



# Victorian Aboriginal Authority

To increase the accountability and outcomes of Victorian Government policies, programs and services that have a significant impact on Aboriginal and Torres Strait Islander people

**AN INITIAL FEASIBILITY STUDY FOR DISCUSSION**

*Prepared by the Lowitja Institute in partnership with the Victorian Aboriginal Community Controlled Health Organisation*

*May 2023*





Together, we acknowledge the strength of Aboriginal and Torres Strait Islander peoples and the power and resilience that is shared as members of the oldest living culture. We acknowledge all Aboriginal and Torres Strait Islander people and their sovereignty and custodianship over the land, seas and waterways of what is now called Australia.

This report was developed on the traditional lands of the Wurundjeri/Woiwurrung where the offices of the Lowitja Institute and the Victorian Aboriginal Community Controlled Health Organisation are based. We acknowledge the Traditional Owners of Country throughout Victoria and pay our respect to them, their culture, and their Elders past, present and future. They have paved the way, with strength, resilience and fortitude, for future generations.

#### **ABOUT THE ARTWORK AND ARTIST**

This art represents the establishment of the Victorian Aboriginal Authority; which aims to strengthen the oversight, accountability and impact of Victorian government programs and services for Aboriginal

people in Victoria. The meeting circle in the middle depicts the accountability process, with the feet representing walking closely together. As time for Aboriginal peoples is circular and not linear, we often reference past, present and future. The various layers/ripples represent the positive impact the Authority can have on community. The various patterning and colours, along with the various outer circles, honours our diverse communities, each with their own lore, culture(s), values and needs. The different circles and ellipses represent transfer of energy and knowledge. The outer layer of water represents a journey and culture as our lifeline; the up and down movement symbolises our heartbeat. The people in the forefront represent our elders/leaders as wisdom and lore holders. The people in the background represent our young people and future generations who inherit our actions and inactions. We are accountable to them as much as we are to our old people and old ways.

Artist and words: Bitja (Dixon Patten Jnr) Yorta Yorta, Gunaai, Gunditjmarra, Dhudhuroa, Djab Wurrung, Wemba Wemba, Yuin, Monero, Wiradjuri, April 2023

ISBN 978-1-922885-05-0

DOI 10.48455/wgdb-rm26

Copyright © Lowitja Institute and Victorian Aboriginal Community-Controlled Health Organisation

First published in May 2023

This work is published and disseminated by Lowitja Institute and the Victorian Aboriginal Community Controlled Health Organisation (VACCHO) in partnership.

This work is copyright. As the publishers, both Lowitja Institute and VACCHO are granted exclusive rights to copy, publish and use the content of the paper. This paper may be reproduced in whole or in part for study or training purposes, or by organisations or individuals subject to an acknowledgment of the source and no commercial use or sale. Reproduction for other purposes or by other organisations requires the written permission of the copyright holders, Lowitja Institute and VACCHO.

A PDF version of this report can be obtained from: [www.lowitja.org.au](http://www.lowitja.org.au) and [www.vaccho.org.au](http://www.vaccho.org.au).

This report has been authored by the Lowitja Institute, working with Equity Economics, in partnership with VACCHO.

Artwork by Dixon Patten and graphic design by Michael Durkee.

### **About the Lowitja Institute**

The Lowitja Institute is Australia's only national Aboriginal and Torres Strait Islander community-controlled health research institute, named in honour of its Patron, Dr Lowitja O'Donoghue AC CBE DSG. We work for the health and wellbeing of Australia's Aboriginal and Torres Strait Islander peoples through high impact quality research, knowledge exchange, and by supporting a new generation of Aboriginal and Torres Strait Islander health researchers. Established in January 2010, the Lowitja Institute operates on key principles of Aboriginal and Torres Strait Islander leadership, a broader understanding of health that incorporates wellbeing, and the need for the work to have a clear and positive impact.

#### **Contact:**

LOWITJA INSTITUTE

PO Box 1524, Collingwood

Victoria 3066 AUSTRALIA

E: [admin@lowitja.org.au](mailto:admin@lowitja.org.au)

W: [www.lowitja.org.au](http://www.lowitja.org.au)

### **About the Victorian Aboriginal Community Controlled Health Organisation**

VACCHO is the peak body for Aboriginal health and wellbeing in Victoria – the only one of its kind – with 33 Aboriginal Community Controlled Organisations as members. Our role is to support our members in the delivery of high-quality, culturally safe health and social services to the Aboriginal and Torres Strait Islander community across the state. Self-determination is at the heart of what we do and what we want to achieve. VACCHO members support over 65,000 Aboriginal people in Victoria, and are the largest employers of Aboriginal people in the State.

#### **Contact:**

VACCHO

PO Box 1328, Collingwood

Victoria 3066 AUSTRALIA

W: [www.vaccho.org.au](http://www.vaccho.org.au)

### **About Equity Economics**

Equity Economics is a leading consulting firm, bringing a unique team of economists, public policy and development experts to policy analysis, development, design and evaluation services to community, not-for-profit and government clients. One of our key priorities is to support Aboriginal and Torres Strait Islander community-controlled organisations achieve their goals and engage in government policy making processes on their terms.

## ACKNOWLEDGEMENTS

Many of our partners and stakeholders came together to support the development of this initial feasibility study. We acknowledge the Koori Caucus of the Aboriginal Health and Wellbeing Partnership Forum and VACCHO and its member organisations for initiating the work on a proposed Aboriginal-led government accountability entity. We also thank those who contributed their expertise and knowledge to ensure the initial feasibility study considered the full range of issues.

We acknowledge that many of the matters explored in the initial feasibility study are not new and Aboriginal and Torres Strait Islander people and our community-controlled organisations have been pressing for urgent action to increase government accountability to Aboriginal and Torres Strait Islander people for a long time and in different forums. We have drawn from this previous intellectual and advocacy work. It is our hope that the next steps of this work continue to build consensus and support including with the Victorian Government on the best way forward.



# Contents

Introduction .....	6
Roundtable discussion .....	8
Key findings and recommended next steps .....	10
Approach to the feasibility study .....	12
The case for a Victorian Aboriginal Authority .....	15
Exploring the model for a Victorian Aboriginal Authority .....	20
Conclusion and next steps .....	34
Glossary of terms and key existing accountability models reviewed .....	35
References .....	38
Appendix A .....	40
Appendix B .....	41

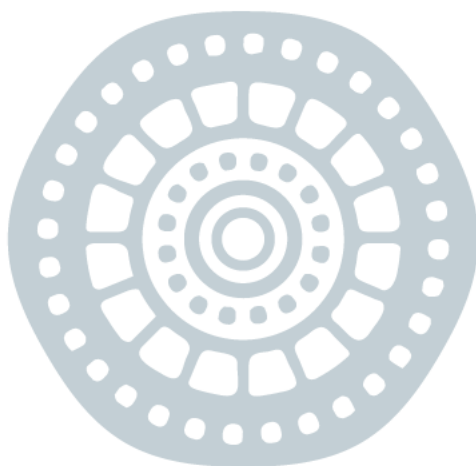
# Introduction

## OVERVIEW

**This paper outlines the findings from an initial feasibility study for a new, Aboriginal-led, independent statutory accountability entity to strengthen oversight of Victorian Government programs for Aboriginal people – a Victorian Aboriginal Authority (the Authority<sup>1</sup>).**

The aim of the feasibility study is to assess whether there was potential support, need and merit in the proposal for an Authority and, if there was, to identify some of the key operating principles and structures of an Authority. This paper also identifies issues for further discussion and recommended next steps.

The proposal for a new entity was put forward as a priority of the Koori Caucus of the Aboriginal Health and Wellbeing Partnership Forum as a key mechanism to promote the self-determination of Aboriginal and Torres Strait Islander people in Victoria. In support of the Koori Caucus, the initial feasibility study and this paper have been prepared by the Lowitja Institute, working with Equity Economics, in partnership with VACCHO.



Aboriginal people in Victoria have been telling the Government for a long time about what it can do to work better with, and for, Aboriginal people. Over the years, many different consultation processes, reviews and reports have consistently shown that the Government's contribution to Aboriginal people's well-being can be improved by:

- better coordination across departments and levels of government
- better policy implementation where programs and services are culturally safe and responsive to the needs of Aboriginal people
- more recognition and support for Aboriginal community-controlled organisations
- long-term funding to support longitudinal programs that embed inter-generational change
- more systematic engagement with Aboriginal people that recognises their right to self-determination
- more effective and coordinated use of data and evaluation

We are encouraged by recent commitments and significant efforts underway by the Victorian Government to change the way government programs and services are designed and delivered to Aboriginal people, as outlined within the Victorian Aboriginal Affairs Frameworks 2018–2023 and the Victorian Government Self-Determination Reform Framework, released in 2019. In particular, we acknowledge the establishment and work of the First Peoples' Assembly of Victoria and the Yoorrook Justice Commission, and the Government's implementation of the National Agreement on Closing the Gap.

<sup>1</sup> The working name of the proposed entity is the **Victorian Aboriginal Authority** (the Authority). It is proposed that the entity name be subject to further consultation in the next phase.

However, despite a 2018 commitment to establish an Aboriginal-led evaluation and review mechanism, outlined within the Victorian Aboriginal Affairs Frameworks 2018–2023, there is yet to be a formal discussion on what kind of accountability mechanism is needed to ensure existing and future commitments fulfil their potential. This will require a sustained reform effort that is closely and independently monitored.

Our feasibility study looks first at whether there is a case for the Authority, and then examines key operating considerations including its purpose, functions and legislative and governance arrangements. We also identify matters that require further consideration to be tested through an extensive engagement process with Aboriginal community-controlled organisations in Victoria.

In examining the outcomes of the initial feasibility study, we believe a permanent, dedicated Aboriginal-led entity with independent statutory powers will:

- **improve the responsiveness and impact** of Government policies and funded programs and services to the needs and safety of Aboriginal people
- **enhance accountability** for effective design, delivery and monitoring of commitments and programs for Aboriginal people
- **meet existing Government commitments within the Victorian Aboriginal Affairs Frameworks 2018–2023 and Self-Determination Reform Framework** to increase its accountability through an Aboriginal-led and independent review mechanism of its performance in supporting improved outcomes for Aboriginal people

We also believe there is sufficient support from Aboriginal community-controlled representatives and organisations to warrant detailed engagements on what the model should be.



# Roundtable discussion

## A VICTORIAN ABORIGINAL AUTHORITY

On 16 May 2023, Lowitja Institute, in partnership with VACCHO, held a roundtable event to discuss the results of the initial feasibility study for a new, Aboriginal-led, independent statutory accountability entity, aimed at increasing oversight of Victorian government programs that affect Aboriginal peoples.

Participants included representatives from the Victorian government, as well as community leaders and representatives from community-controlled organisations in Victoria. Discussions were centered on findings from the initial feasibility study, with particular focus on how the proposed authority would work with government. As well as the potential role and function of the Authority.

