



Victorian
Aboriginal
Legal Service



South Eastern Australian
Aboriginal Justice Services
Limited

ABN: 45 926 675 900

Head Office

273 High St
Preston, Victoria 3072.
PO Box 52
Preston, Victoria 3072.
DX 97208 Preston
Phone: 03 9418 5999
(24 Hrs)
Fax: 03 9418 5900
Free Call: 1800 064 865
Email: vals@vals.org.au

Bairnsdale Office

Shop 13 Riviera Place
80 Main Street
Bairnsdale, Victoria 3875.
PO Box 1060
Bairnsdale, Victoria 3875.

Ballarat Office

403 Main Street
Ballarat, Victoria 3350.
PO Box 516
Ballarat, Victoria 3353

Mildura Office

81 Pine Avenue
Mildura, Victoria, 3500.
PO Box 10354
Mildura, Victoria 3502.

Morwell Office

20 George Street
Morwell, Victoria 3840.

Shepparton Office

Unit 3, 262 Maude Street
Shepparton, Victoria 3630.
PO Box 1983
Shepparton, Victoria 3630.

Swan Hill Office

109 Campbell Street
Swan Hill, Victoria 3585.
PO Box 1319
Swan Hill, Victoria 3585.

8 February 2020

Mr Chin Tan
Race Discrimination Commissioner
Australian Human Rights Commission

By email: antiracismsecretariat@humanrights.gov.au

Dear Mr. Tan,

Re: National Anti-Racism Framework

The Victorian Aboriginal Legal Service (VALS) welcomes the opportunity to contribute to the development of a National Anti-Racism Framework.

VALS is an Aboriginal Community Controlled Organisation (ACCO), which was established in 1973 to provide culturally safe legal and community justice services to Aboriginal and/or Torres Strait Islander peoples¹ across Victoria. VALS' vision is to ensure that Aboriginal people in Victoria are treated equally before the law; our human rights are respected; and we have the choice to live a life of the quality we wish. VALS provides legal and community justice services in relation to criminal and youth law, family law, child protection, and a range of civil law issues (infringements, tenancy, victims of crime, consumer law, discrimination, human rights, Personal Safety Intervention Orders, coronial inquests and civil litigation against government authorities).²

Aboriginal people in Victoria experience racism on a daily basis, including at an individual/inter-personal level, as well as systemic racism across all areas of society. VALS clients are particularly impacted by systemic racism in the criminal justice, youth justice and child protection systems, as well as access to housing, employment, health care, mental health care and consumer law. Addressing systemic racism requires extensive reform of the laws, policies, procedures and institutions that entrench and perpetuate this form of racism.

In December 2021, VALS prepared the attached submission on the Victorian Anti-Racism Strategy, which is due to be released in mid-2022. In preparing our submission, VALS took into consideration the AHRC's Concept Paper and Consultation Update for the National Anti-Racism Framework. Accordingly, we have enclosed our submission for consideration by the AHRC in relation to the development of the National Anti-Racism Framework. Highlights from the submission are summarised below. We have also included an additional section below relating to systemic racism and access to the age pension for Aboriginal people.

¹ The term "Aboriginal" is used to refer to Aboriginal and/or Torres Strait Islander peoples.

² Further information is available at: <https://www.vals.org.au/legal-client-services/>

Key themes from VALS' submission on the Victorian Anti-Racism Strategy

1. Increase awareness and understanding about racism, particularly systemic racism

Data on systemic racism and Aboriginal data sovereignty (recommendations 5-7)

There is a significant lack of data on Aboriginal people's experiences of racism in Victoria, particularly systemic racism. Although some data is available through Government reporting against policy commitments,³ it is not easily accessible, is often not provided in a timely manner, and does not reflect the extent of systemic racism experienced by Aboriginal people. Data on Aboriginal people's experiences of racism in Victoria is critical to support evidence-based policy and law reform, and to increase awareness about the extent and scope of racism. Data must be gathered, managed and used in accordance with Indigenous Data Sovereignty (IDS) and Indigenous Data Governance (IDG).

