



Victorian Aboriginal Legal Service *Nuther-mooyoop* to  
the Yoorrook Justice Committee on Land Injustice

November 2023





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## Background to the Victorian Aboriginal Legal Service

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



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

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

In Natasha's words, the design is a representation of VALS' work over the past 50 years towards the Victorian Aboriginal Communities. The colours used are a depiction of our Aboriginal flag. Aboriginal symbolisms are used to showcase the journeys made by community members and VALS representatives, these symbols tell the story of our journey from one place to another or symbolically from one situation to another. They represent each person, family and organisation that has been and continue to be supported by VALS.

## Legal Services


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

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

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

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

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



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

### **Community Justice Programs**

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

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

### **Policy, Research and Advocacy**

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

### **Acknowledgement**

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


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

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

### **Contributors**

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

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### **Note on Language**

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



## SUMMARY OF RECOMMENDATIONS

**Recommendation 1.** The right of Aboriginal peoples to self-determination must be enshrined in all relevant legislation, including the *Victorian Charter of Rights and Responsibilities*.

**Recommendation 2.** Yoorrook to advocate for the expansion of accessible post settlement legal, restorative and healing supports for Aboriginal community members who have gone through native title determinations that supports reconnection with their Traditional Owner group.

**Recommendation 3.** Yoorrook to recommend improving the accessibility and resourcing of legal and support services for Traditional Owners regarding recognition options, including assistance with resolving disputes.

**Recommendation 4.** The Victorian Government should extend the deadline for the Yoorrook Justice Commission's final report to at least June 2026.

**Recommendation 5.** The Yoorrook Justice Commission should provide further opportunities for individuals and organisations to make written submissions, with longer submission deadlines and consultation periods.

**Recommendation 6.** Yoorrook to advocate to ensure there are avenues for truth telling beyond the term of this Commission that includes land justice issues.

**Recommendation 7.** The Yoorrook Commission should compel the Department of Premier and Cabinet to provide the Victorian Closing the Gap Expenditure Reviews (both targeted and non-targeted) to the Commission to inform their understanding of current expenditure and how this relates to land injustice.

**Recommendation 8.** As part of the treaty process, the Victorian Government should pay reparations to Victorian Aboriginal Community Members, through the Self-Determination Fund, for the ongoing land injustice experienced.

**Recommendation 9.** Establish a proportional ongoing revenue stream from taxes associated with land acquisition and ownership, such as land tax, to be paid to First Peoples Assembly of Victoria's Self-Determination Fund for the benefit of First Peoples in Victoria to support nation building initiatives.

**Recommendation 10.** The Victorian Government must commit to delivering the Aboriginal Housing and Homelessness Framework, *Mana-na woorn-tyeen maar-takoort*, in full.

**Recommendation 11.** The Victorian government should negotiate a Justice Treaty with Aboriginal Communities and Aboriginal Community Controlled Organisations (ACCOs), which sets a new foundation to transform the legal system, including through progressive transfer of power, resources, data and control to allow for Aboriginal justice models.

**Recommendation 12.** The Victorian government must ensure that there are robust transparency and accountability mechanisms to monitor implementation of the *Bail Amendment Act 2023* (Vic), including a requirement for all bail decision makers (BDMs) to collect, maintain and regularly publish data on bail applications, bail outcomes and reasons for refusing or granting bail, including how





Section 3A has been applied. This data should be disaggregated by Aboriginality, sex, age, location (court or police station), and must be collected in accordance with principles of Indigenous Data Sovereignty and Indigenous Data Governance.

**Recommendation 13.** The *Bail Act 1977 (Vic)* should be further reformed, to fully implement Poccum’s Law and the Coronial Recommendations from the Inquest into the passing of Veronica Nelson.

**Recommendation 14.** The Victorian Government should work with Koori Courts and Aboriginal communities to expand the jurisdiction of Koori Courts to hear bail applications.

**Recommendation 15.** The Department of Justice and Community Safety must support and fully fund the Women’s Residential Diversion Facility Program Model.

**Recommendation 16.** The Department of Justice and Community Safety must fund VALS to provide Return to Country programs for Aboriginal children and young people in the Youth Justice System as part of a diversionary program.

**Recommendation 17.** The Department for Families, Fairness and Housing should improve its compliance with cultural support planning requirements.

**Recommendation 18.** The Children’s Court should have greater powers to require CSPs be developed and implemented in a timely manner and in accordance with legislative requirements.

**Recommendation 19.** The Department for Families, Fairness and Housing should fund ACCOs to provide a Return to Country for all Aboriginal children in out-of-home-care.

**Recommendation 20.** The Department of Families, Fairness and Housing should not prioritise placement stability over the inherent interests of Aboriginal children in remaining connected to their family and culture.

**Recommendation 21.** The Victorian Government must allocate adequate funding, as part of nation building, to deliver a coordinated and proactive Aboriginal-led approach in preparation, response, care and recovery for any climate disasters or health emergencies in the future. This could be allocated through the Self-Determination fund for the benefit of the First Peoples of Victoria.



## DETAILED SUBMISSIONS

### Introduction

VALS appreciates the opportunity to respond on the Yoorrook Justice Commissions' (**Yoorrook**) Issues Paper on Land Injustice, looking at the system injustice experienced by Aboriginal peoples in relation to their land, waters, sky and resources.

Our *Nuther-mooyoop* details a response to the following areas identified in the issues paper that VALS sees as relevant to the work we do, and the communities that we support. Our response is grounded in our perspectives as a legal service, and the experience of our clients. The ongoing impact of invasion and dispossession of traditional lands been profound. It is however important to remember, as VALS' CEO, Nerita Waight shares,

Terrible things have been done to us throughout the last 230 years of colonisation – especially by the legal system. But we are still here. We have survived. We are the oldest continuous culture on earth because of our strength based on our connection to culture, community, and Country.<sup>1</sup>

Our main contention for this submission is that connection to Country is both a preventative and rehabilitative measure for community, which in turn can act as a mechanism to prevent criminalisation. This submission will detail some of the positive, self-determined approaches we see in the criminal legal system where connection to Country and culture are foundational elements, alongside the right to self-determination.

Aboriginal peoples living in what is now known as Victoria have never ceded sovereignty. VALS was founded because of the discrimination Aboriginal people experienced – and continue to experience – every day when coming into contact with the legal system.

When the British violently colonised this land, they declared it *Terra Nullius* – unoccupied by other humans. *Terra Nullius* is, as VALS CEO Nerita Waight calls “the original sin of the colonial legal system. It denied our humanity and justified the theft of our land. It took almost 180 years before we were properly recognised as citizens. It took over 200 years for the illegitimacy of *Terra Nullius* to be overturned in the Mabo Decision.”<sup>2</sup>. The impact continues today. Where the clients we support are disconnected from their Aboriginal identity, their culture and Country, from our experience they are at greater risk of decreased social and emotional wellbeing and a subsequent increased risk of further criminalisation. Historical and contemporary land injustice is central to and underpins many of the legal issues we see amongst our clients today.


