

**Summary of Yoorrook Justice
Commission Report into
Victoria's Child Protection and
Criminal Justice Systems
- for KCV Board**



The second report of the Yoorrook Justice Commission focuses on the past and ongoing systemic injustice experienced by First Nations communities within Victoria's child protection and criminal justice systems.

Structure of the report

The report is divided into seven parts:

Part A includes the Letter of Transmission, Chairperson's foreword, and a brief introduction to the report's methodology and terminology.

Part B includes an Executive Summary, list of recommendations and key facts.

Part C examines the historical foundations of the child protection and criminal justice systems. It explains how current injustices, including systemic racism and human and cultural rights violations created by these systems, are not just historical, but continue to persist today with critical impacts on First Peoples families and communities.

It then goes on to discuss matters for Treaty in relation to child protection and criminal justice. In particular, Yoorrook finds that the transformation necessary to end the harms that the child protection and criminal justice systems continue to inflict on First Peoples can only be addressed through self-determination involving the transfer of power, authority and resources to First Peoples via the treaty process.

Part C concludes by examining consistent themes in evidence to Yoorrook that span both the child protection and criminal justice systems, including accountability and transparency, cultural competence and responsiveness, and compliance with cultural and human rights obligations. Whole of government recommendations to address these issues are made.

Part D examines critical issues in the child protection system. It begins with a short overview of some of the key policies, laws and human and cultural rights that are engaged by this system. It then examines the pathway into, through and beyond child protection with chapters on early help, child removal, out-of-home

care, permanency and reunification. Findings on critical issues and recommendations for urgent action are made in each chapter.

Part E adopts a similar approach to the criminal justice system. Following a brief overview, each of the major parts of that system are considered: Victoria Police; the bail system; youth justice; courts, sentencing and classification of offences; and Victorian Prisons. Key systemic injustices are identified, findings made, and recommendations for urgent action put forward.

Part F considers other issues that have arisen during this stage of Yoorrook's work, including legislative barriers to Yoorrook properly fulfilling its truth-telling mandate. Yoorrook outlines legal problems which mean that Yoorrook cannot guarantee that confidential information shared by First Peoples and others will be kept confidential once Yoorrook finishes its work. It also discusses barriers to members of the Stolen Generation and others who have been or are currently subject to child protection orders telling their truth. Recommendations to resolve these issues are made.

Part G contains appendices to the report, including a list of witnesses and a glossary. Further information relating to the child protection and criminal justice systems is also provided.

How Yoorrook approached this inquiry into child protection and criminal justice

Consistent with the methodological framework described in the interim report 'Yoorrook with Purpose' (published July 2022), Yoorrook's work to achieve truth, understanding and transformation prioritises and centres First Peoples' voices, experiences, cultural and human rights, and their right to self-determination.

Yoorrook:

- hears stories and gathers information from First Peoples about experiences of past and ongoing injustices
- hears and demonstrates how First Peoples' cultures and knowledge have survived
- supports First Peoples to choose how they wish to share their experiences and to avoid experiencing further trauma
- supports First Peoples' sovereignty over their knowledge and right to choose how they wish to protect their evidence through Yoorrook's Indigenous Data Sovereignty protocols
- prioritises Victorian First Peoples' perspectives in the interpretation of the Letters Patent, the conduct of the Commission's inquiries, and in the recommendations for systemic change and practical changes to laws, policies and practices.

Yoorrook's Methodology

As an Aboriginal-led Commission, Yoorrook's unique methodology guides all aspects of its work. This includes how it gathers information and from what sources, how it supports First Peoples' choices to participate and treats their knowledge, how it interprets its mandate and uses its powers, and how it recommends changes.