Mandatory training for all public authorities (recommendations 8-9)

While training is not a panacea, it can be a useful tool to increase awareness of and understanding about the different dimensions of racism, as well as Aboriginal peoples' experiences of racism and its impacts. This is particularly critical for public authorities that are known to have a culture of racism, and/or have played a historical and contemporary role in implementing racist laws and policies against Aboriginal communities, including Victoria Police, Child Protection and Corrections Victoria.

2. Address systemic racism through urgent law and policy reform

Aboriginal Self-determination (recommendations 14-17)

The Victorian Government has committed to respecting and promoting Aboriginal self-determination through its policy framework, and steps towards Aboriginal self-determination are reflected in legislation such as the *Children, Youth and Families Act 2005*.⁴ However, the Victorian Government is failing to recognise and respect Aboriginal self-determination in practice.

The inherent failure of the Victorian Government to implement articles 18 and 19 of the *United Nations Declaration on the Rights of Indigenous Peoples*⁵ is a key contributor to ongoing racism in Victoria, particularly systemic racism. The failure to engage in shared decision-making, resulting from meaningful and effective consultation directly with Aboriginal peoples at the community level and indirectly through ACCOs, contributes to ongoing inequalities and a failure to improve outcomes within the Aboriginal communities of Victoria. The

³ See for example, the [Victorian Government Aboriginal Affairs Report](#) (VGAAR) which is published annually to report against the Government's progress in implementing the [Victorian Aboriginal Affairs Framework 2018-2023](#) (VAAF); annual reporting linked to [Burra Lotjpa Dunguludja: Aboriginal Justice Agreement Phase 4](#); annual reporting on the [National Closing the Gap \(CtG\) Agreement](#) and State/Territory CtG Implementation Plans

⁴ See for example, Section 18, *Children Families and Youth Act 2005* (Vic).

⁵ The right to self-determination is the right of Aboriginal peoples to participate in decision-making in matters which would affect their rights (Article 18, UNDRIP), as well as an obligation for Governments to obtain the free, prior and informed consent of Aboriginal peoples before adopting and implementing legislative or administrative measures that may affect them (article 19, UNDRIP).

Victorian Anti-Racism Strategy should include commitments to strengthen the legislative framework for the right to self-determination of Aboriginal peoples in Victoria and increase long-term and stable funding for ACCOs.

Address systemic racism through law and policy reform (recommendation 22)

The Strategy must include concrete commitments to address systemic racism, including changes to laws and policies that disproportionality impact Aboriginal communities. The Government continues to make commitments about reducing over-representation of Aboriginal people in the criminal/youth justice systems and the child protection system; yet refuses to implement key changes that would have an immediate impact on this over-representation. To address systemic racism, the Victorian Anti-Racism Strategy must include key changes such as raising the age of criminal responsibility to at least 14 years; reforming the punitive bail system; and prohibiting solitary confinement. These reforms, and many of the reforms detailed in our submission, are also relevant for the National Anti-Racism Framework.

3. Strengthen legal protection of human rights

Strengthen anti-vilification laws and access to culturally safe legal assistance

In 2021, the Victorian Parliament Legal and Social Issues Committee completed its inquiry into anti-vilification and recommended a range of legislative changes to strengthen Victoria's anti-vilification laws.⁶ The Strategy must commit the Government to implement these recommendations, including additional funding for VALS to provide culturally safe legal assistance and representation to Aboriginal people who experience racial vilification.

Strengthen protection of human rights, particularly Aboriginal cultural rights

While the *Victorian Charter of Human Rights and Responsibilities 2006* (Vic) ("the Charter") protects a number of human rights, judicial review of charter rights is limited. The Victorian Anti-Racism Strategy should include a commitment to enhance the Victorian human rights legal framework by: (i) creating a stand-alone ground for judicial review of Charter rights; and (ii) embedding human rights protections into legislation regulating the role and powers of Victorian Police, Corrections Victoria, Youth Justice and Child Protection.

4. Strengthen accountability and oversight mechanisms

Strengthen accountability and oversight mechanisms (recommendations 23-38)

While strategies to prevent racism should be prioritised, it is also essential to have robust mechanisms to respond to racism once it occurs, including both individual/interpersonal racism, as well as systemic racism. Currently in Victoria, there are significant weaknesses in existing accountability mechanisms, including among complaints mechanisms and independent monitoring mechanisms. The Victorian Anti-Racism Strategy must commit the Government to strengthen accountability and oversight mechanisms to respond to racism, including:

⁶ Parliament of Victoria, Legal and Social Issues Committee, [Inquiry into Anti-Vilification Protections](#) (March 2021).