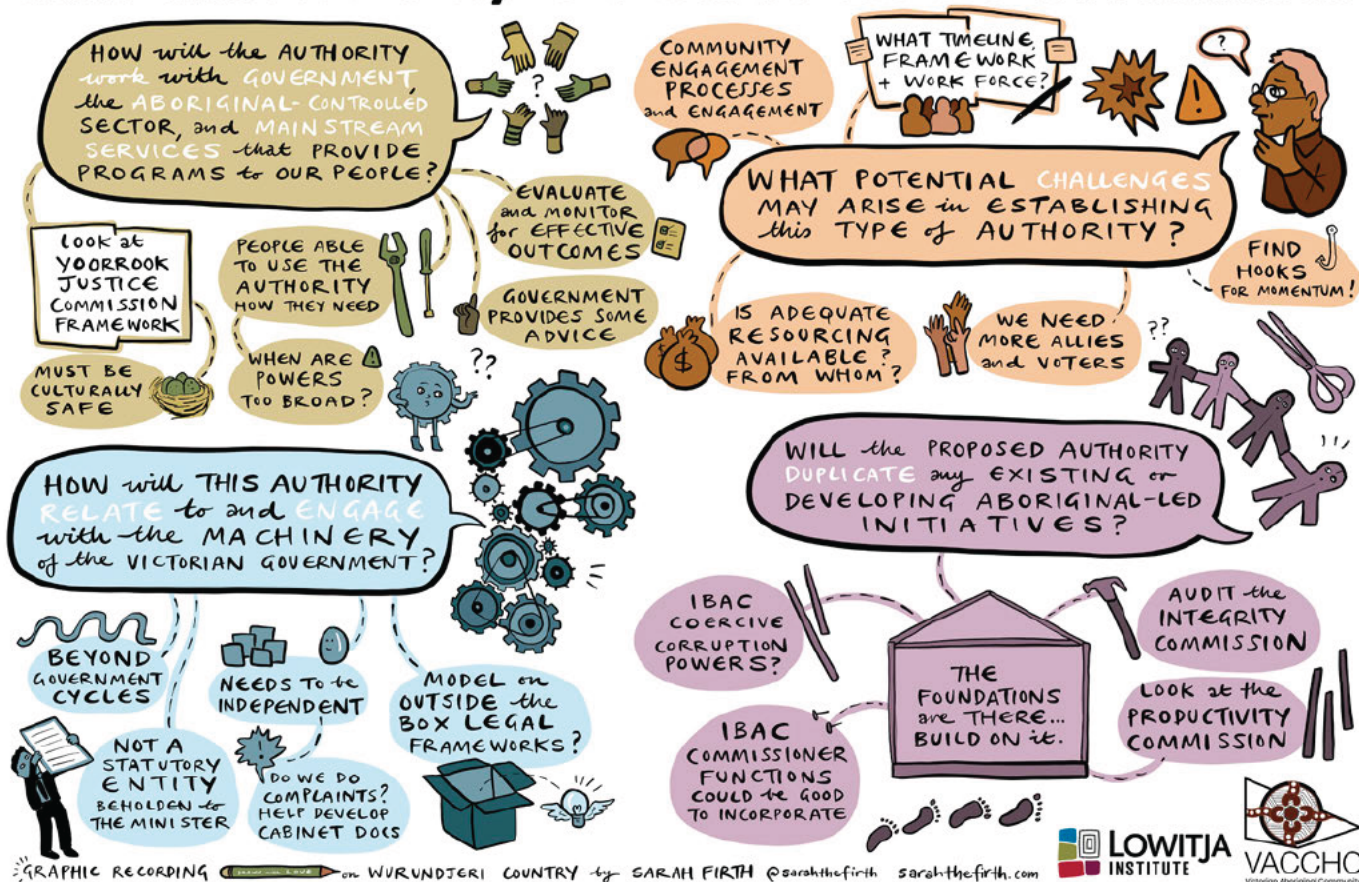
The roundtable heard about the importance of an independent accountability mechanisms to address

current gaps and to increase the accountability, transparency, impact, and efficacy of Victorian government funded programs and services to support Victorian Aboriginal peoples.

The body must be grounded in a two-way accountability structure with the Aboriginal Community-Controlled Sector and the government, to ensure that policies and programs aimed at supporting Aboriginal peoples in Victoria are achieving outcomes.

*“Aboriginal people across Australia, and here in Victoria have long been calling on governments to change the way they work with us. Over the years, different consultation processes, reviews and reports have all consistently shown that the Government’s contribution to Aboriginal peoples well being can be improved through better coordination across agencies and levels of government, and better policy implementation, where programs and services are safe and responsive to the needs of Aboriginal peoples.” Janine Mohamed, CEO of Lowitja Institute*

## How this Authority will work with the Government





## EMERGING THEMES

There was a range of important themes which emerged during the roundtable discussion. These include:

### The Victorian Treaty Negotiation Framework

The joint establishment of the Treaty Negotiation Framework by the First People’s Assembly of Victoria and Victorian government was acknowledged by participants as a useful mechanism in progressing discussions around an Aboriginal Authority. This framework sets out processes for negotiating and formalising agreement to Treaty, reporting requirements and mechanisms for enforcement. Within this framework, government has committed to undertaking structural reform and through treaty-making, building a new relationship with Aboriginal peoples within Victoria. In leveraging this framework and the Treaty negotiation process, participants noted the timely opportunity for discussions around an Aboriginal Authority to be progressed.

### The need for independence

There was a recognition of the need for this body to be independent from government amongst roundtable participants. The need for independence and power derived from legislation and community-controlled authority was agreed at the roundtable, to ensure that quality and accurate advice and information is provided to government. The role that this body could play in supporting health equity advocacy was also noted during the roundtable.

*“This body could provide the evidence base, stories of things that have gone well, so we have examples to point too when demanding change.”*

*Jill Gallagher, CEO of VACCHO*

### The need for adequate resourcing

Participants acknowledged that the body must be adequately resourced on an ongoing basis to build and maintain the necessary capabilities to fulfill its function. A base level of funding should be set in legislation to provide protection from fluctuations in government policy and ensure that any changes to resourcing is subject to a public parliamentary debate and process.

## Potential Roles and Function of the Authority



GRAPHIC RECORDING on WURUNDJERI COUNTRY by SARAH FIRTH @sarahthefirth sarahthefirth.com



# Key findings and recommended next steps

## OVERARCHING FINDINGS

In examining the case for the proposed Authority, we found:

1. Aboriginal people in Victoria have been advocating for greater government accountability for some time and the proposal for an Aboriginal-led oversight Authority, put forward by the Koori Caucus, warrants further and formal consideration by:
  - a. the Victorian Government
  - b. the Victorian Aboriginal community-controlled leadership and organisations
  - c. Aboriginal communities
2. There is a gap in existing machinery of government structures and electoral systems for Aboriginal people to hold the Victorian Government to account for its commitments to Aboriginal people in an ongoing and independent way and the outcomes of Aboriginal people are suffering as a result.
3. Outcomes for Aboriginal people would be significantly improved by the presence of an influential and independent, Aboriginal-led Authority with the resources to hold government and non-government, publicly funded organisations, to account for the services they fund and deliver, and the power to shine a spotlight on policies or practices that are working well and those that are failing to contribute to better outcomes for Aboriginal people.
4. The commitment to long-term reform in the way government services and programs are designed and delivered for Aboriginal people in Victoria would be strengthened by a robust accountability framework, including the proposed Authority.
5. A new accountability Authority would be a response to the Victorian Government's existing commitments in the National Agreement on Closing the Gap (clause 67) and the Victorian Aboriginal Affairs Framework (VAAF) to establish or identify an independent accountability mechanism or mechanism(s). Delivery of these commitments are behind schedule.

## FINDINGS ON POSSIBLE MODEL FOR THE AUTHORITY

The following principles were identified as being critical considerations for the model of the Authority:

1. Its purpose should focus on increasing the performance and impact of Victorian Government policies, programs and their funded services designed for Aboriginal people as well as publicly funded and mainstream policies, programs and services that have a significant impact on their life outcomes.
2. To fulfil its purpose, the Authority should be permanent with a wide range of reporting, monitoring and reviewing functions. The Authority should be adequately resourced on an ongoing basis to build and maintain the necessary capabilities to fulfill these functions.
3. The Authority should be independent of government and have a legislative basis, like Victoria's Treaty Authority, providing it with the best form of available protection from fluctuations in government policy and ensure that any changes to its purpose, functions or the way it operates are subject to a public parliamentary debate and process. A base level of funding for the Authority should be set in legislation for the same reasons.
4. The Authority should be Aboriginal-led. An Aboriginal Commissioner, or Aboriginal Commissioners, should be appointed by a process that involves the Aboriginal community-controlled sector. The Commissioner(s) should be accountable to Parliament.
5. There should be significant transparency in the way the Authority operates and where Aboriginal community-controlled organisations and communities and government can contribute to the development of its workplan, whilst retaining its independence and ability to initiate its own investigations and reviews.
6. The Authority should be independent of program delivery and not administer funding or programs.

## RECOMMENDED NEXT STEPS

In taking forward the proposal for an Authority, we recommend:

1. The Victorian Government commissions Aboriginal-led engagement with the Aboriginal community-controlled sector and communities to further develop the proposal, including:
  - a. testing the Authority model concepts outlined in this paper to ensure it meets the needs and aspirations of Aboriginal people in Victoria (matters for further consideration are identified throughout this paper)
  - b. ensuring the Authority aligns with, and is complementary to, existing Aboriginal-led initiatives including the Treaty process, the work of the Yoorrook Justice Commission and the National Agreement on Closing the Gap
  - c. developing key principles for the development of enabling legislation
  - d. developing an operating model for the Authority and an operating budget estimate
2. The outcomes of the above engagement process and next steps to be discussed and agreed between the Victorian Government and Aboriginal community-controlled organisations.

# Approach to the feasibility study

## SCOPE

The proposal for a new entity was put forward as a priority of the Koori Caucus of the Aboriginal Health and Wellbeing Partnership Forum. The Forum is a strategic collaboration between the Aboriginal community-controlled health sector, the mainstream health sector and the Victorian Department of Health. The Koori Caucus is made up of Aboriginal community-controlled health representatives. The Forum is jointly chaired by the Minister for Health and VACCHO's Chairperson.

The Koori Caucus identified a new Authority as a key priority to promote Aboriginal and Torres Strait Islander self-determination in Victoria. This scope set out by the Koori Caucus provided the starting position and framing for the initial feasibility study.

The priority aligns with VACCHO's strategic plan, *On Solid Ground 2021-26*, and current legislative reform advocacy efforts. In response, the Lowitja Institute was engaged to work in partnership with VACCHO to undertake an initial feasibility study of the proposed new accountability entity for further discussion.

In conducting this feasibility study, potential models, and frameworks for the establishment of a new authority were assessed and only those models that meet a certain base feasibility have been included. In assessing the suitability of these models, the benefits and disadvantages of each have been explored and detailed within this paper.

This includes options for:

- the function of the Authority (taking into consideration the Authority's purpose, issues, and considerations)
- legislative framework for the Authority
- a sustainable and transparent model of governance
- appropriate quality and assurance measures
- any other relevant considerations

## DESKTOP REVIEW

To commence the initial feasibility study, a desktop review was undertaken of:

- existing Aboriginal policy frameworks and commitments in Victoria
- existing accountability entities at the Victorian and national level and internationally

The purpose of the desktop review was to identify to what extent there was a Victorian Government 'accountability gap' in the existing policies, structures and systems to monitor and review programs that have a significant impact on the lives of Aboriginal people in Victoria. We also examined previous efforts by Aboriginal leaders and organisations to address this 'accountability gap'. This helped us understand the need for a new, independent Authority.

In reviewing existing accountability entities at the Victorian and national level and internationally, we examined:

- purpose and objectives
- defined functions to achieve their purpose
- governance and reporting arrangements

This helped us understand the strengths and weaknesses of different models and how they can inform the model of a new Authority. Key existing accountability authorities that formed part of this desktop review are provided in the glossary of terms.

## STAKEHOLDER ENGAGEMENT

### KEY FINDING:

There was a consensus amongst stakeholders that a new, independent Aboriginal-led Authority tasked with reviewing the impact and appropriateness of government policies and programs relating to Victorian Aboriginal peoples would increase outcomes for Aboriginal people and fits well with the progress towards Treaty, Closing the Gap, and greater self-determination.

### The Lowitja Institute, in collaboration with VACCHO, undertook a series of preliminary consultations with eleven key stakeholders to inform the feasibility of the Authority.

These stakeholders included representatives of Aboriginal-led and Aboriginal community-controlled organisations including the First Peoples' Assembly and representatives of Victorian and Commonwealth Government agencies like the Commission for Children and Young People and the Productivity Commission.

*See Appendix A for a full list of stakeholders consulted*

Starting with the framing provided by the Koori Caucus for a new Authority, stakeholders were invited to share their views on existing government accountability entities. They were asked to assess how existing mechanisms were supporting transparency and oversight of the way governments design, deliver and monitor programs, and how effective mechanisms are to ensure government commitments were being implemented as intended. In doing so, stakeholders were asked to provide comments on whether the proposed Authority would improve the impact of government policies and funded programs and services. Stakeholders were also asked whether the proposed Authority would

*[There is] a huge expectation on community to give feedback to government, but no expectation on government to deliver on that feedback – Stakeholder*




support the existing movements in Victoria around Treaty, Yoorrook, Closing the Gap and greater self-determination.