Supporting Aboriginal children, young people, adults and families, we see the ongoing impact of transgenerational trauma caused by the policies and practices that resulted in the Stolen Generations. Many of the families we support are faced with challenges around insecure housing and (risk of) homelessness, experiencing family violence, AOD and mental health issues. Aboriginal children and

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<sup>1</sup> Nerita Waight, [Keynote Speech: Law Institute of Victoria \(LIV\) Criminal Law Conference](#) (22 July 2022).

<sup>2</sup> Nerita Waight, Keynote Speech: [Law Institute of Victoria \(LIV\) Criminal Law Conference](#) (22 July 2022).





young people living in out-of-home-care, as Yoorrook’s Deputy Chair and Commissioner Sue-Anne Hunter shared,

Without continual, meaningful relationships with family and community, there is nothing to anchor our kids to their culture and to their life meaning. Our children are denied a crucial part of their developing identity, connection and belonging, all things that contribute to long-term resilience and sense of self. For us our children belong to community and this bond must never be taken away.<sup>3</sup>

Without proportional sustained funding for prevention and early intervention supports allocated to ACCOs, the trajectory of Victoria having one of the highest rates of Aboriginal children in out-of-home-care will only continue.<sup>4</sup> Almost two thirds of Aboriginal children and young people involved in the youth justice system have experienced living in out-of-home-care<sup>5</sup>, this criminalisation of Aboriginal children and young people is a failure in the duty of care of the state. As one of the young people involved in the Koorie Youth Council’s *Ngaga-djii* report shared,

When you connect me with my culture, Country and community, I know who I am. I heal. I grow. I thrive.<sup>6</sup>

The United Nations Declaration of the Rights of Indigenous Peoples (**UNDRIP**) protects Aboriginal peoples’ rights to maintain and strengthen their relationship with their traditional lands, waters and coastal seas, alongside the right to own, use develop and control these lands.<sup>7</sup> Section 19 of the Victorian Human Rights Charter (**Charter**) articulates the Aboriginal cultural rights that are protected in Victoria, including the;

...special relationship First Nations Peoples have with the land, water and resources of Victoria . This relationship could be spiritual, material or economic and may be connected to traditional laws and customs. This right also protects your access to cultural institutions, ancestral lands, natural resources and traditional knowledge.<sup>8</sup>

These rights must be upheld, and the UNDRIP must be effectively implemented domestically. The right to Aboriginal self-determination is not specifically protected under the Charter, and VALS calls on the Victorian government to address this omission immediately.

Victoria has committed to the National Agreement on Closing the Gap, and in Victoria’s Implementation Plan the Opening Statement expressly identifies the link between continued connection to Country and the social and emotional wellbeing outcomes of community alongside opportunities for economic development<sup>9</sup>.

The right to redress is asserted and protected in Article 28 of UNDRIP, which clearly articulates that Indigenous peoples have a right to redress that may include “restitution, or just, fair and equitable

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<sup>3</sup> Sue Anne Hunter, [‘Too many Aboriginal children are growing up disconnected from their Mob, Country and culture’](#). 2020.

<sup>4</sup> SNAICC, *Family Matters Report 2022*, pp. 199-120.


<sup>5</sup> AIHW, [‘Youth people under youth justice supervision and their interaction with the child protection system 2020-21.’](#)

<sup>6</sup> Koorie Youth Council, [‘Ngaga-Dji: \(Hear Me\) young voices creating change for justice’](#). 2018P37

<sup>7</sup> United Nations Declaration of the Rights of Indigenous Peoples, Art 25, 26.

<sup>8</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic), s15.

<sup>9</sup> Victorian Government, ‘Victorian Closing the Gap Implementation Plan 2021-2023’ p4



compensation”.<sup>10</sup> In relation to land justice, VALS makes recommendations throughout this document relating to appropriate redress that the Commission should consider.

We defer to the collective expertise of the Federation of Traditional Owners, First Nations Legal and Research Services, and the First Peoples’ Assembly of Victoria (**FPAV**) for issues relating to the experience of Traditional Owners undertaking claims for Native Title and working towards negotiating local treaties, land justice and nation building.

## RECOMMENDATIONS

**Recommendation 1.** The right of Aboriginal peoples to self-determination must be enshrined in all relevant legislation, including the *Victorian Charter of Rights and Responsibilities*.

## Overarching Feedback on Land Injustice Inquiry


VALS receives funding from Yoorrook to provide independent legal advice to community members who wish to tell their story to Yoorrook. The Lotjpa team provide legal advice and information and can also assist community members in making a submission to Yoorrook about their experiences. The Lotjpa team at VALS has shared that they have worked with community members who want to speak out about injustices with the Native Title process and determinations, but are restrained by Yoorrook’s limited scope. As one client we are supporting said, “I just can’t believe we can’t speak about this injustice openly.” These stories cannot be separated from the broader narrative of colonisation and dispossession from traditional lands, that Yoorrook is seeking to address through its truth telling process.

This community member expressed concern that his family did not receive adequate legal support through the negotiation process, and has been unable to access any further independent legal or healing support post-settlement.

Yoorrook’s Letters Patent clearly articulate the limited scope of truth telling relating to native title determinations, however we recognise that community expectations around what truth telling should include regarding land injustice may differ. VALS understands that opening up native title determinations for review could risk positive determinations being impacted, so acknowledging the experience outlined above, VALS calls for improved legal, restorative and healing supports and resources to be made available individuals who have participated in native title determinations and have experienced trauma or suffering during the process. This would hopefully provide an opportunity for reconnection and healing. Yoorrook should advocate to ensure there are avenues for truth telling beyond the term of this Commission that includes land justice issues, given Yoorrook is restrained by the current Letters Patent.

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<sup>10</sup> United Nations Declaration of the Rights of Indigenous Peoples, Art 28.



The *Traditional Owner Settlement Act 2010* (Vic) was designed to overcome the inadequacies of the *Native Title Act 1993* (Cth).<sup>11</sup> This is an opportunity to hear from community about what land justice should look like, as we move towards negotiating treaties. The legacy of *terra nullius*, and the “tides of history”<sup>12</sup> that resulted from the Mabo decision, continue to impact native title determinations. We consider that in the context of treaty and land rights, sources of independent legal advice should be made available to claimant groups.

## RECOMMENDATIONS

**Recommendation 2.** Yoorrook to advocate for the expansion of accessible post settlement legal, restorative and healing supports for Aboriginal community members who have gone through native title determinations that supports reconnection with their Traditional Owner group.

**Recommendation 3.** Yoorrook to recommend improving the accessibility and resourcing of legal and support services for Traditional Owners regarding recognition options, including assistance with resolving disputes.