- Amend the mandates of oversight mechanisms to include systemic racism, wherever relevant;
- Establish an independent complaint system for Victoria Police, whereby police do not investigate police; (VALS has also recently published a Policy Brief on Reforming Police Oversight in Victoria⁷);
- Establish independent coronial investigation capacity, to ensure that Victoria Police do not investigate police contact deaths;
- Establish independent and robust monitoring of police powers (e.g. stop and search powers)⁸;
- Strengthen oversight mechanisms for child protection, including judicial review and an independent complaints system;
- Establish an Aboriginal Social Justice Commissioner,⁹ to provide independent oversight of implementation of recommendations from the Royal Commission into Aboriginal Deaths in Custody (RCIADIC), relevant coronial inquests and other inquiries related to racism and systemic racism;
- Implement the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) through an independent and culturally appropriate National Preventative Mechanism (NPM).

As with the law and policy reforms discussed above, many of these challenges arising with oversight and accountability mechanisms in Victoria are relevant to other jurisdictions in Australia.

5. Culturally safe legal assistance and community legal education

Many Aboriginal people who experience racism do not seek legal recourse because they are not aware of their rights and legal options, and because they are unable to access culturally safe legal assistance. The need to provide culturally safe and competent legal representation to Aboriginal people who have experienced racism cannot be understated.¹⁰

Additionally, the continued lack of funding for ACCOs is a serious impediment for the right to self-determination. While Aboriginal peoples have a right to financial and technical assistance from States to enjoy the rights enumerated in the UNDRIP,¹¹ issues concerning the funding and resourcing of Aboriginal organisations and institutions have been highlighted by United Nations human rights bodies in criticisms of the Commonwealth

⁷ VALS, [Reforming Police Oversight in Victoria](#), (January 2022).

⁸ Ibid.

⁹ VALS and the Aboriginal Justice Caucus (AJC) have advocated for the establishment of an Aboriginal, Social Justice Commissioner for decades. This role was first recommended in 2005 by the Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody.

¹⁰ F. Allison, C. Cunneen and M. Schwartz, [Submission to the Select Committee on First Nations People in Custody in New South Wales: Inquiry into First Nations people in custody in New South Wales](#), (2020) pp. 9-11

¹¹ Article 39, UNDRIP.

Government,¹² and concerns about under-funding have been repeatedly identified by VALS and other ACCOs.¹³ The Victorian Anti-Racism Strategy should include measures to increase access to culturally safe legal assistance and wrap around support for Aboriginal people who have experienced racism; as well as measures to increase culturally safe community legal education (CLE) for Aboriginal communities, including in relation to legal rights and remedies for individuals who have experienced racism.

Chronic underfunding is an issue for all Aboriginal and Torres Strait Islander Legal Services (ATSILS) across Australia, and is both a manifestation of systemic racism, as well as a key reason why Aboriginal people who have experienced racial vilification or abuse do not seek legal recourse. The National Anti-Racism Framework should highlight the need to adequately fund access to culturally safe legal assistance for people who experience racism, as well as culturally safe community legal education on legal rights and remedies.

6. Robust monitoring and evaluation for the Anti-Racism Strategy

To ensure that the Victorian Anti-Racism Strategy results in concrete change, it is critical that the Government is accountable to Aboriginal people and other communities that are affected by racism. All Government Departments must be required to report regularly and publicly on their progress in implementing the Strategy and there must be independent oversight of the Government's progress, including by the Aboriginal Social Justice Commissioner once this office is established.¹⁴

Commonwealth law and policy reform

As noted above, reforming laws and policies that entrench and perpetrate systemic racism is a critical step to address racism. The National Framework should emphasise this, and highlight examples of critical reforms that should be implemented at the commonwealth level to address systemic racism.