Aboriginal stakeholders discussed the lack of government accountability to the Victorian Aboriginal community and believed this was shown in: the lack of equity in funding distribution; a lack of recognition for the role of the Aboriginal community-controlled sector in the way programs are funded, monitored and evaluated; the short-term nature of funding; and a lack of cultural safety in mainstream organisations funded by government which are not contributing as they should to improving outcomes for Aboriginal people.

Aboriginal stakeholders also identified that the government had made a number of commitments to change the way they work with Aboriginal communities, organisations and people, but some of these commitments were running behind schedule or not being implemented as intended.

Government stakeholders acknowledged the limitations of existing accountability entities at the Commonwealth and Victorian level in having a dedicated focus on matters impacting Aboriginal and Torres Strait Islander people.

In considering a new Authority, stakeholders were asked their views on what its purpose and goal should be and key considerations for its operating model, including its functions and how it could execute them, independence, management of accountability and transparency, processes for appointment for Commissioners, and management of conflicts of interest.



Stakeholders agreed that a new Authority should be Aboriginal-led, with an Aboriginal Commissioner or Commissioners. Stakeholders noted the importance of the Authority's independence to ensure impartiality and that it should be established in legislation to ensure it had effective power and to assist with maintaining its independence. Stakeholders agreed that the Authority should have a cross-portfolio focus acknowledging the intersection of policies and programs on the outcomes of Aboriginal people and the need for the Authority to be cost effective.

It was agreed that the Authority should have the ability to table reports in Parliament for government response and it was posed that the Authority could act as a 'third umpire' on how funding is used to provide better services and supports to address inequities and challenges faced by Aboriginal people in Victoria.

The views of stakeholders helped confirm the need for a government accountability mechanism and helped shape the proposed operating model features of the Authority discussed in this paper.

## LIMITATIONS

Whilst it is evident that there is support and an identified need for greater accountability of government policies, programs and services designed to support and benefit Aboriginal people, the feasibility study of the proposed Authority in response is an initial exploration only and requires further consideration and engagement.

Engagement with stakeholders were limited to those that we considered would have a direct interest in the Authority and did not include a necessary engagement with Aboriginal community-controlled organisations and communities across Victoria if the proposal was to be progressed. Further, discussions with stakeholders were also preliminary in nature and the proposed operating model we have identified has not been re-tested.

Due to time and funding limitations, we have also not conducted a business case or undertaken any cost modelling of an Authority.

Addressing these matters form our recommended next steps.



# The case for the Authority

## KEY FINDINGS:

Key findings from stakeholder consultations and the literature review conducted:

- The existing machinery of government and the electoral system is not serving Aboriginal people in Victoria well as it should and the social, emotional, economic, political and cultural outcomes of Aboriginal people are suffering as a result.
- The commitment to long-term reform in the way government services and programs are designed and delivered for Aboriginal people already underway in Victoria will be strengthened by a robust accountability framework, which ensures government commitments are sustained and are not influenced by changing governments. This is essential in ensuring generational change.
- Whilst there are some government accountability institutions in Victoria, there is currently no ongoing, independent entity dedicated to the oversight, accountability and improvement of government policies, programs and services designed to support Aboriginal people.
- The system would be significantly improved by the presence of an influential and independent Authority with the resources to pay close attention to what government is doing and the power to shine a spotlight on policies or practices that are working well and those that are failing to contribute to better outcomes for Aboriginal people.
- The Victorian Government has already made commitments as part of the National Agreement on Closing the Gap and the VAAF to identify or establish an independent, Aboriginal-led evaluation and review mechanism to monitor its work to transform the way it works with Aboriginal communities and organisations and achieves impact.

## THE ACCOUNTABILITY GAP

**The case for the new oversight and accountability entity begins with a frank recognition that in Victoria the machinery of government – the way functions and responsibilities are allocated between departments and ministerial portfolios – and the electoral system are not serving Aboriginal people as well as they should.**

There is a well-documented persistent and significant gap between the life outcomes of Aboriginal and non-Aboriginal people in Victoria (Productivity Commission, 2022). Aboriginal people find themselves proportionally more likely to be incarcerated and have contact with the justice system, more likely to need to access to health services and more likely to be engaged with the child protection system.

There are many reasons for this, including the ongoing impact of colonisation. However, one significant reason is structural: Aboriginal people make up a small proportion of the state's population, which translates into a low level of influence in formal electoral politics. This means Aboriginal people on average are more impacted by what government does, but less able to influence it – there is an accountability gap.

Further, the siloed structures of Government fundamentally fail to meet the multi-faceted needs of Aboriginal people and communities. Efforts to improve the life outcomes of Aboriginal people are welcome but have not proven to serve Aboriginal communities as they should.

Consequently, Aboriginal people's interests and their life outcomes are more vulnerable to chronic government underperformance and sudden policy changes compared to other Victorians.

## CALLS OVER TIME FOR GREATER ACCOUNTABILITY

The concept of increasing government accountability to Aboriginal and Torres Strait Islander people for the policies, programs and services delivered, and the need to embed the right to self-determination for Aboriginal and Torres Strait Islander peoples is not new. Aboriginal and Torres Strait Islander people, organisations and communities have been calling for decades for an Aboriginal-led mechanism, independent of government, that can hold it to account. So too has the need for structural shifts which embed and protect Aboriginal and Torres Strait Islander peoples' right to self-determination and allows Aboriginal peoples to regain control over the process and practices through which their affairs are governed.

Some of the more recent calls are identified below.

The **Aboriginal and Torres Strait Islander Commission** (ATSIC), established in 1989, had a broad legislative mandate that included monitoring the effectiveness of programs conducted by all government bodies and agencies. Given the structure and governance of ATSIC, this function was truly Aboriginal-led and determined and remains, since its abolishment in 2005, one of the best examples of what is possible to increase the accountability and impact of government programs designed to support Aboriginal people (Behrendt, 2005).

In 2013, the **National Aboriginal Community Controlled Health Organisation** (NACCHO) released a paper detailing the need for an Aboriginal health authority. The proposed purpose for this body was to lead development of any new national Aboriginal health policies and advocate for implementation of these policies and funding priorities to the federal and state governments through the Council of Australian Governments (COAG) and the Health Ministerial Council.

A similar recommendation was made in 2009, within the Healthier Future for all Australians, final report, released by the National Health and Hospitals reform Commission in 2009. This report noted the need for an expert commissioning group to be established and that this could be

achieved through the establishment of a National Aboriginal and Torres Strait Islander Health Authority.

In 2017, during community engagement for the Victorian Aboriginal Affairs Framework 2018-2023, Aboriginal and Torres Strait Islander peoples in Victoria were clear that the government cannot alone hold itself accountable for spending and outcomes in Aboriginal affairs. Aboriginal people made it clear that that government, Aboriginal organisations and government-funded organisations must be held accountable to community, by community (VAAF, 2018).

The **Victorian Aboriginal Justice Caucus** has for many years advocated for the establishment of an independent agency to ensure greater accountability of government to the community in relation to the achievement of better justice outcomes for Aboriginal people in Victoria. These discussions have highlighted the desire for creating a role, such as an independent Aboriginal Justice Commissioner (or Commission), to monitor, review and inquire into progress towards improving Aboriginal experiences and outcomes across the justice system, whilst also progressing self-determination principles.

In 2019, as part of the engagements on the National Agreement on Closing the Gap, Aboriginal and Torres Strait Islander people, organisations and communities across Australia identified the need to change the way governments were held accountable for efforts to close the gap in life outcomes between Aboriginal and Torres Strait Islander people and non-Indigenous Australians (Coalition of Peaks, 2020). In the negotiation of the National Agreement, the Coalition of Peaks secured a commitment to identify or develop an independent mechanism(s) to monitor government's commitment to transform the way mainstream agencies and institutions work with Aboriginal and Torres Strait Islander communities and organisations.



## Existing mainstream oversight and accountability measures

Government has long recognised that the electoral system cannot guarantee accountability and performance in all areas by itself. It is too blunt a tool to deal with the many varied aspects of government action and decision-making and does not always protect the interests of minorities and other vulnerable groups.

There are many accountability institutions in Victoria beyond the electoral system and the functioning of Parliament. Some are specialist accountability agencies tasked with ensuring the overarching integrity of government systems and processes including the Ombudsman, Office of the Auditor General, and the Independent Broad-based Anti-Corruption Commission. The overarching Victorian integrity system is further described in Appendix B.

The Victorian Government has also recognised that ensuring the performance and accountability of programs and services to support vulnerable groups often requires an additional layer of oversight. For example, the Commission for Children and Young People is responsible for promoting improved policies and practices that affect the safety and wellbeing of Victorian children and young people (CCYP, 2012). The Victorian Government has also recently established a Commission for Mental Health and Wellbeing “to hold government to account for the performance, quality and safety of Victoria’s mental health and wellbeing system, and where the Commission will have responsibility to drive cultural change across the system and support people with a lived experience” (Victorian Government, 2023).

Common among the accountability entities in Victoria is that they all derive authority from government legislation whilst being operationally independent. They have powers to obtain and share information and data, begin inquiries, investigate complaints, and make statements on how to improve government performance.

Of those entities in Victoria that have a particular focus on vulnerable groups, none have an exclusive focus on government performance as it relates to Aboriginal interests and priorities. While they do work that can benefit Aboriginal people, their other responsibilities necessarily prevent them from targeting resources and attention on the full

range of Aboriginal-specific issues and associated government performance.

At the Commonwealth level, accountability entities include the Australian Human Rights Commission (AHRC, 2008), Commonwealth Ombudsman (Commonwealth Ombudsman, 1977) and the Australian National Audit Office (ANAO, 1997). These entities also have independence from the government, allowing them to scrutinise (some) government decisions and actions. They also have statutory powers and an institutional ‘insider’ status that allow them to seek information, access high-level officials, and make authoritative statements about improved government performance on the public record.

[There needs to be] *a third umpire on how money is utilised to provide better services to address inequities in Aboriginal communities* – **Stakeholder**

Whilst these entities have important tools at their disposal for strengthening accountability and advocating for the interests of vulnerable people, most of the generalist oversight entities work primarily from an administrative or technical perspective, focusing mainly on public sector efficiency, effectiveness, consistency, and compliance with legislation. The Ombudsman’s jurisdiction, for example, does not extend to decisions made by Ministers or Cabinet, and the Auditor General’s role does not allow it to examine the merits or assumptions underlying government policy (Commonwealth Ombudsman, 1997; and ANAO, 1997).

The Productivity Commission, whilst not an accountability entity in the same way as the Australian National Audit Office, provides another example. It contributes to the development of more robust policy, program and regulatory settings relating to Australia’s economic performance and community wellbeing through the provision of independent advice, undertaking research, evaluation, and performance monitoring (Productivity Commission, 1998).

## Aboriginal-specific government entities – Commonwealth commitments & initiatives

There are some dedicated Aboriginal-specific initiatives embedded in mainstream entities at the Commonwealth level. The Aboriginal and Torres Strait Islander Social Justice Commissioner, part of the Australian Human Rights Commission, is responsible for keeping “Indigenous issues before the Federal government and the Australian community to promote understanding and respect for the rights of Indigenous Australians” (Australian Human Rights Commission, 2017). However, while the Commissioner does engage on state-specific issues, it cannot deliver the sustained and in-depth scrutiny and advocacy required at the state level or develop the necessary close working relationships with Aboriginal communities and organisations in Victoria. Further, whilst the Commissioner’s powers derive from legislation, they are limited and they do not have the ability to compel government agencies to provide certain data and information, conduct hearings with government officials or require government responses to its findings and recommendations.

In 2018, the Commonwealth government created an Indigenous Policy Evaluation Commissioner at the Productivity Commission (Frydenburg, 2018). The position is held by an Aboriginal person and its primary function is to lead an enhanced role for the Productivity Commission in Indigenous policy and program evaluation. Whilst it is a positive step forward in increasing government accountability for the impact of programs and services for Aboriginal and Torres Strait Islander people, the role is limited in scope, does not have a remit over Victorian Government programs and services they fund and cannot initiate its own lines of inquiries or compel the Government to act.

## Aboriginal-specific government entities – Victorian commitments & initiatives

There are some existing Victorian Government commitments and Aboriginal-led initiatives that are seeking to address the issue of increased government accountability for programs and services for Aboriginal people.