CENTRE CIRCLE

Letters Patent

Historic and ongoing systemic injustices

Causes and consequences

Who/what is responsible

Redress and reform

SECOND CIRCLE

Priority themes based on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and other human rights standards, focus on:

Political organisation, resistance and self determination

Lore and Law

Culture, language and heritage

People, society and wellbeing

Country, sky and waters

Dislocation and economics

THIRD CIRCLE

Truth: create a record of truth and who or what is responsible

Understanding: create broader Victorian community understanding of First Peoples and the links between past, present and future

Transformation: support change to remedy injustice against First Peoples in Victoria

OUTSIDE CIRCLE

Aboriginal ways of knowing, being and doing – understand cultural practice, respect lore and protocols, care and custodianship, safety and support, minimise harm and allow healing to occur

Self-determination – follow lead of communities, ensure Aboriginal participation and free prior and informed consents are included in all processes

Indigenous data sovereignty – ensure First Peoples' continued ownership, control and determination of how First Peoples' knowledge is treated/protected

First People's Nation Rebuilding – restore dignity of participants, use Language, uphold accountability of the state and those responsible, profile strength and survival, contribute to treaty

Avoiding trauma, promoting healing

Yoorrook's Letters Patent require Yoorrook to adopt practices to minimise harm and re-traumatisation for First Peoples and preserve the safety and wellbeing of all participants. Through its methodology, Yoorrook employs the social and emotional wellbeing (SEWB) support model.

The SEWB model Yoorrook uses takes a strengths-based approach to those who wish to participate. Yoorrook emphasises the importance of using the strengths, resilience and connectedness of First Peoples and their communities to provide a safe, supportive and culturally appropriate forum for First Peoples to exercise their rights to truth and justice with dignity while demonstrating their cultural resilience and survival. Yoorrook's model also seeks to address the risks of staff and contractors who work with people impacted by trauma being adversely impacted by vicarious trauma and other health and wellbeing issues.

Yoorrook's community engagement

Yoorrook's Community Engagement Team are based throughout the state and undertake regular information sharing and evidence gathering activities. To inform this Critical Issues Report, Yoorrook engaged with First Peoples across Victoria including with community on every Traditional Owner country.

Between 1 July 2022 and 30 June 2023, this included 56 group engagement activities — including 25 community information stalls, 21 community information sessions, and site visits, roundtables or yarning circles. Additionally, Yoorrook's engagement with First Peoples included dedicated and culturally safe support to more than 105 individuals who wished to provide evidence.

Yoorrook harnesses traditional and digital media coverage to ensure the stories and evidence brought before the Commission are heard by the widest possible audience. This is in line with the objectives set out in Yoorrook's Letters Patent to develop a shared understanding among all Victorians of 'the individual and collective impact of systemic injustice and the intergenerational trauma that has flowed from them since the start of colonisation' and 'of the diversity, strength and resilience of First Peoples' cultures, knowledge, and traditional practices'.

Between 1 July 2022 and 30 June 2023, Yoorrook's work was mentioned in more than 9100 media stories across print, online, television and radio, with an estimated audience reach of over 228 million.

Evidence gathering

On 12 and 13 September 2022, Commissioners held roundtables with experts, academics, and Aboriginal Community Controlled Organisations (ACCOs) on the topics of child protection and criminal justice. These discussions were instrumental in refining the focus of Yoorrook's inquiry and resulted in two Critical Issues papers released for public and expert comment on 8 November 2022.

SUBMISSIONS

In response to the Critical Issues papers Yoorrook received 33 submissions from organisations and academics involved in criminal justice and child protection. These are available on Yoorrook's website.

In addition, between 1 July 2022 and 30 June 2023 Yoorrook received 88 submissions from the public, 28 of which were anonymous. Over three quarters of public submissions speak to Yoorrook's inquiry into the criminal justice and child protection systems.

ROUNDTABLES

Commissioners attended 10 community roundtables and site visits to hear local First Peoples communities' experiences of child protection and of criminal justice. These events reinforced evidence coming through submissions from individuals about the deeply ingrained systemic racism across these systems, as well as the 'casual' racism First Peoples face on a daily basis in Victoria. Organisations and roundtable participants described success stories and programs making a positive difference in the lives of First Peoples affected by systemic injustices in these critical areas.

Yoorrook also engaged with First Peoples in custody in adult and youth prisons. Commissioners held five site visits in prisons and youth detention centres. Yoorrook deeply thanks all participants for their time, courage and truth-sharing.

HEARINGS

Three rounds of public hearings were held at Yoorrook's office in Collingwood. These public hearings were scheduled in blocks and were sequenced to build public understanding of systemic issues. The first, in December 2022, involved hearing from Elders, ACCOs and experts with experience in child protection and criminal justice. The next set of hearings listening to 'community voices' held in March 2023 built on this groundwork, with Commissioners listening to the lived experience of First Peoples affected by systemic injustices in child protection and criminal justice. Commissioners also travelled to Lake Condah to hold hearings on witnesses' country. Recordings of

these hearings were streamed in the main hearing program and released on Yoorrook's website.