**Recommendation 4.** The Victorian Government should extend the deadline for the Yoorrook Justice Commission’s final report to at least June 2026.

**Recommendation 5.** The Yoorrook Justice Commission should provide further opportunities for individuals and organisations to make written submissions, with longer submission deadlines and consultation periods.

**Recommendation 6.** Yoorrook to advocate to ensure there are avenues for truth telling beyond the term of this Commission that includes land justice issues.

## Ongoing Impact of Colonisation

Access to Country is a foundational and critical component of maintaining a strong Aboriginal identity, and part of the “continuing sovereign obligations to Country, culture and community”<sup>13</sup> that Aboriginal peoples hold. Country holds the songlines for 60,000 years of the longest continuing cultures in the world. The forcible removal of Aboriginal peoples from traditional lands onto reserves, the state sanctioned attempts to destroy cultural knowledge and heritage, control every aspect of Aboriginal peoples lives, and the policies and practices that enabled the forcible removal of Aboriginal babies and children that resulted in the Stolen Generations all impacted the ability of Aboriginal peoples to live on Country and speak traditional languages, observe cultural practices and protocols including caring for Country. Aboriginal knowledge is multi-disciplinary and intertwined - not


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<sup>11</sup> Federation of Traditional Owners Corporations, ‘Discussion Paper 5: A Framework for Traditional Owner Treaties: Lessons from the Settlement Act’ (2021) p3.

<sup>12</sup> *Mabo v Queensland* (No 2) (“Mabo case”) [1992] HCA 23; (1992) 175 CLR 1 (3 June 1992) [66].

<sup>13</sup> Indigenous Self-Government in the Australian Federation p215





compartmentalised like Western knowledge systems. The land, the water, the sky, the flora and fauna, the storytelling - all work together to create and embed knowledge. Denying Aboriginal people access to Country undermines their entire knowledge system. Traditional economies, trade practices and protocols, access to economic security have been historically denied<sup>14</sup>, all of which furthers and embeds a poverty of disadvantage.

The state and private landowners have profited significantly from stolen lands. Returning Aboriginal soldiers from World War One were largely not eligible for the *Returned Soldiers Settlement Scheme* which provided land allocation. Of the estimated 800 Aboriginal men who served in the Australian Imperial Force, only two were eligible for the scheme as this was due to them being considered 'half-caste'.<sup>15</sup> Missions and other church welfare-based charities played an integral role during the Stolen Generations<sup>16</sup>, and have since gone on to establish contemporary community service organisations like Anglicare and Mackillop, all of whom hold considerable land ownership.

Aboriginal Community Controlled Organisations (**ACCOs**) delivering services to community hold a much lower rate of land ownership, and therefore a lot of our funding is allocated to paying rent to deliver services on our own lands, reducing the amount of funding we can spend on delivering services to Aboriginal people. Yoorrook Commissioners must compel the Victorian Closing the Gap Expenditure Reviews (both targeted and non-targeted) to gain a clear understanding of the level of funding delivered to ACCOs compared with government and mainstream services. This also needs to be taken into consideration as part of the systemic injustice.

### **RECOMMENDATIONS**

**Recommendation 7.** The Yoorrook Commission should compel the Department of Premier and Cabinet to provide the Victorian Closing the Gap Expenditure Reviews (both targeted and non-targeted) to the Commission to inform their understanding of current expenditure and how this relates to land injustice.

**Recommendation 8.** As part of the treaty process, the Victorian Government should pay reparations to Victorian Aboriginal Community Members, through the Self-Determination Fund, for the ongoing land injustice experienced.

## **Nation Building: Self-determination and self-governance**


Victoria is heralded as leading the way with its commitment to enter into local and statewide treaty negotiations, and this work has included investment in nation building to ensure Traditional Owners are ready to enter into treaty negotiations.

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<sup>14</sup> Gunstone, A. & Heckenberg, S. (2009) 'The government owes a lot of money to our people: A history of Indigenous stolen wages in Victoria' (Australian Scholarly Publishing).

<sup>15</sup> ['They were back to being black': The land withheld from returning Indigenous soldiers - ABC News](#)

<sup>16</sup> Bringing Them Home and Anna Haebich, *Broken Circles: Fragmenting Indigenous Families 1800-2000* (Freemantle Arts, 2000).



Nation building in the Australian context involves developing models for economic development that support the prosperity of communities both through native title and other opportunities (such as social enterprise, renewable energy developments, cultural heritage and environmental management<sup>17</sup>) that build and strengthen cultural heritage.<sup>18</sup>

In Victoria, Native Title Claims have presented many challenges. The unsuccessful claim of the Yorta Yorta people led to the Bracks Government establishing a cooperative agreement with the Yorta Yorta people that gave them access to State crown lands.<sup>19</sup> This agreement was followed by others and ultimately set the State on a track towards the current treaty process. However, many Traditional Owners in Victoria either do not have access to their Country, or do not have the genuine access to their Country that is needed to enable Nation Building.

In her PhD thesis, Janine Gertz, a Gugu Badhun/Ngadjon-ji woman, discusses the ongoing colonial challenges to self-governance and self-determination even where a Native Title Claim has been successful:

In our occupied condition, Gugu Badhun country and culture suffers from being heavily coded and over organised by the Australian state. Gugu Badhun country, suffers from settler colonial land tenures systems and electoral boundaries that criss-cross our ancestral homelands making Gugu Badhun interact with five local, one state, and 1 federal levels of Australian governments and the legal frameworks that administer our native title interests. The same legislative and policy frameworks award us the native title burden of monitoring mining exploration permits and administering twenty-six Indigenous Land Use Agreements with numerous pastoral, mining companies, local and federal governments and their agencies, that define the terms of access to our own country. At the same time the Australian state imposes organisation of Gugu Badhun's culture and decision-making practices under native title corporation rules, regulations, reporting and administration requirements under Australian corporations' law. The parameters of Gugu Badhun participation in decisions regarding the use, occupation, and access of our ancestral homelands are dictated by corporate constitutions, regulated by the Office of the Registrar of Indigenous Corporations; native title legislation; and the policies and practices of native title representative bodies (Land Councils).<sup>20</sup>

Genuine access to country must enable political and economic development as articulated by UNDRIP, not reconfigure colonial controls.

Genuine access to land supports economic prosperity and cultural rights being realised which results in better outcomes for community. Canadian research indicates a link between a greater number of protective factors (self-governance, land claims, education, health, cultural facilities and police/fire) and a decrease in the rate of suicide in First Nations youth<sup>21</sup>. The strongest predictor for a reduction in the suicide rate was First Nation self-governance at 85 per cent, followed by First Nations delivered

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<sup>17</sup> Agreements, Treaties and Negotiated Settlements, '[Other Economic Development Opportunities](#)'

<sup>18</sup> Agreements, Treaties and Negotiated Settlements, '[Nation Building in Australia](#)'.

