023),

⁵⁵ VALS, [Addressing Coercive Control Without Criminalisation](#) (2022), pg 25-28.

⁵⁶ Yoorrook Justice Commission, [Yoorrook for Justice](#) (2023), pg 262.

⁵⁷ Yoorrook Justice Commission, [Yoorrook for Justice](#) (2023), pg 262.

⁵⁸ Royal Commission into Family Violence, [Summary and recommendations](#) (2016), Recommendation 41.

family violence in their relationships, lead to a bias towards thinking an Aboriginal person has been violent. This increases the risk of misidentification, particular for Aboriginal people in a relationship with a non-Aboriginal person.⁵⁹

The impacts of misidentification are profound and can include separation from children, criminalisation, and lack of access to necessary supports, trauma and the continuation of violence in the home. Criminalisation of AFMs replicates the trauma and abuse they have already suffered. If held in police custody or imprisoned, the risks for Aboriginal people are well known, and the denial of autonomy and the violence of incarceration mirror the dynamics of coercive control in personal relationships.⁶⁰

The findings and recommendations of the Inquiry into Queensland Police Service Responses reveal that the institutional, structural and systemic racism and bias that exists in police forces hugely contribute to the over-policing of Aboriginal woman as users of family violence, and their under-policing as AFMs in need of protection.⁶¹

As a short-term reform, while a self-determined criminal legal system is negotiated as recommended by this Commission⁶², we recommend urgently establishing an independent process to automatically review Family Violence Safety Notices issued by police against Aboriginal women to ensure that any misidentification is identified as soon as possible. We also recommend police commencing mandatory and ongoing training around the impact of misidentification particularly for Aboriginal women and other marginalised communities, understanding the complexity and nuances of family violence, and with a cultural awareness module that is developed and delivered by specialist family violence ACCOs, including VALS.

VALS acknowledges that these critical reforms in the current criminal legal response, including increased training for police, are short-term band-aids at best. Justice will only be achieved once self-determined criminal legal and child protection systems, along with a self-determined family violence sector, can be negotiated, developed and implemented by First people and ACCOs. Through this process it must be open for First Peoples to consider different forms of policing based on consent rather than coercion, and the desirability for police to be defunded and deauthorised in relation to family violence.

As found and submitted by the Institute for Collaborative Race Research to the Inquiry into Queensland Police Service Responses:

The QPS [Queensland Police Service] directly and indirectly enact racial and gendered violence and are therefore not a potential solution to the current domestic and family violence (DFV) crisis. By overpolicing Indigenous women as perpetrators, and underpolicing them as victims, the QPS is directly

⁵⁹ VALS, [Submission to the Inquiry into Victoria's Criminal Justice System](#) (2021) p. 71-73.

⁶⁰ VALS, [Submission to the Inquiry into Victoria's Criminal Justice System](#) (2021) p. 73.

⁶¹ Independent Commission of Inquiry Into Queensland Police Service Responses to Domestic and Family Violence, [Final Report: A Call for Change](#) (2022); Institute for Collaborative Race Research, ['Expert report commissioned by the Independent Commission of Inquiry into Queensland Police Service responses to family and domestic violence'](#) (2022). -

⁶² Yoorrook Justice Commission, [Yoorrook for Justice](#) (2023), Recommendation 2.

responsible for creating the culture of impunity which produces the unacceptably high levels of DFV towards Indigenous women... In Queensland, the QPS does not police Indigenous and racialised communities through consent but through control. Their relationship with Aboriginal and Torres Strait Islander women, girls and gender diverse people is particularly coercive, hierarchical and racially violent. Without fundamentally confronting this violent relationship, and returning authority and resources to Indigenous community control, attempts to retrain, diversify, culture-shift or 'feminise' policing will only legitimise and therefore intensify police violence.⁶³

VALS notes that unlikely police institutions in other states, Victoria Police have not undergone an in depth inquiry into the culture and misconduct within the Institution. VALS believes that a broad ranging Royal Commission into Victoria Police, similar to the Wood Royal Commission that investigate NSW Police in the 1990s would play an important role in exposing the full extent of cultural problems and misconduct in Victoria Police. We made this suggestion in our policy paper, *Reforming Police Oversight in Victoria*. Such an airing out would serve as a good circuit breaker before the introduction of a new independent police oversight body based on the Police Ombudsman for Northern Ireland – a recommendation we made in our policy paper and previous nuther-mooyoop's.