Our submission on the Victorian Anti-Racism Strategy highlights a number of critical reforms in relation to Victorian legislation and policy; however, many of these are relevant across other States and Territories in Australia. In addition, we take this opportunity to highlight the need for the following reforms at the commonwealth level:

¹² United Nations Committee on the Elimination of Racial Discrimination. 'Concluding observations on the eighteenth to twentieth periodic reports of Australia' (2017). UN Doc. CERD/C/AUS/CO/18-20, at 17-18; United Nations Committee on the Elimination of Racial Discrimination. 'Concluding observations of the Committee on the Elimination of Racial Discrimination: Australia' (2010). UN Doc. CERD/C/AUS/CO/15-17 at 15; United Nations Committee on Economic, Social and Cultural Rights. 'Concluding Observations on the fifth periodic report of Australia' (2017). UN Doc. E/C.12/AUS/CO/5, at 15-16; United Nations Human Rights Committee. 'Concluding observations on the sixth periodic report of Australia.' (2017) UN Doc. CCPR/C/AUS/CO/6, at 39-40 and 49-50, United Nations Human Rights Committee. 'Concluding observations of the Human Rights Committee: Australia. (2009) UN Doc. CCPR/C/AUS/CO/5, at 13 and 25.

¹³ See, for example, VALS, [Submission to the Royal Commission into Victoria's Mental Health System](#) (July 2019), Recommendations 7- 10; VALS, [Submission to the Victorian Law Reform Commission Project: Improving the Response of the Justice System to Sexual Offences](#), Recommendations 1 and 3 (March 2021); VALS, [Building Back Better: Victorian Aboriginal Legal Service COVID-19 Recovery Plan](#) (February 2021), Recommendations 1 and 5-11.

¹⁴ VALS, Victorian Aboriginal Legal Service Submission to the Inquiry into Victoria's Criminal Justice System (September 2021): "Recommendation 11. The Victorian Government should establish an independent, statutory office of the Aboriginal and Torres Strait Islander Social Justice Commissioner. This office should be properly funded and report directly to the Parliament. The mandate of the Commissioner should include monitoring the implementation of RCIADIC Recommendations, as well as recommendations from coronial inquests into Aboriginal deaths in custody."

- Culturally appropriate implementation of OPCAT;
- Access to the Medicare Benefits Schedule (MBS) and the Pharmaceutical Benefits Scheme (PBS) for people who are incarcerated;
- Earlier access to the Age Pension for Aboriginal people;

Recommendation 1: the National Anti-Racism Framework must provide guidance on concrete measures to address systemic racism, including reforming Commonwealth, State and Territory laws and policies that have a disproportionate and discriminatory impact on Aboriginal peoples.

Culturally Appropriate Implementation of OPCAT

As noted above, culturally appropriate implementation of OPCAT is an important step in strengthening oversight and accountability mechanisms, in order to prevent racism in places of detention. Individuals who are detained are at an increased risk of all forms of racism, given the closed nature of detention facilities and the inherent power imbalance between detainees and the organisations/individuals responsible for running detention facilities.

Our submission on the Victorian Anti-Racism Strategy highlights the current challenges in implementing OPCAT in Victoria, including a lack of consultation with relevant stakeholders in Victoria, a lack of transparency, and an apparent lack of progress in designating an NPM.¹⁵ The deadline for complying with Australia’s international human rights obligations and implementing a culturally appropriate NPM was January 2022, and the Governments have now missed this deadline. Failure to implement OPCAT is yet another example of Government policy that entrenches and perpetuates systemic racism.

Recently, the Victorian Government has reportedly stated that it is unable to implement OPCAT unless the Commonwealth Government provides adequate funding.¹⁶ Both the Victorian and Commonwealth Governments have failed to provide the necessary resources to effectively implement OPCAT. In its 2020-2021 budget, the Victorian Government committed \$500,000 for OPCAT implementation over a four-year period (2021-2025).¹⁷ Under the National Closing the Gap Implementation Plan, the Commonwealth Government committed an unidentified amount for each State and Territory to implement OPCAT.¹⁸ It can only be assumed that the amount of funding provided by the Federal Government is as woefully inadequate as that provided by the Victorian Government.

Given that OPCAT implementation is a joint responsibility of all Governments in Australia, we take this

¹⁵ See also, N. Waight and A. Lachsz, "[Victoria has spent billions on prisons, but has shirked its duty to oversight](#)," 21 January 2022; N. Waight and A. Lachsz, "[Governments must strengthen independent detention oversight to protect Aboriginal people](#)," 18 January 2022.