### Commitment from the Victorian Government in the Victorian Aboriginal Affairs Framework 2018-2023 for an Aboriginal-led evaluation and review mechanism

*“Government alone cannot hold itself accountable for improving outcomes for Aboriginal Victorians. Government, Aboriginal organisations and government-funded organisations must be accountable to Aboriginal-led, independent and transparent oversight.*

*An Aboriginal-led evaluation and review mechanism will be established to track government’s progress against the VAAF. This will include quantitative and qualitative reporting on the goals, objectives and measures, including:*

- *efforts to progress the self-determination guiding principles*
- *implementation of the broad areas for action that support the four self-determination enablers*
- *The terms of reference for this mechanism, including its function, scope, membership and governance, will be developed in partnership with community”*

The **Victorian Aboriginal Affairs Framework 2018-2023** is underpinned by identified self-determination enablers:

- Prioritise culture
- Address trauma and support healing
- Address racism and promote cultural safety
- Transfer power and resources to communities

In 2018, the Victorian Government refreshed the **Victorian Aboriginal Affairs Framework 2018-2023** (VAAF), in partnership with Aboriginal people in Victoria. The VAAF is the Victorian Government’s overarching strategic framework for working with Aboriginal Victorians to drive action and improve outcomes. The VAAF commits the Government to significant structural and systematic transformation and to advancing Aboriginal self-determination, including a commitment in the VAAF for government and government funded organisations to be held to account for delivering services that meet the needs of communities through an “Aboriginal-led evaluation and review mechanism” (Victorian Government, 2018).

The **First Peoples' Assembly of Victoria** was established in 2018 under Victorian legislation and is the independent and democratically elected body to represent Traditional Owners of Country and Aboriginal and Torres Strait Islander peoples in Victoria. In 2020, the First Peoples' Assembly and the Victorian Government have committed to a pathway to a Treaty (Victorian Government, 2022) and negotiations are now underway. It is important not to pre-empt or limit these negotiations, however the proposed Authority could also be considered as part of these discussions.

The **Yoorrook Justice Commission** was established under the Treaty framework and by Victorian Government legislation. Its job is to investigate both past and ongoing injustices experienced by Traditional Owners and First Peoples in Victoria in all areas of life since colonisation. The work of Yoorrook Justice Commission necessarily includes an examination of Aboriginal peoples' experiences with government policies, programs and services. Part of their mandate is to make recommendations for "healing, system reform and practical changes to laws, policy and education, as well as to matters to be included in future treaties." The proposed Authority could have a role in providing oversighting of recommendations that relate to system reform and changes to laws, policy and education that are being implemented (Yoorrook Justice Commission, 2021).

In 2020, the **National Agreement on Closing the Gap** was signed by all governments and the Coalition of Peaks and commits all governments, including the Victorian Government to:

- "By 2023, [Government Parties agree to each] identify, develop or strengthen an independent mechanism, or mechanisms, that will support, monitor, and report on the transformation of mainstream agencies and institutions. The mechanism, or mechanisms, will:
- support mainstream agencies and institutions to embed transformation elements, as outlined in Clause 59 (of the National Agreement) and monitoring their progress
  - be recognisable for Aboriginal and Torres Strait Islander people and be culturally safe
  - engage with Aboriginal and Torres Strait Islander people to listen and to respond to concerns about mainstream institutions and agencies
  - report publicly on the transformation of mainstream agencies and institutions,

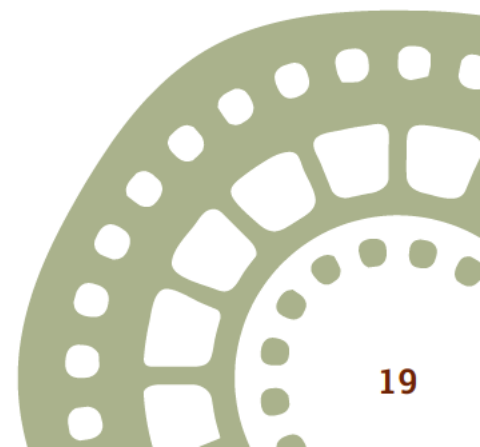
including progress, barriers and solutions (Clause 67, Coalition of Peaks and all Australian Governments, 2020)"

Like the commitment in the VAAF, this commitment is overdue in Victoria (Australian Government, 2020) and the proposed Authority could be developed as a response.

## Temporary reviews and inquiries

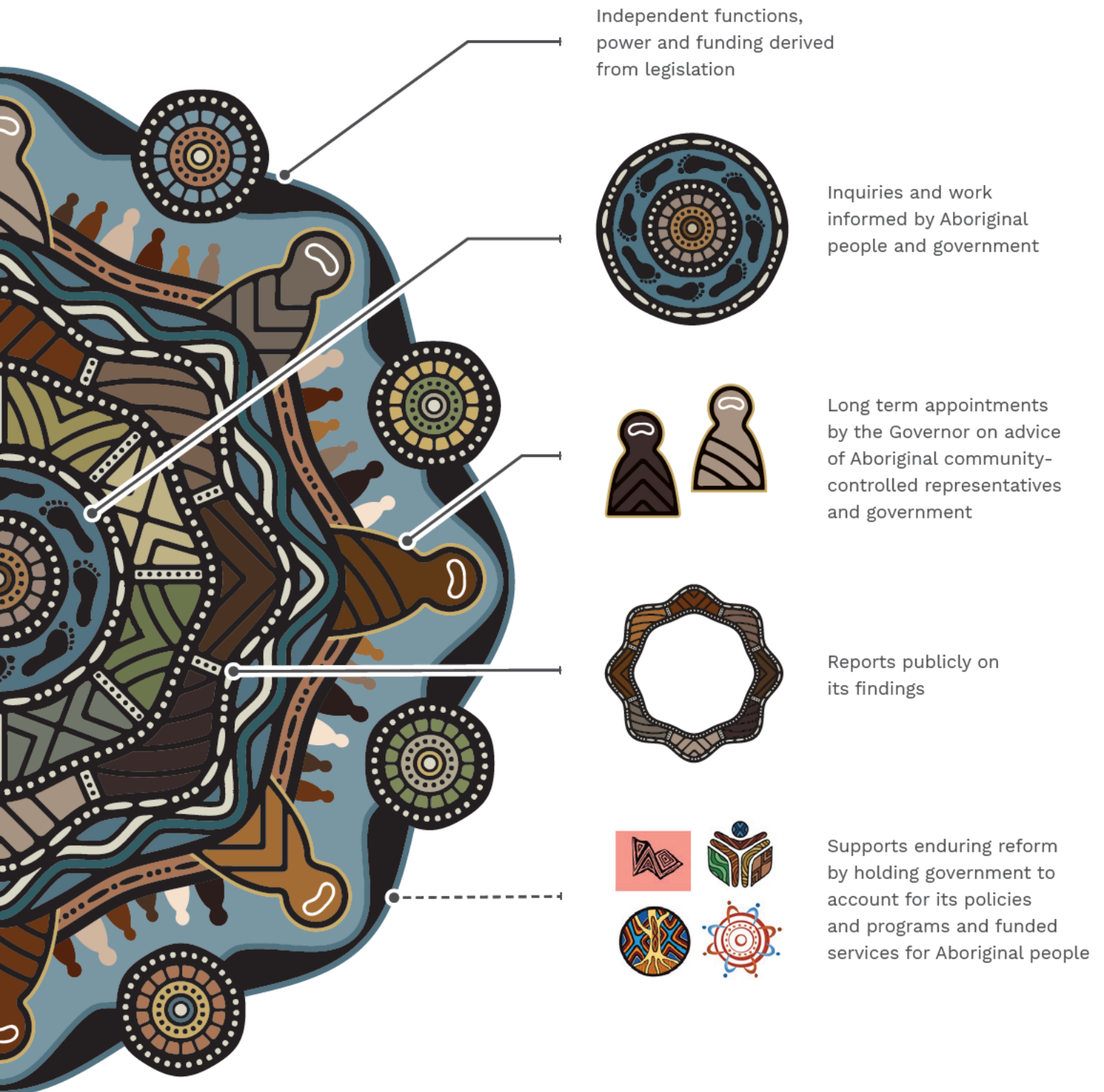
The institutional accountability gap in Aboriginal and Torres Strait Islander affairs has been partly filled in the past by temporary reviews and inquiries, often prompted by a crisis situation. These include the 1991 National Royal Commission into Aboriginal Deaths in Custody (Johnston, E, 1997), the 2004 establishment of the Indigenous Family Violence Taskforce in Victoria to "provide the government with advice about how to effectively address family violence within Indigenous Communities", and the 2021 Systemic Inquiry into the Over-representation of Aboriginal Children and Young People in Victoria's Youth Justice System (CCYP, 2021).

These reports have gained the attention of government decision-makers, Aboriginal people and the wider community, and have led to findings and recommendations to achieve better outcomes. However, the arrangements responsible for undertaking the inquiries lacked the permanency to ensure that changes are made by successive governments. The result is a steady accumulation of reports and recommendations without lasting improvements in government performance and outcomes.



# Exploring the model for a Victorian Aboriginal Authority

The aim of a Victorian Aboriginal Authority is to increase the accountability, transparency, and outcomes of Victorian government's policies and funded programs and services that have a significant impact on Aboriginal people through Aboriginal-led independent oversight and functions.



## PURPOSE OF THE AUTHORITY

**To meet the accountability gap identified, the purpose of the proposed Authority is to increase accountability for the performance and impact of Victorian Government policies and programs and their funded services designed specifically to support Aboriginal people and mainstream policies, programs and services that have a significant impact on their life outcomes.**

To fulfill this purpose the Authority should be permanent, Aboriginal-led and independent of government.

The Authority's job would be to hold the Government accountable for commitments made and the services they fund, and provide system-level advice for improved policies, programs and services affecting Aboriginal people in Victoria. In doing so, the Authority would work to ensure that the Government understands and responds to the views, aspirations and interests of Aboriginal people and enables their self-determination.

It is important that the purpose of the Authority does not duplicate existing Aboriginal-led and controlled initiatives. It is noted the future remit of Yoorrook Justice Commission is yet to be considered and the outcomes of the Treaty negotiations will not be resolved for some time. Further, the proposal for a Constitutionally enshrined First Nations Voice will be put to a referendum later this year and, subject to its successful passing, the purpose and role of the Authority would also need to be distinct from the Voice.

That said, each of these initiatives in development need to be coupled with a strong oversight and accountability mechanism to ensure all commitments are implemented in the way they are envisaged and the reform effort is sustained.

Further, the Victorian Government has also committed under the National Agreement on Closing the Gap to "identify, develop or strengthen an independent mechanism, or mechanisms, that will support, monitor, and report on the transformation of mainstream agencies and institutions" (Clause 67,

## PROPOSED PURPOSE:

The purpose of the Victorian Aboriginal Authority is to increase the accountability, transparency and outcomes of the Victorian Government's policies and funded programs and services that have a significant impact on Aboriginal and Torres Strait Islander people living in Victoria through Aboriginal-led, independent oversight.

In doing so, the goal of the Authority is to contribute to Aboriginal and Torres Strait Islander self-determination by enhancing the responsiveness and accountability of Government to the cultural, economic and social needs and aspirations of Aboriginal people living in Victoria.

Coalition of Peaks and all Australian Governments, 2020) and the proposed Authority would be an appropriate and effective response to this commitment.

The proposed Authority also provides a response to the Victorian Government's commitment for an Aboriginal-led evaluation and review mechanism to be established to track government's progress against the VAAF (Victorian Government, 2018).

## FOR FURTHER CONSIDERATION:

Whilst the Authority is proposed to have a broader remit, its establishment could be considered as a response by the Victorian Government to its commitment under Priority Reform Three of the National Agreement on Closing the Gap to "identify, develop or strengthen an independent mechanism, or mechanisms, that will support, monitor, and report on the transformation of mainstream agencies and institutions" (Coalition of Peaks and all Australian Governments, 2020). The proposed Authority could be discussed and considered as part of the Closing the Gap government and Aboriginal community-controlled governance arrangements.