We believe it is important to mention a Royal Commission into the culture and misconduct of Victoria Police and independent police oversight in the conduct of police oversight as there are numerous examples of Victoria Police members perpetrating family violence and sexual assault, and enabling those behaviours.^{64,65} There is no doubt that the regular media stories represent a small sample of the reality and are the result of the insular, protective culture of Victoria Police which is in part driven by the toxic culture within The Police Association of Victoria and its significant political influence which allows it to remain a member of the Victorian Trades Hall Council, a peak body for trade unions that regularly campaigns on a number of social issues but has failed to hold its affiliated unions to account.⁶⁶

Victims of family violence will never feel safe reporting incidents to police while such a culture remains.

RECOMMENDATIONS

Recommendation 10. Establish an independent process for automatic reviews of Family Violence Safety Notices issued by police against Aboriginal women to ensure misidentification is identified as soon as possible.

⁶³ Institute for Collaborative Race Research, 'Expert report commissioned by the Independent Commission of Inquiry into Queensland Police Service responses to family and domestic violence' (2022), pg 5.

⁶⁴ The Victorian Inspectorate recently published a terrifying report about how Victoria Police members enabled one of their colleagues to perpetrate family violence by stopping the victim from making a report and how existing accountability measures, namely IBAC, failed. See: [Victorian Inspectorate, IBAC's referral and oversight of Emma's complaints about Victoria Police's response to family violence by a police officer - October 2022](#)

⁶⁵ ABC Online, [Calls for a Victorian police ombudsman to tackle 'predatory behaviour', after senior officer jailed for raping junior colleague](#); The Age, [Former cop charged with exposing himself to colleague at Sunshine station](#).

⁶⁶In our policy paper, *Reforming Police Oversight in Victoria*, we devoted small sections to discussing the influence of Victoria Police and the Police Association of Victoria have over Victorian Governments.

Recommendation 11. The Victorian Government must establish multi-agency coordinated approach to address misidentification which is in line with Recommendation 41 of the Royal Commission into Family Violence, requiring Victoria to immediately work family violence services, legal organisations and community members to reduce (the risk of) misidentification in Victoria.

Recommendation 12. Police should commence mandatory and ongoing training around the impact of misidentification particularly for Aboriginal women and other marginalised communities, understanding the complexity and nuances of family violence, and with a cultural awareness module that is developed and delivered by specialist family violence ACCOs, including VALS.

Recommendation 13. There should be a broad ranging Royal Commission into the culture and misconduct of Victoria Police and the terms of reference should specifically refer to family violence and sexual assault.

Recommendation 14. The Victorian Government should implement a new independent police oversight body.

Restorative approaches to working with adolescents who use violence in the home

Last year VALS responded to a proposal for a Victim Centred Restorative Justice Program for adolescents who use violence in the home⁶⁷. Adolescents who use violence in the home require a specialist trauma informed, therapeutic and culturally safe policy and practice response that is specific to the needs of young people, as too often they are responded to adults using violence, rather than understanding that often they too have been affected by violence themselves. We detailed that this kind of model would only be appropriate in circumstances where the young person has been found to have committed serious family violence and is part of a youth justice plan and/or intervention. We also recommended that an Aboriginal model be developed that is co-designed, developed and delivered by ACCOs with specialist family violence and legal expertise to ensure it is culturally safe, therapeutic and trauma informed, with adequate resources allocated to ACCOs and includes funding for evaluation.

VALS notes the extensive work undertaken under AJA4 *Burra Lotjpa Dunguludija* in developing the *Lotjpadhan* (Talking Together) A Restorative Justice Pilot Project for Connecting and Healing. This project was led by Dr Lois Peeler, in partnership with JSS in developing this model that is culturally responsive and meets the needs of Aboriginal children and young people in various contexts. VALS encourages consideration for funding and model development and delivery a model working with adolescents who use violence in the home in a similar way.