<sup>19</sup> State Library of Victoria, '[Native title & the Yorta Yorta](#)'

<sup>20</sup> Gertz, Janine (2022) *Gugu Badhun sovereignty, self-determination, and nationhood*. PhD Thesis, James Cook University. Access to this file is available from: <https://doi.org/10.25903/abhm%2D4m07>

<sup>21</sup> Chandler, M. J. And C Lalonde. "Cultural Continuity as a Hedge against Suicide in Canada's First Nations: Culture and Suicide." *Transcultural psychiatry* 35.2 (1998): 212-213.



education, land claims, and First Nation delivered health services. This research strongly indicates the importance of land justice to support the wellbeing and prosperity of Aboriginal communities.

### Housing and Homelessness

Secure land tenure and housing have historically not been afforded to Aboriginal peoples as part of the systemic injustice and violent dispossession of colonial invasion. As of November 2022, one in six Aboriginal people living in Victoria require homelessness assistance and are 10 times more likely to depend on social housing than other Victorians.<sup>22</sup> Aboriginal peoples in Victoria are also 25 per cent less likely to purchase their own home.<sup>23</sup>

As evidenced in the Final Report of the Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**), land rights are an intrinsic part of moving towards Aboriginal self-determination and self-governance and economic independence<sup>24</sup>. The dispossession of traditional lands, and forced movements have directly resulted in homelessness, through the loss of “any form of secure tenure”<sup>25</sup>. With the current economic climate, we understand that housing stress has become the fastest growing cause of homelessness for Aboriginal people, increasing by 40 per cent over the past five years.<sup>26</sup> We are also particularly concerned for Aboriginal young people leaving care, Aboriginal women and children experiencing family violence, and Aboriginal peoples exiting the criminal legal system.

The reflections contained in the Final RCIADIC Report are still relevant today, highlighted by the recent announcement of the demolition of 44 public housing towers in Melbourne where most of the land will be sold off to private providers and new housing estates will be built. Of the estimated 10,000 tenants of these towers are many Aboriginal community members who have called these towers home for generations. Whilst we acknowledge that the state of many of these towers are not adequate and need to be upgraded, the impetus seems to be the economic benefit of selling off government-owned land rather than upholding the rights of Aboriginal people and all other Victorians who live there. The government must ensure there is a right of return and support provided to tenants to ensure a supported transition throughout this period, with assurances that active efforts will be afforded to maintain cultural and community connections, including where families have pre-school and school aged children. VALS supports the vision of the Victorian Aboriginal Housing and Homelessness Framework ‘*Mana-na woorn-tyeen maar-takoort*’, with the identified need for an additional 300 social housing properties to meet the projected future demand of 5000+ homes by 2036.<sup>27</sup>

Given one of the next Yoorrook issues papers relates directly to housing and homelessness we will respond in greater detail to this issue in due course.

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<sup>22</sup> Victorian Aboriginal Housing and Homelessness Framework. (2022). 2022 [Annual Report Card](#), p. 13.

<sup>23</sup> Victorian Aboriginal Housing and Homelessness Framework. (2022). 2022 [Annual Report Card](#), p. 13. ; [AIHW Home ownership and housing tenure](#) April 2023; City of Darebin, ‘[Initiative to improve Aboriginal housing in Darebin and beyond](#)’ November 2022

<sup>24</sup> [Royal Commission into Aboriginal Deaths in Custody Final Report](#), [17.3.47-17.3.49].

<sup>25</sup> [Royal Commission into Aboriginal Deaths in Custody Final Report](#), [18.2.1].

<sup>26</sup> [New data shows true state of Victoria's homelessness crisis - Council to Homeless Persons website \(chp.org.au\)](#)

<sup>27</sup> [Victorian Aboriginal Housing and Homelessness Framework 2020](#), p16





## RECOMMENDATIONS

**Recommendation 9.** Establish a proportional ongoing revenue stream from taxes associated with land acquisition and ownership, such as land tax, to be paid to First Peoples Assembly of Victoria's Self-Determination Fund for the benefit of First Peoples in Victoria to support nation building initiatives.

**Recommendation 10.** The Victorian Government must commit to delivering the Aboriginal Housing and Homelessness Framework, *Mana-na woorn-tyeen maar-takoort*, in full.

## Criminal Legal System

VALS provided a comprehensive discussion around systemic injustice experienced by Aboriginal peoples in the criminal legal system last year in our '*Nuther-mooyoop to the Yoorrook Justice Commission: Criminal Legal System*'.<sup>28</sup> The recommendations included in that submission are still relevant as to how connection to culture, community and Country are protective factors for Aboriginal children, young people and adults, and the interrelationship between bail, housing stability and child protection. This section focuses specifically on the inherent right of Aboriginal children, young peoples and adults to Country, and how - if this is properly realised and protected - we believe the numbers of Aboriginal children, young people and adults involved in the criminal legal system will be reduced. Culture, and in turn access to Country, is a protective factor that strengthens Aboriginal people's cultural identity and therefore supports individual social and emotional wellbeing.

Yoorrook and Treaty also present an opportunity to break away from the ongoing denial of self-determination and make concrete progress towards a self-determined system. To be free of the violence and racism that defines the current criminal legal system, we need to reimagine and rebuild the system in a way that is decided by Aboriginal Communities, for Aboriginal Communities.

VALS is working towards a Justice Treaty that builds on the successes of past Aboriginal Justice Agreements, but sets a new foundation to achieve not just mitigation, but transformation of the whole legal system, so that it is fair for all, not just a few. Along with other Aboriginal leaders and organisations, we look forward to sharing our proposal for a Justice Treaty with the Commission.


The *Victorian Aboriginal Justice Agreement, Phase 4: Burra Lotjpa Dunguludja* includes agreed outcomes for Aboriginal peoples to be more connected to their family, community, Country and culture.<sup>29</sup> One of the strategies to do this is to, "[i]ncorporate cultural strengthening approaches into justice services and programs to enhance positive connections to family, community and kin and improve strength, resilience and wellbeing."<sup>30</sup>

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<sup>28</sup> VALS '*Nuther-mooyoop to the Yoorrook Justice Commission: Criminal Justice System*' 2022.

<sup>29</sup> *The Victorian Aboriginal Justice Agreement, Phase 4: Burra Lotjpa Dunguludja*, p32

<sup>30</sup> *The Victorian Aboriginal Justice Agreement, Phase 4: Burra Lotjpa Dunguludja*, p34



Since VALS provided our submission to the Commission last year there has been some progress, particularly relating to bail reform, in relation to Aboriginal people's access and engagement with their culture and Country.

### Bail Reform

Both remand and bail conditions that restrict an Aboriginal person's ability to be on Country or engage in cultural practices are incredibly harmful to a person's connection to culture, and therefore are harmful to their overall well-being. Aboriginal people's connection to culture, kin and Country are inseparable from the persons overall being. When Aboriginal people are restricted from engaging with these parts of their self, it causes harm to their social and emotional health and wellbeing.