## CORE FUNCTIONS AND POWERS OF THE AUTHORITY

**In fulfilling its purpose and contributing to Aboriginal peoples right to self-determination, it is proposed that the Authority would hold a range of powers and functions, embedded in legislation. It would not administer government or Aboriginal community-controlled sector services and programs or exercise executive powers of government or community-controlled organisations or structures.**

Its contribution would hinge on accountability measures between the Authority, the government and the Aboriginal Community-Controlled Sector, as well as the quality of its independent advice and information it provides to government and the Aboriginal Community-Controlled Sector, and the communication and engagement on its ideas and analysis.

Set out below, the proposed powers and functions for consideration draw from the more effective and persuasive functions of existing entities, including the Productivity Commission, the Victorian Office of the Auditor General and Australian National Audit Office. This includes undertaking inquiries and investigations into the way government is working and the outcomes being achieved and an ability to report publicly and make recommendations for future practice.

To ensure the Authority focuses on the most impactful activities, the Authority would also not have a role in investigating individual complaints (like the Commonwealth Ombudsman, 1997) or advocating for individual cases (like the Australian Human Rights Commission, 2008). Instead, the Authority could operate at a system-wide level.

## PROPOSED FUNCTIONS:

In fulfilling its purpose, the Authority could:

- conduct public inquiries into the outcomes achieved and impact of government funded programs and services that affect Aboriginal peoples and make recommendations for improvements
- conduct public inquiries into the way government agencies and institutions are working with Aboriginal peoples, families, and organisations and make recommendations for improvements
- initiate research to promote understanding of the importance and value of the Aboriginal community-controlled sector in achieving outcomes for Aboriginal peoples and supporting self-determination
- benchmark best practice performance monitoring and reporting for mainstream and Aboriginal community-controlled organisations delivering government funded programs and services for Aboriginal peoples
- monitor and report publicly on the implementation of government commitments in relation to Aboriginal peoples and policies and make recommendations for improvements. This would include assessing how commitments are being applied to funding decisions and the effectiveness and appropriateness of design and delivery of services and programs for Aboriginal peoples
- support the development of the Aboriginal community-controlled sector through capacity building activities and tools



This strategic function would include working collaboratively with the entities that do handle individual cases. Similarly, there may be scope for the Authority to refer or recommend matters to be addressed by entities such as the Victorian Office of the Auditor General or other Aboriginal-led initiatives (Commonwealth Ombudsman, 1997, Australian Human Rights Commission, 2017, and Victorian Auditor General's Office, 1851).

The proposed powers and functions of the Authority should also centre around the important contribution of the Aboriginal community-controlled sector and their role in supporting the self-determination of Aboriginal people in their governance, advocacy and service delivery functions.

#### **FOR FURTHER CONSIDERATION:**

It is important that the powers and functions of the Authority do not duplicate existing or developing Aboriginal-led initiatives and will need to be further tested through a next round of engagements.



## STRUCTURE OF THE AUTHORITY

**Existing Commonwealth and Victorian Government accountability entities are established in legislation which sets out their powers, functions and responsibilities (including AHRC, 2008; Commission for Children and Young People (CCYP), 2012; Commonwealth Ombudsman, 1997; and Victorian Auditor General's Office, 1851).**

Establishing accountability entities in legislation means they can only have their functions changed or disbanded with the agreement of the Parliament. This provides some independence and helps enable the entity to act without fear of reprisal from the government of the day. Having the entity established in legislation also helps to build its legitimacy across parliamentary parties and with the public.

*Accountability is not possible without a legislative mandate – Stakeholder*

It is proposed that the Authority be established in legislation for these same reasons. As with like entities, the Authority's legislation would set out its key purpose, functions and features, the appointment process and duties of Commissioners or persons' responsible for the Authority and reporting obligations to Parliament.

The powers of the Authority should also be included in the legislation, along with the responsibilities of the government of the day to respond to the Authority's requests for information and data and any recommendations it makes. Compelling the government to respond to reports and recommendations of the Authority is a critical accountability feature. Existing entities are more effective at driving reform where governments are obligated to respond. The government is not required to respond to the Productivity Commission for example (Productivity Commission, 1998), leaving many of its recommendations unanswered and unaddressed. It is also proposed that funding for the Authority be enshrined in legislation with the rationale for this addressed in the following section.

## PROPOSED FRAMEWORK FOR THE AUTHORITY:

The Authority would be established in legislation and include:

- the Authority's purpose, functions, key features and powers
- the establishment of Commissioners and appointment processes
- funding of the Authority
- government obligations to the Authority including:
  - the Premier as responsible Minister
  - how it responds to requests for information and data to carry out its' functions
  - the format and timeframes of required responses to the Authority's recommendations arising from its functions
  - tabling of the Authority's annual report in Parliament and the Government's response
- operational independence and ways of working
- obligations to engage with the Aboriginal Community-Controlled Sector and Aboriginal people of Victoria in how it undertakes and prioritises its workplan
- requirement to report annually to the Parliament on its activities



Importantly, the Authority's legislation should also set out how it will be responsive and accountable to the needs of Aboriginal people in Victoria in the way it exercises its functions. This could include how the Authority determines its priority areas for inquiries and other monitoring activities, and how it communicates its findings.

It is proposed that the Minister responsible for the Authority is the Premier. Policy issues for Aboriginal people cut across multiple domains and Ministerial responsibilities. The persistent gap in life outcomes and chronic underperformance of services and programs warrants leadership and responsibility from the highest political level.

Based on the research and stakeholder consultations, the headline proposed legislative features of the Authority are set out with the details considered in the following sections.

### FOR FURTHER CONSIDERATION:

A key consideration to be resolved is what requirements should be on the government and publicly funded bodies to provide a response to the Authority's request for information and data and hearings, including timeframes. Actions the Authority could take if the government does not meet its requirements should also be considered.

Importantly, additional consideration is needed on how the Authority's performance should be monitored and what actions should be taken if it was not fulfilling its functions.

Both these matters should be addressed in enabling legislation.



## ABORIGINAL LEADERSHIP OF THE AUTHORITY

**Like similar accountability entities, it is proposed that the Authority is led by Commissioners who are statutory office holders and responsible for its work. To support self-determination and ensure government policies, programs and services are responsive to the needs of Aboriginal people in Victoria, the Commissioners should be Aboriginal people and appointed through a process that enables Aboriginal people in Victoria to have a say on who they should be.**

There are various models to draw from when considering how Commissioners should be appointed, the terms of their appointment and remuneration, and how a Commissioner could be dismissed if they were not meeting their statutory obligations.

Common among existing examples is for Commissioners to be appointed by Parliaments or the Governor General or state Governors, on the advice of another body or person, for tenures longer than electoral cycles. This is seen as necessary to support a Commissioner's independence and ability to undertake their duties in a frank and fearless manner.

For example:

- The Auditor General of the Australian National Audit Office is a ten-year appointment made by the Governor General on the advice of the Standing Parliamentary Committee of the Public Account and Audit and the Prime Minister (ANAO, 1997).

- The Productivity Commission is headed by a Chairperson and between four and 12 Commissioners, who are appointed by the Governor-General on the advice of the Australian Government for periods up to five years. Some Commissioners are required to have particular skills and experience that are set out in its enabling legislation. Associate Commissioners can be appointed by the Treasurer on a full or part-time basis (Productivity Commission, 1998).
- The Victorian Auditor-General is an Independent Officer of the Victorian Parliament and is appointed by the Governor on the advice of the Government for five-year terms.
- Remuneration Tribunals generally set the remuneration and allowances for statutory officer holders, including the Commissioners in these examples. Staff employed to support Commissioners and work in the entities are deemed public servants under relevant jurisdictional legislation (Victorian Auditor-General's Office, 1851).
- Internationally, the model of Governor General appointment is also seen in the New Zealand Waitangi Tribunal. The Governor General, on recommendation from the Minister for Māori Affairs or the Minister for Justice, appoints roughly half the tribunal to represent the Māori culture and the other half to represent the Pakeha culture. Appointments are not strictly identified and are based on expertise. Commissioners from the New Zealand Productivity Commission are also appointed or renewed by the incoming Governor General for a five-year tenure (Waitangi Tribunal, 1975).



For the Authority, it is proposed that there be one Aboriginal Chief Commissioner and up to five additional Aboriginal Commissioners who are appointed by the Victorian Governor on the advice of the Premier and Aboriginal community-controlled representatives. Terms should be between 5–7 years with salaries and allowances to be determined by the Victorian Independent Remuneration Tribunal. It is proposed that a Commissioner’s tenure may be terminated by the Victorian Governor following advice from the Premier and Aboriginal community-controlled representatives. Staff working at the Authority should be public servants but are held accountable to the Aboriginal Chief Commissioner.

## PROPOSED FRAMEWORK FOR COMMISSIONERS AND STAFF OF THE AUTHORITY:

The appointment, duties and remuneration of the Authority’s Commissioners be set out in its enabling legislation and include:

- the creation of a Chief Commissioner and up to five additional Commissioners
- all Commissioners are Aboriginal
- Commissioners to be appointed by the Victorian Governor on the advice of the Premier and Aboriginal community-controlled representatives
- why and how Commissioners can have their tenure terminated
- remuneration is set by the Victorian Independent Remuneration Tribunal
- tenure for Commissioners is between 5–7 years
- Commissioners can stand for re-appointment
- staff of the Authority are public servants accountable to the Chief Commissioner
- the Authority to provide its Aboriginal employment levels in its annual report

## FOR FURTHER CONSIDERATION:

A detailed discussion is required on the appointment of Commissioners, including whether they should all be Aboriginal, and how the Aboriginal community-controlled sector should be involved in the appointment process.

Consideration should also be given to whether a proportion of staff working at the Authority should also be Aboriginal.

## DETERMINING THE AUTHORITY'S REMIT AND WORK PLAN

**A key strength of accountability entities is that they can determine their own work plans and priorities for inquiries and investigations.**

Existing entities have differing ways of determining and making public their work plans and areas of focus within their defined remit. For example:

- The Commonwealth Auditor General must have regard to the audit priorities of the Parliament, as determined by the Joint Committee of Public Accounts and Audit. However, the Commonwealth Auditor General has the complete discretion in performing or exercising the functions and powers and in particular, they are not subject to direction in relation to whether a particular audit is to be conducted; the way a particular audit is to be conducted; or the priority given to any particular manner. The Auditor-General publishes an annual audit work plan on its website. The Auditor-General receives requests for audit from members and senators of the Parliament of Australia. These requests are published on its website and notified to the Joint Committee of Public Accounts and Audit. The Auditor-General also publishes responses to the requests received (ANAO, 1997).
- The Victorian Auditor General is also not subject to control or direction by Parliament or the government in the audits it undertakes, and the way investigations are undertaken. The Victorian Auditor-General openly calls for audit or assurance review topics from members of Parliament, Government and non-Government agencies and the Victorian public. The Victorian Auditor-General also publishes its annual plan and, if a topic that was nominated is included, the proponent will be notified (VAGO, 1851).
- Internationally, the Canadian Indigenous Advisory Committee also determines its own remit and does not receive instructions from outside the Committee. Although the government has an observational seat at the table, it must provide the Committee with regular updates on the implementation of the Committee's advice, creating a two-way accountability stream (Government of Canada).

## PROPOSED REMIT AND WORK PLAN SETTING:

The Authority's enabling legislation would set out that:

- the Authority cannot be directed on its area of focus or on its annual workplan to conduct its legislated functions including inquiries and reviews
- the Authority will publish criteria to guide decisions on its workplan.
- to inform decisions on its work plan, the Authority will:
  - primarily engage with and consider requests from the Aboriginal community-controlled sector and communities through a formal process to ensure it is responsive to the needs, priorities, and aspirations of Aboriginal people in Victoria
  - engage with and consider requests made by the Premier as the responsible Minister

*Continued on next page →*

- The work program of the Productivity Commission in Australia is set differently and largely determined by the Commonwealth Government as directed by the Treasurer. This covers the area of focus and can also include a timeframe by which a report must be delivered by. However, the Productivity Commission retains independence in the way it conducts its inquiries, and any findings and recommendations are based on its own analyses and judgements (Productivity Commission, 1998).