⁶⁷ VALS, Victim Centred Restorative Justice Program's AVITH Model (2023)

RECOMMENDATIONS

Recommendation 15. The Government must fund the design and implementation of Aboriginal restorative justice model for adolescents who use violence in the home. This model must be self-determined, developed and delivered by ACCOs with specialist family violence and legal expertise to ensure it is culturally safe, therapeutic and trauma informed, with adequate resources allocated to ACCOs and includes funding for evaluation.

Family law system

VALS has significant practice experience in Family law, with VALS lawyers in our Aboriginal Families Practice representing Aboriginal adults and children in Commonwealth family law proceedings, including in the Specialist Indigenous List (“Indigenous List”). In the family court jurisdiction, it is common for allegations to arise of Family Violence, alcohol and other substance use and the mistreatment of children. Allegations of family violence that arise in the course of proceedings are taken particularly seriously by the court.

The Indigenous List has operated in the Federal Circuit and Family Court of Australia (FCFCA) since 2020. The introduction of a specialist family court list recognised that the best outcomes for Aboriginal and Torres Strait Islander families occur when they are assisted by culturally appropriate and safe support systems that have a clear understanding that it cannot be a “one size fits all” approach for families. Currently, the Indigenous List is available across 11 locations in Australia, with only 1 of those locations being in Victoria (Melbourne). In comparison, 3 regional locations were added to the Indigenous List in New South Wales over the last 3 years in addition to the existing Sydney sitting.

In Melbourne, the Indigenous List operates only once a month – effectively meaning Aboriginal people in Victoria have only one day a month for their family law matters to be heard and dealt with in a more culturally appropriate way. VALS lawyers note that this is not nearly sufficient for the legal need that exists, and that the limited availability of the Indigenous List is an access to justice issue that must be urgently addressed.

RECOMMENDATIONS

Recommendation 16. The Victorian Government should request and facilitate the expansion of the Indigenous List of the Federal Circuit and Family Court of Australia to other locations across Victoria, to ensure that Aboriginal families, particularly those in rural and regional areas, have access to culturally appropriate family court processes.

Recommendation 17. The Victorian Government should request and facilitate increasing the frequency of the Indigenous List of the Federal Circuit and Family Court of Australia at Melbourne from monthly to at least weekly.

APPENDIX

Annex A: VALS relevant policy and research work

Submissions

- Submission to the Parliamentary Inquiry into the Criminal Legal System (2021)
- Submission to the Disability Royal Commission (2022)
- Submission to the Royal Commission into Victoria's Mental Health System
- Supplementary Submission to the Royal Commission into Victoria's Mental Health System
- Submission to the Victorian Law Reform Commission: Improving the Response of the Justice System to Sexual Offences, (2021)
- Submission to Inquiry into Children of Imprisoned Parents, (2022)
- Submission to the Senate Inquiry into Missing and Murdered First Nations Women and Children (2022)

Community Factsheets

- Addressing Coercive Control Without Criminalisation (2022)
- Community Factsheet, Fixing Victoria's Broken Bail Laws (2022)

This material is available at vals.org.au/publications.

Annex B: witnesses that Yoorrook should compel to give evidence

Department of Families, Fairness and Housing

- Secretary
- Associate Secretary

Family Violence

- Minister for Prevention of Family Violence
- Family Safety Victoria CEO

Child Protection

- Minister for Children
- Deputy Secretary Children and Families

Department of Justice and Community Safety

- Attorney General
- Minister for Police and Crime Prevention
- Minister for Corrections, Youth Justice and Victim Support
- Secretary
- Deputy Secretary Aboriginal Justice

Disability

- Minister for Disability

Commission for Children and Young People

- 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

- Seek an update on the Federal Parliamentary Inquiry into missing and murdered First Nations women and children, and the relevant submissions and evidence to Victoria.
 - Ask Victoria Police to provide data on the numbers of missing and murdered Aboriginal women and children in the past 10 years.
- DJCS to provide numbers of Aboriginal women in prison who have experienced family violence
- Victoria Police to provide numbers of Aboriginal women who have been misidentified by Victoria Police as the person using violence/respondent.
 - Request data on the number of family violence incidents (where the AFM or PUV is Aboriginal) where charges have been laid but the matter has not progressed
 - Request data on the number of missing and murdered Aboriginal women and children that remain unsolved.