It is common for our clients to have their bail revoked for attending sorry business or returning to Country. This contributes to the overincarceration of our people.

The *Bail Amendment Act 2023* (Vic) passed in October 2023 and will come into effect on 25 March 2024. These reforms are a direct result of the sustained and courageous advocacy of Uncle Percy and Auntie Donna, who have fought so hard since Veronica Nelson passed away in custody in 2020, including for bail reform as set out in Poccum's Law<sup>31</sup>.

Veronica Nelson was a Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman who passed away at the Dame Phyllis Frost Centre on 2 January 2020 after days of crying out for help. Victoria's unfair and discriminatory bail laws put Veronica in prison for minor shoplifting and failure to appear on bail. Veronica passed away in that prison, alone and isolated from culture and support. In the Coronial Inquest into Veronica Nelson's passing, VALS represented Veronica's life-long partner, Uncle Percy Lovett, and has worked closely with Veronica's mother, Auntie Donna. VALS continues to advocate on behalf of Veronica's family for full implementation of Poccum's Law, which sets out four key asks for bail reform.

Although the recent reforms do not go far enough in terms of implementing Poccum's Law, nor the Commission's own recommendations on bail reform<sup>32</sup>, they include significant wins that will directly benefit our clients. These include removing two out of three bail offences, strengthening the requirement for bail decision-makers (**BDM**) to consider a person's Aboriginality, and narrowing the scope of the reverse onus provisions.


In the Coronial Findings into the passing of Veronica Nelson, Coroner McGregor stated that "proper weight could – and should – have been given to [Veronica's] kinship ties, the significance of her mother and brother's ill health, her cultural connection to Country and community, and the unique disadvantages she experienced as an Aboriginal woman in the criminal justice system."<sup>33</sup> We have

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<sup>31</sup> See [VALS Briefing Paper](#) on bail reform for more detailed advocacy on this issue.

<sup>32</sup> Yoorrook Justice Commission, '[Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems](#)' 2023.

<sup>33</sup> Inquest into the Passing of Veronica Nelson, [332].



also seen in relevant case law that factors including ties to Country, e.g. residing on Country, should be considered when making decisions around bail<sup>34</sup>.

Section 3A of the *Bail Act 1977* (Vic) provides that in making a decision under the Act, BDMs must take into account any issues arising due to the person's Aboriginality, including: (a) the person's cultural background, including the person's ties to extended family or place; and (b) any other relevant cultural issue or obligation. Aboriginal cultures are not static, the question of how Aboriginality is relevant to bail decisions will naturally evolve over time, and this includes connection to Country.

The new Act introduces four substantial changes to Section 3A:

1. BDMs must take into account an expanded list of factors when making a decision under the Act in relation to an Aboriginal person.
2. BDMs are required to have reference to evidence and information that is reasonably available at the time, including information provided by family and community, as well as providers of Aboriginal bail support services.
3. BDMs are required to take into account the expanded list of factors, regardless of whether the person's connection to their Aboriginality has been intermittent throughout their life, or if they have only recently connected to their culture.
4. If the BDM is refusing bail to an Aboriginal person, they must identify which factors they took into account, either orally (and ensure that an audio visual or audio recording of the statement is made available) or in writing.

Whilst we welcome these reforms, there remains ongoing work to ensure that the bail system does not discriminate against Aboriginal peoples, and does not unnecessarily restrict access to Country, culture, kin and community. As stated by VALS CEO, Nerita Waight, "VALS will continue to advocate for the complete removal of the reverse onus provisions and for less onerous bail tests for children. We urge the Victorian Government to listen to our voice, accept our recommendations, and ensure the Bail Act is not trapping children in the legal system." <sup>35</sup>

Additionally, there is a critical need for transparency and accountability, to ensure that the new reforms are implemented properly by all stakeholders, including Victoria Police and the courts. We must not have more informal policies and bad decision-making that undermines the reforms. As recommended by the Yoorrook Justice Commission in its Report into Victoria's Child Protection and Criminal Justice Systems,<sup>36</sup> monitoring and public reporting on the bail system is critical, including public reporting by each bail decision-maker on bail applications, bail outcomes and reasons for refusing or granting bail, including how Section 3A has been applied.


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34 Re TS [2021] VSC 213, [50].

35 VALS, '[Bail Reform is a step towards justice and Poccum's Law](#)' (Media Release, October 5, 2023)

36 Yoorrook Justice Commission, Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems, Recommendation 32(f).





Finally, we continue to advocate for the expansion of Koori Court to include bail hearings. As recommended by Yoorook, the Victorian Government must ensure access to culturally safe and appropriate bail hearings for Aboriginal people, and culturally safe support for First Peoples on bail.<sup>37</sup>

### Positive Approaches to Protecting Connection to Country in the Criminal Legal System

In this section we will raise several community-based approaches and initiatives within the criminal legal system and youth justice system that are grounded on connection to Country. We are sharing these as examples of good and promising practice in the justice space that are grounded in a rights-based framework including self-determination and access to Country.

The Aboriginal Justice Caucus' Literature Review<sup>38</sup> clearly identifies the benefits of 'on Country' or place-based diversionary practices, successful programs are "highly localised, holistic and whole-of-community approaches...[that] take place in the presence of Elders and in a cultural setting"<sup>39</sup>.

Several recommendations in the RCIADIC called for non-custodial sentences be available, accessible and culturally appropriate, and that authorities work with Aboriginal and Torres Strait Islander groups in implementing programs.<sup>40</sup> Thirty years later, we continue to see culturally inappropriate conditions, which set Aboriginal people up to fail. VALS supports AJC's recommendations in their submission to Yoorook which called for "diversionary options being available and prioritised at all stages of the criminal legal system".<sup>41</sup> Some of the critical elements for culturally safe community-based sentencing alternatives for Aboriginal people are:

- Introducing sentencing options between a Community Corrections Order and adjourned undertaking;
- Ensuring that any conditions on community-based orders are culturally appropriate;
- Ensuring that individuals who have an acquired brain injury (ABI) or an intellectual disability that was not diagnosed before the age of 18 years, are eligible for a Justice Plan;
- Strengthening the role of Aboriginal Communities in relation to community-based sentences;
- Increasing funding for ACCOs to deliver culturally appropriate services/programs to support Aboriginal people on community-based orders.

**Wullunga Ngalug Learning Place**<sup>42</sup> is a statewide, culturally appropriate residential diversion program delivered jointly by Corrections Victoria and the Aboriginal community in Victoria. It can accommodate

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<sup>37</sup> Ibid., Recommendation 34.


<sup>38</sup> Chris Cunneen, 'Self-Determination and the Aboriginal Youth Justice Strategy', Jumbunna Institute for Indigenous Education and Research, UTS, 2019.