¹⁶ J. Latimore, "[Deaths in custody oversight missing as government deadline passes](#)," 20 January 2022.

¹⁷ Ibid.

¹⁸ Commonwealth of Australia (2021). [Commonwealth Closing the Gap Implementation Plan](#), p. 48. The funding is linked to Targets 10 (By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15%) and Target 11 (By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30%).

opportunity to highlight that culturally appropriate OPCAT implementation can play a significant role in identifying and preventing racism within prisons, youth prisons, police places of detention and other places where people are deprived of their liberty. The National Framework on Anti-Racism must highlight the Government's obligations under OPCAT, and the urgent need to comply with these obligations before more Aboriginal people die in custody.

Recommendation 2: the National Anti-Racism Framework must emphasise:

- the Government's obligations under OPCAT, and the failure to comply with these obligations as yet another example of systemic racism;
- the significant role that a culturally appropriate NPM can play in preventing racism experienced by people who are incarcerated, particularly Aboriginal people;
- the critical need for a culturally appropriate NPM to prevent more Aboriginal Deaths in Custody;
- the critical need for the Victorian Government to undertake robust, transparent and inclusive consultations with the Victorian Aboriginal community, its representative bodies and ACCOs on the implementation of OPCAT in a culturally appropriate way;
- the critical need to implement OPCAT in all jurisdictions in Australia in a culturally appropriate way.

Access to the Medicare Benefits Schedule (MBS) and the Pharmaceutical Benefits Scheme (PBS) for people who are incarcerated

There is a critical need to reform the way that health care is provided for people who are incarcerated. Currently, incarcerated people do not have access to the same quality of health care as they would in the community. One of the key reasons for this is that access to Medicare Benefits Schedule (**MBS**) and the Pharmaceutical Benefits Scheme (**PBS**) is suspended by people who are incarcerated. Due to high incarceration rates and racism within the prison system, unequal access to health care for people who are incarcerated has a disproportionate impact on Aboriginal people.¹⁹ Additionally, exclusion of incarcerated people is one of the main reasons for the lack of in-reach culturally safe health care in prisons, provided by Aboriginal Community Controlled Health Organisations (**ACCHOs**).

Equivalency of health care for people who are incarcerated is required under international human rights law, and has been identified as a requirement arising from the Victorian Charter of Human Rights and Responsibilities. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) make clear that "prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary healthcare services free of charge, without discrimination on the grounds of their legal status." The obligation to provide equivalence of medical care to people deprived of their liberty is echoed in the International Covenant on Economic, Social and Cultural Rights, which emphasises "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

The Victorian Charter of Human Rights and Responsibilities requires that "[a]ll persons deprived of liberty must

¹⁹ See Allam, L. et al., "The facts about Australia's rising toll of Indigenous deaths in custody," 9 April 2021.

be treated with humanity and with respect for the inherent dignity of the human person.” The Victorian Coroners Court has found, in its inquest into the death of Yorta Yorta woman Ms Tanya Day, that in custodial settings this requires police and prison staff to ensure access to medical care, given that people detained are completely dependent on the state to provide for their health.

The importance of equivalence of care for Aboriginal people in prison was recognised by the RCIAIDC more than thirty years ago. The Royal Commission recommended that “health care available to persons in correctional institutions should be of an equivalent standard to that available to the general public,” and specifically identified access to mental health and AOD services and the importance of culturally safe care.²⁰ Yet, an analysis by the *The Guardian* of the 474 Aboriginal Deaths in Custody since 1991, found that “Indigenous people who died in custody were three times more likely not to receive all necessary medical care, compared to non-Indigenous people. For Indigenous women, the result was even worse – less than half received all required medical care prior to death.”²¹

Equivalence of care is particularly important because people in prison are more likely to have pre-existing health conditions and vulnerabilities which exacerbate their healthcare needs. Many incarcerated people have both diagnosed and undiagnosed disabilities²² and mental health conditions.²³ According to research from the Victorian Aboriginal Community Controlled Health Organisation (VACCHO), Aboriginal people detained in prisons in Victoria are less healthy than Aboriginal people in the community and less healthy than non-Aboriginal people in prison.