Directions hearings were held on 27 March and 4 April 2023. The purpose of these hearings was for Yoorrook to obtain an update on the status of the State's compliance with Notices to Produce and other information requests issued in connection with the planned government accountability hearings and to make related procedural directions. Commissioners also took the opportunity in these hearings to reinforce their expectations of the State. In response to submissions made by Counsel for the State of Victoria at these hearings (particularly regarding the extent of the relevant work and the timeframes reasonably required), the planned hearing commencement date was further delayed to late April 2023, and small amounts of additional time were granted to the State for compliance with the various outstanding productions necessary to inform those hearings.

State witnesses then attended government accountability hearings in late April–May 2023. This included evidence from the Attorney-General, Minister for Police, Minister for Corrections, Youth Justice and Victim Support and the Minister for Child Protection and Family Services. Senior government officials including departmental Secretaries, Associate Secretaries and Deputy Secretaries also gave evidence along with the Chief Commissioner of Victoria Police. The Commissioner for Aboriginal Children and Young People, Corrections Commissioner and the Youth Justice Commissioner also gave evidence.

In total, 84 people, including international witnesses, gave evidence at Yoorrook's hearings across 27 days. Yoorrook thanks all witnesses for their insights, expertise and generosity. While a primary purpose of holding public hearings is to increase public awareness and understanding of systemic injustices imposed on First Peoples in Victoria through truth-telling, some community witnesses spoke to Commissioners under restricted publication orders. The truths and themes shared with Commissioners and Counsel in closed session, while not public, have equally informed the writing of this report, its findings and its recommendations.

Evidence production and analysis

Yoorrook built on the existing body of knowledge and the vast experience of First Peoples who have been affected by and who have pushed for reform of the child protection and criminal justice systems over many years. As heard often in hearings, roundtables and submissions, the problems, and solutions to address systemic injustices

in these sectors are not new — First Nations people and organisations have been proposing evidence-based solutions for decades.

Commission staff and the legal team thematically analysed all the direct evidence received through submissions and roundtables to develop key themes and lines of inquiry that were then explored and tested during hearings. In addition, Yoorrook issued 29 Notices to Produce to the State, and received 4100 documents in response. Yoorrook also examined evidence of previous major inquiries and actions taken since those inquiries to inform its findings and recommendations.

DATA ANALYSIS

Much of the statistics in this report, especially current figures, were not publicly available before being requested by Yoorrook. To analyse the data provided by the State, Yoorrook engaged a data research analyst. At several points through this report Yoorrook notes the inconsistencies among State data. The most up-to-date data produced by the State as well as previous research is presented in this report in a range of charts and diagrams throughout each chapter.

As a result of Yoorrook's approach to thematic analysis and in an effort to ensure First People's voices are heard, this report includes quotes from submissions, roundtables and evidence in hearings. Not all participants have been directly quoted, and many wished to remain anonymous, but their truth has been used to form the evidence base for Yoorrook's findings and recommendations throughout the remainder of this report.

Why Yoorrook chose to investigate Victoria's criminal justice and child protection systems

The evidence of injustice against First Peoples in the child protection and criminal justice systems is stark. From its inception, First Peoples called on Yoorrook to investigate injustice in these systems as a priority. This was a common theme raised by Elders in yarning circles Yoorrook ran across Victoria in the first half of 2022.

Further, Yoorrook's Letters Patent require it to investigate and report on issues including:

- the forced removal of children and unfair policies and practices relating to child protection, family and welfare matters
- past and ongoing injustices in policing, youth and adult criminal justice, incarceration, detention and the broader legal system.

Yoorrook announced its intention to investigate these issues as a priority when it published its interim report, *Yoorrook with Purpose*, in July 2022. The change in these systems cannot wait until delivery of its Final Report. Yoorrook will continue to monitor injustice in these systems, and the implementation of this report's recommendations, until Yoorrook concludes in June 2025.