<sup>39</sup> Ibid P94

<sup>40</sup> Commonwealth of Australia, Royal Commission into Aboriginal Deaths in Custody, National Report (1991) Vol 5, Recommendations 111 - 116.

<sup>41</sup> Aboriginal Justice Caucus, [Nuthur-mooyoop to the Yoorrook Justice Commission: Systemic Injustice in the Criminal Justice and Child Protection](#) Systems, 40.

<sup>42</sup> Corrections, Prisons & Parole, '[Wungaunggo Ngalu Learning Place](#)'; Chris Cunneen, 'Self-Determination and the Aboriginal Youth Justice Strategy', Jumbunna Institute for Indigenous Education and Research, UTS, 2019, 73.



up to 18 Koori adult males at any one time who have been sentenced to a Community Correction Order

The Wulgunggo Ngalu<sup>43</sup> Learning Place provides Aboriginal men, on a Community Correction Order, with the opportunity to learn new skills, reconnect with, or further strengthen, their culture and participate in programs and activities to help them address their offending behaviour. It is a voluntary program, which requires the men live at Wulgunggo Ngalu in Gippsland for between three to six months. There are three core elements to the program:

- Fulfilling the requirements of the Community Correction Order
- Undertaking further education component, including life skills; and the
- Cultural component, which aims to strengthen the participant's cultural identity, and provides a culturally safe environment that is relevant and responsive to the needs of Aboriginal men.

Under AJA4, the government has committed to explore the feasibility of a women's equivalent model. This project is being led by Djirra in partnership with the Centre for Innovative Justice and the Women's Residential Diversion Facility Program Model report will soon be presented to the department. It is critical that government support and fund the full implementation of this Aboriginal-led model.

Another program that shows promising practice in community-based approaches and initiatives within the criminal legal system and Youth Justice System that are grounded on connection to Country is the Grampians RAJAC's **Yallum Yallum Elders and Respected Persons Council**. The initiative,

... is a process for referring willing community members of any age to a Council of Elders and Respected Persons known as Yallum Yallum for support and referral. Council members will engage with participants over time with the aim of building relationships, and fostering development, growth and increased connection to culture, Community and Country.<sup>44</sup>

The Kimberley Aboriginal Law and Cultural Centre's **Yiriman Project** is another example of best practice<sup>45</sup>. It is an on-Country program supporting young people who were at risk of self-harm and suicide, by taking them on-Country and connects them with Elders and community leaders<sup>46</sup>. The program was developed by Aboriginal leaders from four language groups in the Kimberly, Nyikina, Mangala, Karajarri, and Walmajarri and "...provides an avenue for young people to reconnect with country, culture and family."<sup>47</sup>

As detailed below in the Child Protection section, VALS sees benefit of adapting a **Return to Country** program for Aboriginal children and young people involved in the youth justice system. This could be part of a diversionary program where an Aboriginal child or young person is able to visit their family

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<sup>43</sup> Wulgunggo Ngalu, in the Gunai Kurnai language, means 'which way together'.

<sup>44</sup> Aboriginal Justice Caucus, [Nuther-mooyoop to the Yoorrook Justice Commission: Systemic Injustice in the Criminal Justice and Child Protection](#) Systems, 25

<sup>45</sup> This program was awarded a number of awards and praised for its positive outcomes for Aboriginal young people. Thorburn, K., & Marshall, M. (2017). [The Yiriman Project in the West Kimberley: An example of justice reinvestment?](#). Indigenous Justice Clearinghouse, Current initiatives 5.

<sup>46</sup> Ibid

<sup>47</sup> Ibid



on Country, to make connections, learn about their culture. These programs are not part of the core funding provided to ACCOs delivering services to Aboriginal children and young people in care, and therefore access to this kind of transformative and healing experience is not equitable nor based on their right to maintain a connection to their culture and Country.

## RECOMMENDATIONS

**Recommendation 11.** The Victorian government should negotiate a Justice Treaty with Aboriginal Communities and Aboriginal Community Controlled Organisations (**ACCOs**), which sets a new foundation to transform the legal system, including through progressive transfer of power, resources, data and control to allow for Aboriginal justice models.

**Recommendation 12.** The Victorian government must ensure that there are robust transparency and accountability mechanisms to monitor implementation of the *Bail Amendment Act 2023* (Vic), including a requirement for all bail decision-makers (**BDMs**) to collect, maintain and regularly publish data on bail applications, bail outcomes and reasons for refusing or granting bail, including how Section 3A has been applied. This data should be disaggregated by Aboriginality, sex, age, location (court or police station), and must be collected in accordance with principles of Indigenous Data Sovereignty and Indigenous Data Governance.

**Recommendation 13.** The *Bail Act 1977* (Vic) should be further reformed, to fully implement Poccum's Law and the Coronial Recommendations from the Inquest into the passing of Veronica Nelson.

**Recommendation 14.** The Victorian government should work with Koori Courts and Aboriginal communities to expand the jurisdiction of Koori Courts to hear bail applications.

**Recommendation 15.** The Department of Justice and Community Safety must support and fully fund the Women's Residential Diversion Facility Program Model.

**Recommendation 16.** The Department of Justice and Community Safety must fund VALS to provide Return to Country programs for Aboriginal children and young people in the youth justice system as part of a diversionary program.





## Child Protection System

Victoria has one of the highest rates of Aboriginal child removal in the country,<sup>48</sup> and Aboriginal children are removed at 20 times the rate of non-Aboriginal children<sup>49</sup>. This is the result of generations of punitive child protection policies and practices.

VALS provided an in-depth discussion around systemic injustice experienced by Aboriginal peoples in the Child Protection system last year in our, *'Nuther-mooyoop to the Yoorrook Justice Commission: Child Protection'*.<sup>50</sup> This section focuses specifically on Aboriginal children and young peoples in out-of-home-care's inherent right to remain connected to Country.

## Stolen Generations

The Bringing Them Home Report detailed the harrowing experiences of Aboriginal children and their families as a result of the systematic and discriminatory policies and practices that resulted in the Stolen Generations. The resulting transgenerational trauma, harm and suffering caused by the loss of connection to family, identity, culture, community and Country are well established. As detailed in the final report, "One principal effect of the forcible removal policies was the destruction of cultural links. This was of course their declared aim...Culture, language, land and identity were to be stripped from the children in the hope that the traditional law and culture would die by losing their claim on them and sustenance of them."<sup>51</sup>

Reverend Bernie Clarke detailed the impact and ongoing injustice experienced by Stolen Generations and their descendants:

... they have been deprived of their right to the songs and the spiritual and cultural heritage that was theirs, and I think there are direct financial consequences of that. I mean, in doing so, they have been removed from the very link which most land rights legislation demands in order for your rights to native title to be recognised. So in effect their removal in that way from their own family and context was also to deprive them of certain legal rights that we later recognised ...<sup>52</sup>

The Bringing Them Home Report details extensively the impacts of forced removal policies on being able to successfully claim native title rights. "In all jurisdictions the ability to bring a Native Title Claim will generally be extinguished by forced removal."<sup>53</sup> This speaks to an insidious injustice that permeates into contemporary Aboriginal society, and limits rights to accessing our traditional lands.