Culturally safe health care can only be delivered in prisons with substantial resourcing. This requires that people in prison to have access to funding from Medicare and the Pharmaceutical Benefits Scheme (PBS), to ensure that resources are available to provide all the care needed to the same standard enjoyed in the community. This is particularly important for Aboriginal people, as there are a number of specific items in the Medicare Benefits Schedule which support enhanced screenings, assessments and health promotion activities for Aboriginal people. These streams of Medicare funding are critical to the operation of Aboriginal health services.²⁴ Access to Medicare funding for people in prison would enable the expansion of in-reach care in prisons by Aboriginal health services. It would also bring funding arrangements in line with those for people in the community. Similar funding arrangements should be available in relation to custodial settings to ensure the same quality of care can be provided.²⁵

²⁰ Recommendation 150.

²¹ Allam, L. et al., “The facts about Australia’s rising toll of Indigenous deaths in custody,” 9 April 2021.

²² For example, in 2011 the Victorian DJCS reported 42% of incarcerated men and 33% of incarcerated women had an acquired brain injury, compared to 2.2% of the general population. See Martin Jackson et al, ‘Acquired Brain Injury in the Victorian Prison System’, *Corrections Research Paper No 4*, Department of Justice (2011) 22. In 2013, a Victorian parliamentary inquiry reported that individuals with an intellectual disability were “anywhere between 40 and 300 per cent more likely” to be jailed than those without an intellectual disability. See Law Reform Committee, Parliament of Victoria, *Inquiry into Access to and interaction with the Justice System by People with an Intellectual Disability and their Families and Carers* (2013).

²³ Australian Institute for Health and Welfare, “[Health of Prisoners](#),” (July 2020).

²⁴ *Ibid*, p. 83.

²⁵ ABC News, 19 October 2020, ‘Greg Hunt rejects Danila Dilba’s request for Medicare-funded health services in Don Dale’. Available at <https://www.abc.net.au/news/2020-10-19/don-dale-medicare-health-services-rejected-by-greg-hunt/12776808>.

Good Practice Models

ACT: Since Medicare access is suspended for incarcerated people during incarceration, the ACT Government committed funding to establish an autonomous Winnunga AMC Health and Wellbeing Service to Aboriginal people in prison in Alexander Maconochie Centre (AMC), resulting in Winnunga Nimmityjah Aboriginal Health and Community Services being the first ACCHO to provide primary healthcare service to incarcerated people in 2019.²⁶

Northern Territory: Successes with in-reach care to Aboriginal children in detention following the commissioning of an Aboriginal community health organisation, Danila Dilba, to deliver healthcare in the Don Dale Youth Detention Centre.²⁷

New South Wales: The inspector of Custodial Services made a firm recommendation that access to Medicare would facilitate the expansion of in-reach care in prisons by Aboriginal health services.²⁸

Recommendation 3: The National Anti-Racism Framework should highlight systemic racism within prisons, and underline the critical need for:

- Changes to the Pharmaceutical Benefits Scheme (PBS) and the Medicare Benefits Schedule (MBS) to ensure that people who are incarcerated are not excluded from these schemes;
- Changes to the National Disability Insurance Scheme (NDIS) to ensure that people who are incarcerated have access to the Scheme and are assessed for eligibility for NDIS upon entry to a prison or youth justice centre.

Earlier access to the age pension for Aboriginal people

Due to the gap in life expectancy arising from the ongoing impacts of invasion, Aboriginal people do not have equal access to the age pension. This means they are less likely to reach pension age, and if they do, they are likely to have fewer years to benefit from it than non-Aboriginal people. On average, Aboriginal men have a life expectancy 8.6 years lower than non-Aboriginal men, and Aboriginal women's lives are on average 7.8 years shorter than non-Aboriginal women.²⁹ Fewer than 1% of people currently receiving the Age Pension are

²⁶ Shukralla, H. & Tongs, J. (2020). Australian first in Aboriginal and Torres Strait Islander prisoner health care in the Australian Capital Territory. 44(4) Australian and New Zealand Journal of Public Health 324. Available at <https://onlinelibrary.wiley.com/doi/full/10.1111/1753-6405.13007>

²⁷ For further information, see <https://ddhs.org.au/services/don-dale-youth-support>.