How Yoorrook conducted this inquiry

Yoorrook began receiving evidence about the injustice experienced by First Peoples in the Victorian child protection and criminal justice systems as soon as it started meeting with and hearing from First Peoples in 2021. Yoorrook's dedicated inquiry into injustice in these systems commenced in the second half of 2022 with the publication of two Issues Papers inviting submissions.

Yoorrook received evidence in different ways including:

- **Submissions:** 33 submissions from organisations and other experts in response to the Issues Papers. This was in addition to many broader submissions from individuals which talked about their experiences with either or both systems. Of 88 submissions received from individuals in 2022–23, over three quarters included issues about the child protection or criminal justice systems.
- **Hearings:** 27 days of hearings, receiving evidence from 84 witnesses in Melbourne, on country and from international witnesses.

- **Roundtables and visits:** 12 roundtables across Victoria with experts, people working in the criminal justice and child protection systems and people affected by these systems. This included five visits to adult and youth prisons.
- **Documents:** more than 4000 documents from the Victorian Government in response to Notices to Produce.

Yoorrook's recommendations for change

Yoorrook makes 46 recommendations across five categories:

- transformative change to the child protection and the criminal justice systems through the treaty process (recommendations 1 to 2)
- urgent actions across both the child protection and criminal justice systems relating to accountability, cultural competency and responsiveness, and strengthening compliance with human and cultural rights obligations (recommendations 3 to 6)
- urgent reforms to the child protection system (recommendations 7 to 26)
- urgent reforms to the criminal justice system (recommendations 27 to 44)
- legislative reforms required to enable Yoorrook to fulfill its mandate for truth telling (recommendations 45 to 46).

Yoorrook expects that the Victorian Government immediately commence work to implement the urgent recommendations made in this report so that they can be achieved over the next 12 months. Yoorrook recognises that work to fulfil these urgent recommendations may be supplemented by consultations within the treaty process due to commence before the end of 2023. This must not be used as an excuse for delay given the evidence Yoorrook has presented. Yoorrook also notes that the treaty framework allows the negotiation of interim agreements.

Where Yoorrook makes recommendations that require oversight agencies and Aboriginal organisations to assume additional responsibilities or functions, it is essential that the government provide adequate resources to those organisations. Similarly, where Yoorrook makes recommendations that require or improve compliance with laws, policies and cultural and human rights obligations, the State must adequately resource this. Lack of resources must not be used as an excuse for failing to act.

Some of Yoorrook's legislative recommendations will benefit all Victorians in addition to addressing the significant injustices that First Peoples continue to experience in the child

protection and criminal justice systems. Examples include recommendations to improve the Children, Youth and Families Act 2005 (Vic) and to improve bail, sentencing and other criminal justice laws. It is normal practice that government considers full implications of any legislative change, however in doing so this must not be an excuse for delay or deferral. First Peoples cannot wait for these injustices to be addressed and nor should other Victorians be denied the positive changes that will flow from them.

Yoorrook will monitor the implementation of the recommendations made in this report and will require the State to report on the status of implementation during the remainder of this royal commission.

Recommendations

<p>Transformative change through the Treaty process</p> <p>Recommendations 1 and 2</p>	<p>1. The Victorian Government must:</p> <p>a) transfer decision-making power, authority, control and resources to First Peoples, giving full effect to self-determination in the Victorian child protection system. Transferring or creating decision-making power includes but is not limited to:</p> <ul style="list-style-type: none"> i. system design ii. obtaining and allocating resources iii. powers of, and appointments to bodies or institutions, and iv. accountability and oversight functions including new First Peoples led bodies, oversight processes or complaints pathways <p>b) negotiate this through the Treaty process including through potential interim agreements</p> <p>c) in doing so, go beyond the transfer of existing powers and functions under the Children, Youth and Families Act 2005 (Vic), which will require new, dedicated legislation, developed by First Peoples, for the safety, wellbeing and protection of First Peoples children and young people, and</p> <p>d) recognising the urgent need for immediate reform and without delay, take all necessary steps to begin and diligently progress the establishment of a dedicated child protection system for First Peoples children and young people supported by stand-alone legislation based on the right of First Peoples to self-determination and underpinned by human and cultural rights to be developed by the First Peoples' Assembly of Victoria which must be sufficiently resourced by government for this purpose.</p>
	<p>2. The Victorian Government must give full effect to the right of First Peoples to self-determination in the Victorian criminal justice system as it relates to First Peoples. This includes negotiating through the Treaty process, including through potential interim agreements, the transfer of decision-making power, authority, control and resources in that system to First Peoples. Transferring or creating decision-making power includes but is not limited to:</p> <ul style="list-style-type: none"> a) system design b) obtaining and allocating resources c) powers of, and appointments to bodies or institutions, and d) accountability and oversight functions including new First Peoples led oversight processes or complaints pathways.