In June 2021, there were an estimated 3,100 Stolen Generations people born before 1972 living in Victoria, which equates to the third highest Stolen Generation populations in Australia<sup>54</sup>. Part of the Stolen Generations Reparations Package includes access to restorative reparations that may involve

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<sup>48</sup> SNAICC, *Family Matters Report 2022*, pp. 199-200.

<sup>49</sup> Victorian Government, *Victorian Government Submission to the Yoorrook Justice Commission* (2023) p. 39.


<sup>50</sup> VALS *'Nuther-mooyoop to the Yoorrook Justice Commission: Child Protection' 2022*.

<sup>51</sup> Bringing Them Home Report, p175

<sup>52</sup> Bringing Them Home Report, p175

<sup>53</sup> Bringing Them Home Report, p178

<sup>54</sup> Healing Foundation, 2 June 2021, Make Healing Happen: It's Time to Act



family reunions and reconnection to Country where possible<sup>55</sup>. This is an integral part of the healing process for many Stolen Generations, it is pertinent to note that many of the reunions are now held at the gravesite of family members who have passed away, and for many Stolen Generations people and their descendants, the Reparations Package has come too late as they have passed away.

The Scheme has also perpetrated racist behaviours and attitudes in its delivery. This came to the attention of the wider community when the late Uncle Jack Charles was asked to provide evidence of his Aboriginality to the staff in order for him to be eligible to receive the reparation he was entitled to under the Scheme.<sup>56</sup> Uncle Jack is a well-known and well respected member of the Victorian community, and he has been candid and open about his experience as a member of the Stolen Generations. The way in which the Scheme has operated has perpetuated systems of racism. It is imperative that any reforms that are intended to address historic wrongs are rooted in respect and acknowledgement of the harms that the systems continue to perpetuate. Any reforms that address issues of access to Country and culture must be wholly anti-racist.

### The Aboriginal Child Placement Principle and Cultural Support Plans

The Aboriginal Child Placement Principle (**ATSICPP**) is a national principle that “aims to keep children connected to their families, communities, cultures and country and to ensure the participation of Aboriginal and Torres Strait Islander people in decisions about their children’s care and protection”.<sup>57</sup> The ATSICPP centres on five elements: prevention, partnership, participation, placement and connection.<sup>58</sup> The connection element, relates to “maintaining and supporting connections to family, community, culture and country for children in out-of-home-care”<sup>59</sup> The Victorian Government has failed to properly implement and adhere to all five elements of the ACPP

Cultural Support Plans (**CSP**) are a critical part of supporting Aboriginal children and young people in out-of-home care to maintain and strengthen their connection to their Aboriginality, their kin and community, their culture and their Country. The *Children, Youth and Families Act 2005* (Vic) requires that all Aboriginal children and young people in OOH must have a finalised CSP within 19 weeks of coming into care.<sup>60</sup>

The Commissioner for Children and Young Peoples’ 2016 Report, ‘Always Was, Always Will Be, Koori Children’ found that a large majority of Aboriginal children did not have a cultural support plan.<sup>61</sup> Recent evidence at Yoorrook indicated that a CSP had been finalised for approximately 65% of Aboriginal children who were required to have one.<sup>62</sup>

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<sup>55</sup> [Stolen Generations Reparations Package | vic.gov.au \(www.vic.gov.au\)](https://www.vic.gov.au/stolen-generations-reparations-package)

<sup>56</sup> ABC (1 July 2022) , [Uncle Jack Charles asked to prove Aboriginality to receive Stolen Generations reparations.](#)

<sup>57</sup> SNAICC (2019) “The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation”


<sup>58</sup> SNAICC, ‘The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation. Website: , <https://www.snaicc.org.au/the-aboriginal-and-torres-strait-islander-child-placement-principle-a-guide-to-support-implementation/>>

<sup>59</sup> SNAICC (2019) “The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation”

<sup>60</sup> *Child Youth and Families Act 1995* (Vic), Section 169, CYFA.

<sup>61</sup> CCYP, *Always was, always will be Koori children: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*, (“Always was, Always Will be Koori Children”)(2016) p. 71.

<sup>62</sup> Yoorrook, Transcript of Day 2 – Public Hearings, 28 April 2023, p. 96.



In our experience, there are still challenges with both the compliance and the quality of CSPs, which mean that even when they do exist, they are incapable of generating meaningful connection to culture and identity for Aboriginal children. In VALS Aboriginal Families Practice team's experience, almost every single litigated matter where we have assisted a child in out-of-home-care, the matter has experienced delays in resolution due to cultural support planning requirements not being met<sup>63</sup>. The department must be held accountable and improve their compliance.

It is not uncommon for CSPs to simply recite information such as the geographical boundaries of the child's traditional Country, or a list of famous Aboriginal people. Many plans include tokenistic efforts to acknowledge culture, for example, by including the Aboriginal flag, or having books in the home without support to have ongoing, informed conversations with the child about their culture, and opportunities to meet family and Elders<sup>64</sup>. These plans fail to set out the actual steps to be taken to ensure that Aboriginal children are supported to interact with family, community members, friends, attend cultural events and visit significant sites for their mob(s). Other plans may state that a child attends a NAIDOC event once a year but provide no ongoing or regular connection, learning or engagement with their culture and community. It is critical that these plans are living documents and develop over the life of the child in care, in a developmentally appropriate manner. It is VALS' contention that CSPs should not be the primary mechanism for supporting the right of Aboriginal children in out-of-home-care (OOHC), to access and engage with their community, culture and Country.

Some Aboriginal children and young people in OOHC are able to participate in a Return to Country program, where the Aboriginal child or young person is able to visit their family on Country, to make connections, learn about their culture. These programs are not part of the core funding provided to ACCOs delivering services to Aboriginal children and young people in care, and therefore access to this kind of transformative and healing experience is not equitable nor based on their right to maintain a connection to their culture and Country.

Since VALS' previous '*Nuther-mooyoop* to the Yoorrook Justice Commission: Child Protection', there has been some progress including the recent passing of the *Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Act 2023* includes section 7A, an "Aboriginal Statement of Recognition and recognition principles relating to child protection decision-making for Aboriginal children."<sup>65</sup> This section includes an acknowledgment of the Victorian Parliament that:

...the child protection system played a key role in the enactment of policies leading to the dispossession, colonisation and assimilation of Aboriginal people; and ...the laws, practices and policies of former child protection systems resulted in the removal of Aboriginal children from their


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<sup>63</sup> *Child Youth and Families Act 1995 (Vic)*, Section 176, CYFA

<sup>64</sup> Commission for Children and Young People (2016), *Always was, always will be Koori children: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*, p74.