²⁸ NSW Inspector of Custodial Services (2021), *Health services in NSW correctional facilities*, p. 83. Accessed at <https://www.inspectorcustodial.nsw.gov.au/inspector-of-custodial-services/reports-and-publications/inspection-reports/adult-reports/health-services-in-nsw-correctional-facilities.html>.

²⁹ Productivity Commission, *Closing the Gap: Annual Data Compilation Report* (July 2021), p. 23.

Aboriginal.³⁰ For the pension to be fair, Aboriginal people should be able to access the pension at least three years earlier, based on national data about the gap in life expectancy.

Uncle Dennis, a 64-year-old proud Wakka Wakka man who lives in Melbourne, is currently bringing a case in the Federal Court, arguing that access to the age pension for Aboriginal people is breach of the *Racial Discrimination Act 1975* (Cth).³¹ According to Uncle Dennis:

“But this isn’t just about money. Things will never get better unless we acknowledge something is wrong. Truth and accountability are important. This case is about telling the truth, and asking the Government to work together with us, to give our people the same chance in life as everyone else.”³²

Uncle Dennis is bringing the claim on behalf of other Aboriginal people in similar circumstances. Uncle Dennis is represented by VALS and the Human Rights Law Centre, with support from DLA Piper and pro bono barristers. For more information on the case, please see our [Fact Sheet](#).

Recommendation 4: The National Anti-Racism Framework should highlight the unequal access to the Age Pension by Aboriginal people, and recommend legislative reform so that that Aboriginal people can access the Age Pension at least three years earlier.

The National Anti-Racism Framework and Closing the Gap

We note that the National Anti-Racism Framework will complement and build on existing commitments and reporting requirements, including the National Closing the Gap (CtG) Agreement and State/Territory Implementation Plans for CtG. VALS supports this approach, however, we take this opportunity to underline that the National Anti-Racism Framework must do more than simply acknowledge and repeat existing policy commitments.

The commitments in the CtG Agreement – particularly in relation to justice – are not ambitious, and do not go far enough to address racism within the criminal justice and youth justice systems. For example, to address over-representation in the criminal justice system, the National Agreement aims to reduce the incarceration rate of Aboriginal adults by at least 15% by 2031.³³ In Victoria, the significant increase in remand rates since 2017 means that the Government could meet this target by simply returning to the incarceration rate from 2017.³⁴ If we continue on this path, we will not close the gap on over-representation in prisons until 2093, by which time,

³⁰ Human Rights Law Centre, [“Legal challenge launched to secure fair access to the Age Pension for Aboriginal and Torres Strait Islander people,”](#) 27 September 2021.

³¹ VALS, [Community Fact sheet: the Age Pension test case](#).

³² Ibid.

³³ The Coalition of Aboriginal and Torres Strait Islander Peak Organisations and all Australian Governments, [National Agreement on Closing the Gap](#) (2020), p. 31.

³⁴ Productivity Commission, [Closing the Gap: Information Repository](#), Target 10. Accessed at <https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area10>.

there is the potential for “1,100 more black deaths in custody.”³⁵ In the view of both VALS and the National Aboriginal and Torres Strait Islander Legal Services (NATSILS), this target is “not acceptable.”³⁶

Secondly, while it is important not to duplicate existing reporting requirements, it is meaningless to reproduce existing policy commitments without adding anything further. Aboriginal communities have been consulted time and time again and are growing tired of being consulted and not listened to. The Anti-Racism Framework must go further than what the Government has already committed to, and must reflect the feedback from Aboriginal stakeholders who contribute to this process.

Next Steps

We look forward to seeing the next iteration of the National Framework Concept Paper in June 2022. Please don't hesitate to contact our Senior Policy Adviser, Isabel Robinson (irobinson@vals.org.au) if you would like to discuss our submission further.

Yours sincerely,



Nerita Waight
Chief Executive Officer
VICTORIAN ABORIGINAL LEGAL SERVICE

³⁵ L. Allam, “[Closing the Gap prison reduction targets show ‘disappointing lack of ambition,’ lawyers say](#),” 30 July 2020.

³⁶ Ibid.