<p>Urgent reforms: accountability, cultural competence and compliance with human and cultural rights</p> <p>Recommendations 3 to 6</p>	<p>OPEN MONITORING AND EVALUATION UNDERPINNING ACCOUNTABILITY</p> <p>3. To ensure State accountability for First Peoples related programs and policies by those responsible for their development and delivery:</p> <p>a) government bodies must ensure that First Peoples related programs and policies are rigorously monitored and evaluated</p> <p>b) monitoring and evaluation must be designed alongside the development of the program or policy so that it is built into the program or policy (and commences at the same time as implementation) with measurement focused on real outcomes</p> <p>c) where programs or policies have existing commitments to monitoring and evaluation, but little or no progress has been made, these must be actioned within six months</p> <p>d) where programs or policies do not have monitoring or evaluation included, the inclusion of these must be actioned urgently, and</p> <p>e) these monitoring and evaluation processes must be in accordance with the Burra Lotjpa Dunguludja (AJA4) Monitoring and Evaluation Framework including:</p> <ul style="list-style-type: none"> i. being consistent with First Peoples values ii. reflecting First Peoples priorities for what is measured and how it is measured iii. having an approved regular reporting cycle, and iv. having a commitment to the open reporting of results.
	<p>4. The Victorian Government must as an urgent priority, having regard to the right of First Peoples to self-determination, negotiate in good faith with the First Peoples' Assembly of Victoria:</p> <p>a) the establishment of an independent and authoritative oversight and accountability commission for the monitoring and evaluation of First Peoples related policies and programs</p> <p>b) the detailed functions and membership of the commission, and</p> <p>c) to give the commission the necessary resources and authority to hold responsible government ministers, departments and entities to account for the success or failure of the programs they develop and deliver.</p>
	<p>STRENGTHENING CULTURAL COMPETENCE AND RESPONSIVENESS</p> <p>5. The Victorian Government must as soon as possible significantly upscale the capability, competence and support in relation to human rights, including Aboriginal cultural rights, of all persons appointed to work or working in:</p>

	<p>a) the child protection system</p> <p>b) the corrections system, including prisons</p> <p>c) the youth justice system, including youth detention and like facilities and the bail system</p> <p>d) the adult justice system including the bail system</p> <p>e) Victoria Police, and</p> <p>f) the forensic mental health system,</p> <p>to ensure that they have that capability, competence and support necessary for them to carry out their obligations under the Charter of Human Rights and Responsibilities Act 2006 (Vic) (the Charter) and other human and cultural rights laws, and in particular for this purpose the government must:</p> <p>g) review and revise all relevant policies, procedures, protocols, administrative directions, guidelines and like documents</p> <p>h) review all relevant training courses and programs, and</p> <p>i) ensure that Victorian First Peoples businesses or consultants participate on a paid basis in the review and revision of training courses and programs, and the delivery of these, wherever possible.</p>
	<p>STRENGTHENING HUMAN RIGHTS & CULTURAL RIGHTS COMPLIANCE</p> <p>6. Drawing on (but not confined to) the recommendations of the 2015 Review of the Charter and its response to that review, the Victorian Government, following a public consultation process that includes the First Peoples' Assembly of Victoria and other First Peoples organisations, must clarify and strengthen the Charter so that it more effectively:</p> <p>a) requires public authorities to act in a way that is and make decisions that are substantively compatible with human rights including Aboriginal cultural rights, and</p> <p>b) ensures that public authorities are held accountable for acting or making decisions incompatibly with human rights including Aboriginal cultural rights, including by:</p> <p>i. enabling individuals to bring a legal proceeding in the Victorian Civil and Administrative Tribunal for a remedy (including compensation) against public authorities who have made decisions or acted incompatibly with human rights including Aboriginal cultural rights under the Charter, and</p> <p>ii. enabling individuals to rely upon the human rights including Aboriginal cultural rights in the Charter in any legal proceedings, as provided (for example) in section 40C of the <i>Human Rights Act 2004 (ACT)</i>.</p>