<sup>65</sup> Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Bill 2023, [Explanatory Memorandum](#)





families, culture and Country, by compulsion, in an effort to assimilate and extinguish their culture and identity<sup>66</sup>

Section 7E of the Act includes recognition principles that speak to the right of Aboriginal children to maintain and strengthen strong connections with their culture, family, Elders, community and Country, so that they can “develop and thrive and be protected from harm”<sup>67</sup>. To deliver the intent of these principles, the rights of Aboriginal children to have connection to their Country must be protected, otherwise they will continue to experience trauma and isolation due to this disconnection. Within the youth justice context, funding should be allocated to VALS to support Aboriginal children and young people to return to their Country, as part of a diversionary program.

The Act also included the expansion of section 18 powers so that ACCOs can now deliver an Aboriginal Child Protection Investigations model, which the Bendigo District Aboriginal Corporation and the Victorian Aboriginal Child Care Agency, are delivering pilots as part of their ACAC programs. Whilst these amendments are a positive move towards recognising the expertise of ACCOs in delivering a culturally safe Child Protection System, simply tasking ACCOs with the same remit as the generalist Child Protection System is not a genuine action of self-determination. A genuinely self-determined system would be a stand-alone system that is developed and run by ACCOs and Aboriginal communities, as per recommendation one of Yoorrook’s ‘Yoorrook for Justice Report’<sup>68</sup>.

VALS is also part of the recently established Child Protection Legal Reference Group that was established pursuant to a commitment from Minister Blandthorn to improve consultation with legal services<sup>69</sup>. The Group has only met once since it was established in April 2023 and to date, consultation has included an opportunity for members to provide submissions as part of the confidential DFFH review of the Permanency Amendments. VALS remains frustrated with the way DFFH engages with us and we hope that the Department will make strides towards genuine consultation and partnership. VALS and Djirra provided a joint submission building on our previous submissions to Yoorrook, including that family reunification should always be an option for Aboriginal children in out-of-home-care, based on the best interests of the child.

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<sup>66</sup> [Children and Health Legislation Amendment \(Statement of Recognition, Aboriginal Self-determination and Other Matters\) Bill 2023](#), s7A.

<sup>67</sup> [Children and Health Legislation Amendment \(Statement of Recognition, Aboriginal Self-determination and Other Matters\) Bill 2023](#), s7E

<sup>68</sup> Yoorrook Justice Commission, ‘[Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems](#)’ 2023.

<sup>69</sup> Legislative Council, [Hansard](#), 1 June 2023



## RECOMMENDATIONS

**Recommendation 17.** The Department for Families, Fairness and Housing should improve its compliance with cultural support planning requirements.

**Recommendation 18.** The Children's Court should have greater powers to require CSPs be developed and implemented in a timely manner and in accordance with legislative requirements.

**Recommendation 19.** The Department for Families, Fairness and Housing should fund ACCOs to provide a Return to Country for all Aboriginal children in out-of-home-care.

**Recommendation 20.** The Department of Families, Fairness and Housing should not prioritise placement stability over the inherent interests of Aboriginal children in remaining connected to their family and culture.

## Disaster Management and Emergency Response

VALS supports Aboriginal community-led preparedness and recovery initiatives across the state, in particular in response to bushfires, flooding and the COVID-19 pandemic. Aboriginal and Torres Strait Islander people are uniquely and disproportionately affected by disasters<sup>70</sup>, and in light of this disaster preparedness, response and recovery activities need to be guided by, and be respectful of, cultural heritage, knowledges and expertise.

Bhiamie Williamson, an Euahlayi man and an expert in Indigenous land management, in reflecting on the Black Summer bushfires shared that "it is clear that the concerns, values, interests and legal status of Aboriginal peoples generally, but in particular in NSW and Victoria were, at the time of the Black Summer bushfires, not accounted for *at all*."<sup>71</sup> During COVID-19 it was the collective advocacy and service response that kept Aboriginal communities in Victoria largely protected, yet this significant achievement in contrast to Indigenous communities globally has largely been ignored.

In the 21st century, land justice will necessarily be tethered to climate change experienced by First Nations' peoples. Traditional knowledges and expertise around land management based on thousands of years of care and custodianship should be respected in the face of a global climate crisis, and government should engage meaningfully with First Nations people to incorporate learnings and practices that will protect Country. A recent landmark decision found that Australia had violated its human rights obligations to the Traditional Owners of the island of Masig in the Torres Strait, due to the government's inaction to respond to climate change.<sup>72</sup> It is therefore in the government's interest

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<sup>70</sup> Williamson, B. (2022). Aboriginal community governance on the frontlines and faultlines in the Black Summer bushfires (Discussion Paper No. 300/2022), Centre for Aboriginal Economic Policy Research, Australian National University

<sup>71</sup> Williamson, B. (2022). Aboriginal community governance on the frontlines and faultlines in the Black Summer bushfires (Discussion Paper No. 300/2022), Centre for Aboriginal Economic Policy Research, Australian National University, p8.

<sup>72</sup> **Daniel Billy and others v Australia (Torres Strait Islanders Petition)** CCPR/C/135/D/3624/2019; United Nations Human Rights Office of the Human Rights Commissioner, '**Australia violated Torres Strait Islanders' rights to enjoy culture and family life, UN Committee finds**'. 2022



to ensure that adequate steps and protections are implemented to protect against further injustice relating to access to, and enjoyment of, traditional lands.

Adaptation in the context of land justice is knowledge held by First Nations people, based on thousands of years in this land. Governments should engage meaningfully with First Nations people to learn from them as to adaptations, responses and measures to combat climate change.

VALS believes that any disaster and emergency response must to be informed and led by the Aboriginal communities living in Victoria, this includes the preparation, response, care and recovery approaches. What is often missed in disaster management in the recovery process is the need for healing,

...a healing-informed approach to disaster recovery offers opportunities to better support all communities affected by disasters, by unsettling assumptions and enabling holistic understandings of complex interactions between multiple disasters, community contexts and systemic inequities.<sup>73</sup>

Traditional Owner groups and ACCOs need to be properly funded to be able to deliver a coordinated and proactive approach in preparation, response, care and recovery for any climate disasters or health emergencies in the future.

## RECOMMENDATIONS

**Recommendation 21.** The Victorian Government must allocate adequate funding, as part of nation building, to deliver a coordinated and proactive Aboriginal-led approach in preparation, response, care and recovery for any climate disasters or health emergencies in the future. This could be allocated through the Self-Determination fund for the benefit of the First Peoples of Victoria.

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<sup>73</sup> Phoebe Quinn, Bhiemie Williamson, Lisa Gibbs, 'Indigenous-informed disaster recovery: Addressing collective trauma using a healing framework' Progress in Disaster Science, Volume 16, 2022, p1.