*The Authority should review any policy and program to consider their impact on Aboriginal people – Stakeholder*

To support the self-determination of Aboriginal people in Victoria, it is proposed that the Authority is not able to be directed in deciding on its work plan and how its functions are exercised. That said, it will be important for the Authority to hear from Aboriginal people and include their voices in deciding its workplan and how it may go about particular inquiries and reviews. A formal process and structure should be available for Aboriginal people to have a say and where the Authority needs to account back to the community on how its decisions were made. This will help ensure that the work of the Authority is centered on the views, aspirations, and interests of Aboriginal people. The Government should also have a reasonable opportunity to inform the Authority's work plan through a formal process and structure and where the Authority is transparent for the decisions it makes in response.

A key issue is the policy remit of the Authority and whether it should be limited to defined areas of policy focus, like health or justice. However, to be truly responsive to the needs, interests, and priorities of Aboriginal people, it should be left to the Authority, based on the advice of Aboriginal people, to determine what its policy remit should be for a particular inquiry. Further, limiting the Authority to a particular policy area does not enable the Authority to sufficiently take account of the interconnectedness of policies, programs and services that impact on Aboriginal people and their life outcomes.

An additional matter for consideration is whether the Authority should be limited to State Government issues. Given the Authority would be established in Victorian Government legislation this seems it would not have any jurisdiction over the Commonwealth Government. However, it should also be free to speak about Commonwealth and local government policies and performance, and about how the three levels of government work together.

To ensure the Authority is independent in how it makes and communicates its findings and views, it should be free to determine the timing of the release of any reports, findings, and recommendations. Timeframes for tabling reports in Parliament should be set out in legislation to ensure procedural consistency.

## PROPOSED REMIT AND WORK PLAN SETTING (CONT)

- the Authority would publish an annual workplan and provide rationale for its decisions and areas of focus
- the Authority's findings and recommendations from its inquiries and work would be based on its own research and analysis and not be able to be altered by government or other parties. However, the Authority may seek feedback from parties on its findings and recommendations prior to finalisation
- the Authority would determine the timing of the release of its reports and other work, after giving sufficient notice to the Aboriginal community-controlled sector and the government
- the Authority's annual report, to be tabled in Parliament, would occur before the last sitting of the winter session
- within its overall budget, the Authority would be responsible for determining how the budget is allocated to support its priorities

## FOR FURTHER CONSIDERATION:

In determining the remit of the Authority, further consideration is warranted on whether the Authority should be able to make comment on performance of other levels of government.

Further consideration is also required on how the government and Aboriginal community-controlled sector can engage with the Authority on its work plan and priority focus areas and whether the Authority can be compelled to act on at least one proposal from government and one from the Aboriginal community-controlled sector for its annual work plan, or a proportion of its work.

## CONDUCT OF THE AUTHORITY

**A key requirement for legitimacy and public support of the Authority, including government buy in to any recommendations it may make, is ensuring transparency in the way it operates and makes decisions.**

For example:

- Transparency is one of the core features of the Productivity Commission where its advice to government and the information and analysis on which it is based, is open to public scrutiny. Its processes allow for extensive public input and feedback through hearings, workshops and other consultative forums, and through the release of draft reports and preliminary findings (Productivity Commission, 1998).
- The Australian National Audit Office (ANAO) also considers transparency to be an important aspect to the way it functions. Information about briefings are provided to parliamentarians by the National Auditor-General and ANAO staff, these briefings are then published on the website. The Auditor General provides Parliament with its annual performance review of government agencies and its reports and audits are made public. The ANAO also publishes the Auditor-General's annual expenses and information about gifts and benefits on its website (ANAO, 1997).
- Internationally, the Canadian Indigenous Advisory Committee also values transparency and uses the mechanism of open meetings, subject to their privacy commitments. The open meetings allow observers to sit in on meetings, much in the same way courts allow the public to view the process of justice. This mechanism of openness and transparency ensures the process can be held accountable by the public (Government of Canada).

## PROPOSED TRANSPARENCY MECHANISMS:

To ensure the Authority's processes are transparent, the Authority would:

- in producing its annual work program:
  - Publish criteria to guide the decisions of the Authority's on its work program
  - Engage with and consider requests from the Aboriginal community-controlled sector and government on its priorities for the Authority and provide rationale for its decisions
  - Publish an annual work program, providing rationale for its decisions and timeframes for its work
- in conducting its inquiries and reviews:
  - Engage with the Aboriginal community-controlled sector and government on terms of reference and timeframes to complete the work
  - Publish terms of reference and timeframes
  - Invite public input and feedback through hearings, workshops, and other consultative forums, ensuring that its mechanisms and timeframes are relevant and appropriate for Aboriginal peoples
  - Make public and provide transcripts or summaries of its engagements, submissions and feedback received
  - Provide opportunity for Aboriginal community-controlled organisations and to provide feedback on draft findings and recommendations
  - Make public its reports, findings, and recommendations

*Continued on next page →*

Covered in the previous section is the importance of transparency and engagement in how the Authority makes decisions on its work plan and priorities.

It is proposed that transparency and procedural accountability measures for the Authority are set out in its authorising legislation.

### **PROPOSED TRANSPARENCY MECHANISMS (CONT):**

- in reporting on its activities:
  - Maintain a website with information on its governance and accountability arrangements, its Commissioners, work program and its work
  - Produce an annual report, provided to the Aboriginal community-controlled sector and tabled in Parliament outlining its activities, outcomes and expenditure
  - Produce materials in accessible format, including in language where needed

Key transparency requirements would be included in the Authority's enabling legislation.

### **FOR FURTHER CONSIDERATION:**

Whilst transparency would be a critical factor to the Authority's success, it is important that the right balance is struck where it is not held to standards that would not be applied to other like entities and can undertake its functions in a culturally safe manner.

## FUNDING FOR THE AUTHORITY

**Securing long term, stable and sufficient government funding for the Authority is an important aspect of ensuring its functions are independent, its activities, including reviews and inquiries are robust, and its duty and responsibility is always to Aboriginal people of Victoria.**

Existing government accountability entities in Victoria are funded through annual budget appropriations made by the government of the day. Similar entities at the Commonwealth level like the Productivity Commission and the Australian National Audit Office, are also funded through annual budget appropriations. This makes the operation and effectiveness of the entities subject to political will and support. As an example, in 2020, after the Australian National Audit Office had revealed major government flaws in the way it was managing some programs, its annual funding was cut. At the time, the Auditor-General commented that the funding cut would significantly reduce the number, depth, and breadth of audits that it would be able to undertake. In late 2022, the Chief Commissioner of the Victorian Independent Broad-based Anti-Corruption Commission called for a significant change to how the organisation is funded, suggesting decisions about funding should be removed from the discretion of the government of the day and given to the state parliament (Millar, R and Ilanbey, S, 2022).

To avoid these issues experienced by like authorities, it is proposed that core funding for the Authority be established in legislation, with provisions to allow the Government to increase this level of funding for certain inquiries and investigations with the agreement of the Authority. The level of core funding to be established in legislation should be determined by an independent organisation and after consultation with Aboriginal community-controlled organisations and government.

## PROPOSED FUNDING FOR THE AUTHORITY:

The Authority would be Government funded, with:

- the Authority's base funding established in its legislation, where an annual appropriation would be set out and any changes would require an amendment to the Act and support of the Parliament
- annual funding would be appropriately indexed to ensure the base funding keeps pace with the cost of wages and services
- the government could provide additional funding to the Authority to undertake specific inquiries and pieces of work that are within its functions and with the agreement of the Authority

The level of core funding would be established in legislation and should be determined by an independent organisation and after consultation with Aboriginal community-controlled organisations and government. The core funding should be reviewed every ten years.

The Chief Commissioner would be responsible for the expenditure of the budget and the Authority would:

- determine how the base level of funding is allocated to fulfil its functions, and where any funding not expended in a financial year would be retained by the Authority to allocate to its functions in following years
- include reporting on expenditure in its annual report to Parliament

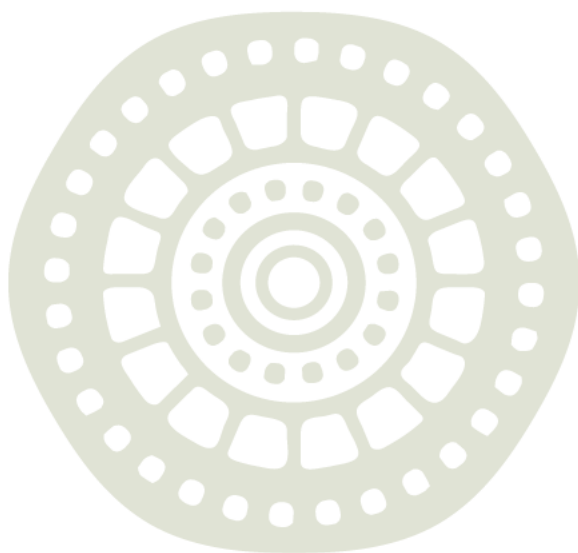


The core funding should be reviewed every ten years through the same independent process and legislation updated accordingly.

It is further proposed that the Authority, by decision of its Chief Commissioner, should have complete responsibility and accountability for how its funding is allocated, and be required to provide annual expenditure reports to Parliament as part of its annual report. This role and requirement should also be included in legislation, helping to ensure the Authority's independence while also supporting transparency.

#### **FOR FURTHER CONSIDERATION:**

It will be important to resolve whether the Authority should be able to accept additional funding from government or other parties to undertake particular inquiries and how this may impact on its independence. Ensuring there is an appropriate mechanism to determine the Authority's funding base and that it is secure and can increase over time to reflect rising costs of services will be critical.



# Conclusion and next steps

**Through this initial feasibility study, we have found that there is both a need and general support for a Victorian Aboriginal Authority as proposed by the Koori Caucus.**

We also identified existing, overdue Victorian Government commitments relating to increasing its performance in, and accountability for, the way it designs, delivers, monitors, and evaluates policies and programs that have a significant impact on Aboriginal people.

The existing VAAF is widely accepted and championed by the Victorian Community as the framework for a self-determining future. The establishment of the Authority would be a natural extension of this work. In considering the model of an Authority there are lessons to be drawn from existing like accountability entities in Victoria, at the Commonwealth level and internationally, to ensure its operating model and governance arrangements enable the Authority to deliver on its purpose.

Further engagement is needed to ensure the proposed Authority aligns with the Yoorrook and Treaty processes underway in Victoria and on critical aspects of the Authority's operating model to ensure it meets the needs and aspirations of Aboriginal people in Victoria.

There are also a number of issues for further discussion identified in this paper, that should form the basis of a robust, Aboriginal-led engagement process with the Aboriginal community-controlled sector and communities in Victoria.

## RECOMMENDED NEXT STEPS

In taking forward the proposal for an Authority, we recommend that:

1. the Victorian Government commissions Aboriginal-led engagement with the Aboriginal community-controlled sector and communities to further develop the proposal, including:
  - a. testing the Authority model concepts outlined in this paper to ensure it meets the needs and aspirations Aboriginal people in Victoria (matters for further consideration are identified throughout this paper)
  - b. ensuring the Authority aligns with, and is complementary to, existing Aboriginal-led initiatives including the Treaty process, the work of the Yoorrook Justice Commission and the National Agreement on Closing the Gap
  - c. developing key principles for the development of enabling legislation
  - d. developing an operating model for the Authority and an operating budget estimate
2. the outcomes of the above engagement process and next steps be discussed and agreed between the Victorian Government and Aboriginal community-controlled representatives

# Glossary of terms and key existing accountability models reviewed

## **Aboriginal Health and Wellbeing Partnership Forum**

A strategic collaboration between the Aboriginal community-controlled health sector, the mainstream health sector, and the Victorian Department of Health. It is jointly chaired by the Minister for Health and VACCHO's Chairperson. The Forum's vision is for Aboriginal people to have access to a health system that is holistic, culturally safe, accessible, and empowering.

## **Australian Human Rights Commission**

The Australian Human Rights Commission is an independent statutory organisation, established by an act of Federal Parliament. Its role is to protect and promote human rights in Australia and internationally and does this through a range of functions including:

- investigating and conciliating discrimination and human rights complaints
- advocating to government and others for human rights to be considered in laws and policy making
- promoting awareness of human rights in Australia through education and training, events and discussion, media outreach, digital resources and social media communication
- undertaking research into human rights and discrimination issues in Australia
- providing legal advice on human rights obligations to courts and appear as an amicus curiae – or 'friend of the court' – to provide specialist advice in discrimination cases

## **Australian National Audit Office (ANAO)**

The ANAO is a specialist Commonwealth public sector agency that supports the Auditor-General of Australia, who is an independent officer of the Parliament of Australia. The main functions and powers of the Auditor-General under the Auditor-General Act 1997 (Cth) include auditing financial statements of Commonwealth agencies, authorities, companies and their subsidiaries in accordance with the Financial Management and Accountability Act 1997 (Cth) and conducting performance audits

which are tabled in Parliament. The Auditor-General may report its findings directly to Parliament or to a Minister, on any important matter. In addition, the ANAO plays a leadership role in improving public administration and audit capability in Australia and overseas.

## **Coalition of Aboriginal and Torres Strait Islander Community Controlled Peak Organisations (Coalition of Peaks)**

The Coalition of Peaks is made up of over 80 Aboriginal and Torres Strait Islander community-controlled peak and other organisations from across the country. They came together in 2019 to change the way Australian governments work with Aboriginal and Torres Strait Islander communities and organisations. The members share a belief that Aboriginal and Torres Strait Islander community-controlled representatives should share in decisions with governments on policies and programs that have a significant impact on Aboriginal and Torres Strait Islander people through formal partnerships.

## **First Peoples' Assembly of Victoria**

The First Peoples' Assembly of Victoria is the independent and democratically elected body to represent Traditional Owners of Country and Aboriginal and Torres Strait Islander peoples in Victoria. The Assembly is committed to the negotiation of Treaties between Aboriginal people and the Government of Victoria and are creating a pathway to get there.

## **Independent Broad-based Anti-Corruption Commission (IBAC)**

The IBAC is Victoria's statutory anti-corruption agency with jurisdiction over the public sector. It does this by: investigating serious corruption and police misconduct informing the public sector, police and the community about the risks and impacts of corruption and police misconduct. Its powers to undertake its functions are set out and protected in legislation.

### **Indigenous Advisory Committee (Canada)**

The Indigenous Advisory Committee in Canada provides the Impact Assessment Agency of Canada (Agency) with expert advice for the development of key policy and guidance on the impact assessment system. The Agency is a federal body accountable to the Minister of Environment and Climate Change. It serves Canadians by delivering high-quality impact assessments that look at both positive and negative environmental, economic, social, and health impacts of potential projects and contribute to informed decision making on major projects in support of sustainable development in Canada. The Indigenous Advisory Committee is made up of First Nations, Métis and Inuit individuals, as well as experts recommended by Indigenous individuals and organisations. The views expressed by each member comes from their own experience and knowledge. The membership is appointed by the Government of Canada.

### **National Agreement on Closing the Gap**

The National Agreement on Closing the Gap came into effect on 27 July 2020. It is the first intergovernmental agreement to be signed by all First Ministers, the Australian Local Government Association and Aboriginal and Torres Strait Islander representatives. The National Agreement commits governments to change the way they work to improve the lives of Aboriginal and Torres Strait Islander peoples through four Priority Reforms. The Priority Reforms were developed through a Coalition of Peaks led engagement process with Aboriginal and Torres Strait Islander organisations and communities across the country and include one on increasing the accountability of government funded organisations and institutions.

### **Productivity Commission**

The Productivity Commission is an advisory body. It does not administer government programs or exercise executive power. It contributes by providing quality, independent advice and information to governments, and on the communication of ideas and analysis.

The Commission is an agency of the Australian Government, located within the Treasury portfolio. However, its activities cover all levels of government and encompass all sectors of the economy, as well as social and environmental issues.

The core function of the Commission is to conduct public inquiries at the request of the Australian Government on key policy or regulatory issues bearing on Australia's economic performance and community wellbeing. In addition, the Commission undertakes a variety of research at the request of the Government and to support its annual reporting, performance monitoring and other responsibilities.

### **Victorian Auditor General's Office (VAGO)**

The VAGO is a specialist Victorian public sector agency that supports the Victorian Auditor-General, an independent officer of the Victorian Parliament. It provides assurance to Parliament and the Victorian community about how effectively public sector agencies are providing services and using public money. This is achieved through an annual program of financial and performance audits of state and local government public sector entities and where the audits examine:

- how effective, efficient, and economical government agencies, programs and services are
- how government agencies manage resources
- opportunities for government agencies to improve their management practices and systems
- if government agencies are fairly presenting their annual financial statements and performance statements
- if government agencies are complying with legislation and other requirements
- if there is wastage or a lack of probity in the way that public resources are being managed

The Victorian Auditor-General makes recommendations that promote accountability and transparency in government and improve agencies' service efficiency and effectiveness and provides written advice to agencies on how they can improve their future performance. Audit findings in reports are tabled in the Victorian Parliament and publicly available online.

### **Victorian Commission for Children and Young People (CCYP)**

The CCYP is an independent Victorian Government statutory body that promotes improvements in policies and practices for the safety and wellbeing of vulnerable children and young people in Victoria.

The main functions of the CCYP are to:

- provide independent scrutiny and oversight of services for children and young people, particularly those in the out-of-home care, child protection and youth justice systems
- advocate for best-practice policy, program and service responses to meet the needs of children and young people
- promote the rights, safety and wellbeing of children and young people
- promote the views and experience of children and young people to increase the awareness of government and the community
- support and regulate organisations that work with children and young people to prevent abuse and make sure these organisations have child safe practices

It achieves its purpose through a range of independent inquires and reporting functions.

### **Victorian Commission for Mental Health and Wellbeing**

The Commission is an independent statutory authority established in Victorian Government legislation and its purpose is to hold government to account for the performance, quality and safety of Victoria's mental health and wellbeing system. It has substantial powers to obtain and share data, begin inquiries and investigate complaints.

### **Waitangi Tribunal (New Zealand)**

The Waitangi Tribunal in New Zealand is a standing commission of inquiry. It makes recommendations on claims brought by Māori relating to legislation, policies, actions or omissions of the Crown that are alleged to breach the promises made in the Treaty of Waitangi. The role of the Tribunal is set out in the Treaty of Waitangi Act 1975 and includes:

- inquiring into and making recommendations on well-founded claims

- examining and reporting on proposed legislation, if it is referred to the Tribunal by the House of Representatives or a Minister of the Crown
- making recommendations or determinations about certain Crown forest land, railways land, state-owned enterprise land, and land transferred to educational institutions

In fulfilling this role, the Waitangi Tribunal has exclusive authority to determine the meaning and effect of the Treaty. It can decide on issues raised by the differences between the Māori and English texts of the Treaty.

### **Yoorrook Justice Commission**

Yoorrook is the first formal truth-telling process into past and ongoing injustices experienced by First Peoples in Victoria arising from colonisation. The Yoorrook Justice Commission was set up by agreement between the First Peoples' Assembly of Victoria and the Victorian Government but is independent of the Assembly and of government. Yoorrook delivered an interim report in June 2022 and will deliver a final report by June 2024. Yoorrook is led by five Commissioners, of whom four are Aboriginal and three are Victorian First Peoples.

# References

Australian Government, 2020, Closing the Gap – Implementation Tracker, <https://www.closingthegap.gov.au/national-agreement/implementation-tracker>, accessed January 2023.

Australian Human Rights Commission (AHRC), 2017, June Oscar AO – Aboriginal and Torres Strait Islander Social Justice Commissioner, <https://humanrights.gov.au/our-work/commission-general/june-oscar-ao-aboriginal-and-torres-strait-islander-social-justice>, accessed November 2022.

Australian Human Rights Commission (AHRC), 2008, 'Our Work', <https://humanrights.gov.au/>, accessed November 2022.

Australian National Audit Office (ANAO), 1997, 'Home' <https://www.anao.gov.au/>, accessed November 2022.

Behrendt, L, 2005, The abolition of ATSIC – Implications for democracy, Democratic Audit of Australia, [https://library.bsl.org.au/jspui/bitstream/1/679/1/200511\\_behrendt\\_atsic.pdf](https://library.bsl.org.au/jspui/bitstream/1/679/1/200511_behrendt_atsic.pdf).

Coalition of Aboriginal and Torres Strait Islander Community Controlled Peak Organisations (Coalition of Peaks), 2020, A report on engagements with Aboriginal and Torres Strait Islander people to inform a new National Agreement on Closing the Gap, June 2020, [https://coalitionofpeaks.org.au/wp-content/uploads/2020/06/Engagement-report\\_FINAL.pdf](https://coalitionofpeaks.org.au/wp-content/uploads/2020/06/Engagement-report_FINAL.pdf).

Coalition of Peaks and all Australian Governments, 2020, National Agreement on Closing the Gap, July 2020.

Commission for Children and Young People (CCYP), 2021, Our youth, our way: inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system, Commission for Children and Young People, Melbourne.

Commission for Children and Young People (CCYP), 2012, Recognising, respecting and defending the rights of children and young people, Victorian Government, <https://ccyp.vic.gov.au/>, accessed March 2023.

Commonwealth Ombudsman, 1997, We help ensure fairness, <https://www.ombudsman.gov.au/>, accessed November 2022.

Commonwealth Productivity Commission, 1998, About, <https://www.pc.gov.au/about>, accessed November 2022.

Commonwealth Productivity Commission, 2022, Closing the Gap; Annual Data Compilation Report July 2022, Australian Government.

Doran, M, 2021, Auditor-General warns budget cuts will mean reduction in audits like ones that led to the 'sports rorts, Leppington Triangle, ABC News, <https://www.abc.net.au/news/2021-02-19/auditor-general-warns-budget-cuts-less-audits/13172600>, accessed February 2023.

Frydenburg, J, 2018, First full time Indigenous Policy Evaluation Commissioner of the Productivity Commission, Australian Government, <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/first-full-time-indigenous-policy-evaluation>.

Government of Canada, Indigenous Advisory Committee, <https://www.canada.ca/en/impact-assessment-agency/advisory/advisory-groups/indigenous-advisory-committee.html>, accessed November 2022.

Government of New Zealand, 2021, Gazette: New Zealand, Appointment of the New Zealand Productivity Commission, Gazette Government New Zealand, <https://gazette.govt.nz/notice/id/2021-go142>, accessed November 2022.

Independent Broad-Based Anti-Corruption Commission (IBAC) Victoria, 'About Us', <https://www.ibac.vic.gov.au/about-us>, accessed February 2023.

Johnston, E, QC, 1997, Royal Commission into Aboriginal Deaths in Custody, <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol1/>.

Millar, R. and Ilanbey, S, 2022, Give me independent funding, says anti-corruption chief Robert Redlich' The Age, <https://www.theage.com.au/politics/victoria/give-me-independent-funding-says-anti-corruption-chief-robert-redlich-20220805-p5b7kc.html>, accessed 4/02/2023)

Victorian Aboriginal Community Controlled Health Organisation (VACCHO), 2021, On Solid Ground, Strategic Plan 2021 – 2026: Strength, Sustainability and Innovation for Generational Change, <https://www.vaccho.org.au/about/5-year-strategy/>, accessed March 2023.

Victorian Auditor-General's Office, 1851, Our Role, <https://www.audit.vic.gov.au/our-role>, accessed November 2022.

Victorian Government, 2023, A new Mental Health and Wellbeing Commission for Victoria, Department of Health, <https://www.health.vic.gov.au/mental-health-reform/a-new-mental-health-and-wellbeing-commission-for-victoria>, accessed February 2023.

Victorian Government, 2022, First Peoples – State Relations, Pathway to Treaty, <https://www.firstpeoplesrelations.vic.gov.au/treaty-process>, accessed November 2022.

Victorian Government, 2018, Victorian Aboriginal Affairs Framework 2018 – 2023, <https://www.firstpeoplesrelations.vic.gov.au/victorian-aboriginal-affairs-framework-2018-2023>, accessed March 2023.

Victorian Government, 2019 Self-Determination framework

<https://www.vic.gov.au/sites/default/files/2019-09/Self-Determination-Reform-Framework-August-2019>. PDF accessed May 2023

Victorian Ombudsman, 'Independent, impartial and free', <https://www.ombudsman.vic.gov.au/>, accessed November 2022.

Waitangi Tribunal, 1975, 'About the Waitangi Tribunal' Justice Government New Zealand <https://waitangitribunal.govt.nz/about/members-of-the-waitangi-tribunal/>, accessed November 2022.

Yoorrook Justice Commission, About Yoorrook, <https://yoorrookjusticecommission.org.au/overview/>, accessed November 2022.

# Appendix A

## LIST OF STAKEHOLDERS CONSULTED

**Commission for Children and Young People**

**Coroner's Court of Victoria**

**Department of Justice and Community Safety**

**First Peoples' Assembly of Victoria**

**Northwestern Medical Primary Health Network**

**Oonah Health & Community Services  
Aboriginal Corporation**

**Productivity Commission**

**Victorian Department of Health**

**Victorian Healthcare Association**

**Victorian Ombudsman**





# Appendix B

## OVERVIEW OF VICTORIA'S INTEGRITY SYSTEM

To help ensure confidence in Victoria's public sector, the Victoria integrity system has been established to support safeguard integrity. The Victorian integrity system includes a number of agencies, each with a distinct role in preventing and exposing corruption and ensuring the integrity of the Victoria public sector. The core agencies that make up the core of Victoria's integrity system are:

- the Victorian Inspectorate
- Victorian Auditor-General's Office (VAGO)
- Victorian Ombudsman
- Independent Broad-based Anti-corruption Commission (IBAC)

The core functions and responsibilities of each are detailed below:

## FEATURES OF THE VICTORIAN INTEGRITY SYSTEM

Each of the agencies which make up the Victorian integrity system have been given significant powers and have specific responsibilities and obligations in contributing to their shared responsibility. Table 1, Features of the Victorian Integrity System, describes the main features of these organisations and is drawn partly from their websites and mainly from legislation that establishes them, namely:

- the Constitution Act 1975 and Audit Act 1994 (VAGO)
- Ombudsman Act 1973
- Independent Broad-based Anti-corruption Commission Act 2011
- Victorian Inspectorate Act 2011
- Public Administration Act 2014

### Victorian Inspectorate and parliamentary committee oversight of IBAC, Ombudsman and VAGO

#### Independent Broad-based Anti-corruption Commission

Exposes and prevents public sector corruption and police misconduct

#### Victorian Ombudsman

Investigates administrative actions of state government departments, local councils and statutory authorities

#### Victorian Auditor-General's Office

Provides independent assurance to the Parliament and the Victorian community on the financial integrity and performance of the state

Other agencies supporting a sound integrity system include:

Local Government Investigations and Compliance Inspectorate, and Commissions for FOI, Privacy and Data Protection, the Victorian Public Sector and Equal Opportunity and Human Rights

## FEATURES OF THE VICTORIAN INTEGRITY SYSTEM

	Victorian Inspectorate	Victorian Auditor-General's Office	Victorian Ombudsman	Independent Broad-based Anti-corruption Commission
<b>Legal Status</b>	<p><i>Inspector:</i> An Independent officer of Parliament</p> <p><i>Organisation:</i> independent statutory office (Special Body under Public Administration Act 2004)</p>	<p><i>Auditor-General:</i> An Independent officer of Parliament</p> <p><i>Organisation:</i> independent statutory office (Special Body under Public Administration Act 2004)</p>	<p><i>Ombudsman:</i> An Independent officer of Parliament</p> <p><i>Organisation:</i> independent statutory office (Special Body under Public Administration Act 2004)</p>	<p><i>Commissioner:</i> An Independent officer of Parliament</p> <p><i>Organisation:</i> independent statutory office (Special Body under Public Administration Act 2004)</p>
<b>Purpose</b>	Investigate complaints made about other integrity and anti-corruption bodies	Promote service efficiency and effectiveness	Promote improved public sector administration	Prevent and expose public sector and police corruption and misconduct
<b>Functions</b>	Oversee the use of coercive powers (for example, power to summon and examine witnesses) by IBAC, VAGO, the VO	Financial and performance audits	Investigate and resolve complaints, and consider whether administrative action is compatible with the Charter of Human Rights Act 2006	Investigate allegations of public sector corruption and/or police misconduct, bringing criminal proceedings or referring to the Office of Public Prosecutions
<b>Scope</b>	IBAC, Chief Examiner, VAGO, Ombudsman, Office of the Victorian Information Commissioner; Judicial Commission, Wage Inspectorate Victoria, Officer of the Special Investigator	Public sector bodies or those in which the State has some control; education institutions; councils; registered community health centres; registered aged care providers	Public sector bodies and any organisation performing a public function on behalf of the State. Specified entities include: registered providers of community services within the Children, Youth and Families Act; contractors & sub-contractors under the Corrections Act; and providers of health services to public hospital patients at hospital.	Public sector bodies and any organisation performing a public function on behalf of the State
<b>Powers</b>	<ul style="list-style-type: none"> <li>Require information or documents</li> <li>Require people to attend meetings</li> <li>Issue summons</li> <li>Examine people under oath</li> <li>Enter IBAC premises</li> </ul>	<ul style="list-style-type: none"> <li>Require a person to provide information or documents, including documents subject to Cabinet confidentiality</li> <li>Enter premises to collect documents</li> <li>Require testimony under oath</li> <li>Penalties apply for non-compliance, including potential imprisonment</li> </ul>	<ul style="list-style-type: none"> <li>Require a person to provide information or documents</li> <li>Require testimony under oath</li> <li>Penalties apply for non-compliance, including potential imprisonment</li> <li>Request the principal officer of a public body or responsible Minister or Mayor to notify the Ombudsman what steps have been or are proposed to be taken to give effect to recommendations</li> </ul>	<ul style="list-style-type: none"> <li>Require a person to provide information or documents</li> <li>Enter police premises and seize documents or other things</li> <li>Apply for search warrants</li> <li>Is not subject to the direction or control of the Minister</li> </ul>

## FEATURES OF THE VICTORIAN INTEGRITY SYSTEM (CONT)

	Victorian Inspectorate	Victorian Auditor-General's Office	Victorian Ombudsman	Independent Broad-based Anti-corruption Commission
<b>Provides reports to</b>	Parliament	Parliament	The principal officer of the relevant organisation	Victorian Inspectorate and Parliament
<b>Appointed by</b>	Governor	Governor on recommendation of the Parliamentary Public Accounts and Estimates Committee	Governor	Governor on recommendation of the Minister. The Integrity and Oversight Committee can veto the recommendation.
<b>Accountable to whom</b>	The Governor may suspend the Inspector, and if both Houses vote to remove the Inspector, the Governor must remove them. The Parliamentary Integrity and Oversight Committee, and the Public Accounts and Estimates Committee can review the Inspectorate's performance	The Governor can remove the Auditor-General at any time. Parliament, if agreed by both houses, can remove the Auditor-General from office. The Public Accounts and Estimates Committee can review performance	Oversight by the Parliamentary Integrity and Oversight Committee who reports to Parliament on any matter connection to performance of Ombudsman. Parliament, if agreed by both houses, can remove the Ombudsman from office.	The Governor may suspend the Commissioner, and if both Houses vote to remove the Commissioner, the Governor must remove them. Parliament can appoint an independent performance auditor of IBAC.
<b>Funding</b>	To be determined in consultation with the Parliamentary Integrity and Oversight Committee. 2021-22: \$6m	To be determined in consultation with the Parliamentary Public Accounts and Estimates Committee. 2021-22: \$48m	Annual budget set by Parliamentary Integrity and Oversight Committee. 2021-22: \$21m	To be determined in consultation with the Parliamentary Integrity and Oversight Committee. 2022-23: \$64m
<b>Organisation</b>	Employed under the Public Administration Act 2004 i.e. public sector employees. Total staff unknown.	Employed under the Public Administration Act 2004 i.e. public sector employees. Approx 185 staff	Employed under the Public Administration Act 2004 i.e. public sector employees. Approximately 115 staff.	Employed under the Public Administration Act 2004 i.e. public sector employees. The Commissioner has 2 Deputy Commissioners and a Chief Executive and 4 EDs. Total staff unknown.



## **HISTORY OF THE VICTORIAN AUDITOR-GENERAL'S OFFICE (VAGO)**

### **History of the Victorian Auditor-General's Office (VAGO)**

Since 1955, the Victorian Auditor-General's Office has conducted two performance audits specifically on Aboriginal affairs:

1. Coordinating services and initiatives for Aboriginal People (2008)
2. Accessibility of Mainstream Services for Aboriginal Victorians (2014)

The number of reports VAGO produces increased from only 1-3 a year in the 1950s-80s to 5-10 a year in the 1990s, and since 2000 has conducted over 500 reports (sometimes over 30 p/a). The Annual Plan for 2022/23, which looks three years into the future, contains no future proposals for performance audits on Aboriginal affairs.

Since 2017, VAGO has planned to conduct performance audits specifically relating to Aboriginal affairs but these have never been conducted and no explanation was given for this in their published annual plans:

- Governance of the Aboriginal services sector
- Community housing for Aboriginal Victorians
- Improving health outcomes for Aboriginal Victorians

### **Governance of the Aboriginal services sector (planned but never conducted)**

The Auditor-General in its 2017-18 workplan proposed conducting a performance audit of governance in the Aboriginal services sector in 2019-20 to determine whether the Aboriginal services sector is well governed in the context of DPC having a program to strengthen governance and support of ACCOs. VAGO wanted to understand if ACCOs had sufficient and appropriate access to this program and understand its impact. The proposed agencies for inclusion were DPC, DHHS, DHR, DET and a selection of ACCOs. This proposal did not appear in VAGO's 2018-19 Workplan, which included proposed audits for 2018-2021 and has not been included since.

### **Community housing for Aboriginal Victorians (planned but never conducted)**

The 2018-19 Workplan did include a proposal to audit outcomes for Aboriginal Victorians regarding

community housing in 2020-21. The objective was to assess whether the ownership transfer of public housing assets to Aboriginal Housing Victoria (AHV) is supporting improved housing access, stability and uptake of support services for Aboriginal Victorians. Proposed agencies for inclusion were: DHHS, DTF, DPC and AHV.

The 2019-20 Plan included this planned performance audit but it was not included in VAGO's 2020-21 Workplan and has not reappeared.

### **Improving health outcomes for Aboriginal Victorians (planned but never conducted)**

The 2019/20 Plan proposed conducting a performance audit in 2021-22 to assess whether another DHHS is making progress in improving health outcomes for Aboriginal Victorians and would include DHHS and a selection of Aboriginal health service providers. This planned performance audit was included in the 2020-21 Workplan to be conducted in 2022-23 but it did not appear in the 2021-22 Workplan and has not reappeared.

### **The Yoorrook Justice Commission**

The Yoorrook Justice Commission is the first formal truth-telling process into historical and ongoing injustices experienced by First Peoples in Victoria and since colonisation. It will establish an official record of the impact of colonisation on Traditional Owners and First Peoples in Victoria and aim to create a shared understanding of that impact as well as the diversity, strength and resilience of First Peoples' cultures.

Yoorrook has the powers of a Royal Commission, which means it has the power to subpoena documents (requiring request individuals or organisations to produce documents as evidence) and summons witnesses to appear before it. Yoorrook does not exercise judicial power, but it can refer information about alleged crimes to law enforcement authorities. Yoorrook's Commissioners were appointed by an Assessment Panel made up of two people nominated by the First Peoples' Assembly of Victoria, one person nominated by government and one person from the International Center for Transitional Justice. Yoorrook is independent of Government and the First Peoples' Assembly of Victoria but will provide its reports to the First Peoples' Assembly of Victoria, and the Governor. Yoorrook had an initial budget of \$44.445m for three years.

### National Anti-Corruption Commission

The Commonwealth has multiple agencies to promote accountability and transparency including: the Australian Commission for Law Enforcement Integrity, the Commonwealth Ombudsman, the Australian National Audit Office, the Australian Public Service Commission, and the Independent Parliamentary Expenses Authority. From the 1st July 2023, the Commonwealth will establish a National Anti-Corruption Commission (NACC) as an independent Commonwealth agency to detect, investigate and report on serious or systemic corrupt conduct in the Commonwealth public sector. The NACC will also educate the public service, and the public, about corruption risks and prevention.

The scope of the NACC is all Members and staff of the Australian Parliament and all staff of Commonwealth agencies. People who are responsible for providing goods or services (or who carry out functions) under a Commonwealth contract will be public officials under the NACC Act. The NACC will be able to investigate any person, even if they are not a public official, so long as they do something that might cause a public official to carry out their official role in a dishonest or biased way.