<p>Urgent reforms: child protection system</p> <p>Recommendations 7 to 26</p>	<p>OVERSIGHT</p> <p>7. The Victorian Government must amend the Commission for Children and Young People Act 2012 (Vic) to:</p> <p>a) specifically establish the role of the Commissioner for Aboriginal Children and Young People in the same way that the Principal Commissioner for Children and Young People's role is provided for in the legislation</p> <p>b) provide the Commissioner for Aboriginal Children and Young People with the same statutory functions and powers as the Principal Commissioner insofar as these powers relate to Aboriginal children and young people in Victoria</p> <p>c) expressly provide the Commissioner for Aboriginal Children and Young People the function to receive and determine individual complaints from or relating to First Peoples children and young people concerning their treatment in child protection, including out of home care, and</p> <p>d) give the Commissioner for Aboriginal Children and Young People and the Principal Commissioner rights of intervention in legal proceedings relating to a child or young person's rights under the Charter to be exercised at their discretion.</p> <p>These roles and powers must be appropriately resourced.</p>
	<p>EARLY HELP, PREVENTION AND INTERVENTION</p> <p>8. The Victorian Government must:</p> <p>a) work with Aboriginal organisations to develop a consistent definition of early help, early intervention and prevention that aligns with the perspectives of First Peoples. This definition should be adopted across the Victorian Government</p> <p>b) enshrine prevention and early help/intervention as a guiding principle in the Children, Youth and Families Act 2005 (Vic) and take all necessary steps to implement this principle in the administration of the Act</p> <p>c) as an immediate action, substantially increase investment in Aboriginal Community Controlled Organisation prevention and early help/intervention services to keep First Peoples children out of the child protection system and to prevent their involvement from escalating when it does occur, and</p> <p>d) review the governance model for implementing target 12 of the Closing the Gap Agreement, with a view to broadening the responsibility to achieve this target beyond the Department of Families, Fairness and Housing.</p>

	<p>9. The Victorian Government must publicly report annually on the amount and proportion:</p> <p>a) of total child protection and family services funding allocated to early intervention (family and parenting services) compared to secondary and tertiary services (community delivered child protection services, care services, transition from care services and other activities), and</p> <p>b) of funding allocated to Aboriginal Community Controlled Organisations compared to mainstream services for early intervention (family and parenting services), secondary and tertiary services.</p>
	<p>10. The Victorian Government must immediately give a direction to health services (including perinatal, maternal and child health services) that:</p> <p>a) clinical and allied health staff working with pregnant women must undertake appropriate training to address bias and build expertise in working safely and effectively with First Peoples women and families to address their social and emotional needs, and</p> <p>b) this training must be designed and delivered by a Victorian First Peoples business or consultants on a paid basis, and completion rates of this training must be publicly reported.</p>
	<p>11. The Department of Families, Fairness and Housing must ensure that:</p> <p>a) when a child protection worker is considering making a pre-birth report, that prior to birth, and with the consent of the pregnant Aboriginal women, organisations (including Aboriginal Community Controlled Organisations or Aboriginal Community Controlled Health Organisations) are informed of the rationale for and intention to make a pre-birth report so that they can:</p> <ul style="list-style-type: none"> i. provide input into that decision ii. ensure people with appropriate training and expertise are involved, and iii. offer culturally safe supports to the mother, father and/or significant others in the family network <p>b) when DFFH receives a pre-birth report from any source, that pregnant Aboriginal women are informed of the report by a person(s) with the appropriate expertise to hold such a sensitive discussion and who has the skills to respond appropriately and offer a range of culturally safe support options, including a referral to a supporting organisation (including an Aboriginal Community Controlled Organisation or Aboriginal Community Controlled Health Organisation), and</p> <p>c) pre-birth reports that are assessed as not requiring further action are to be excluded from this scheme.</p>

	<p>CHILD REMOVAL</p> <p>12. Whenever:</p> <p>a) the Department of Families, Fairness and Housing receives a pre-birth report regarding a pregnant Aboriginal woman, or</p> <p>b) a child protection report is substantiated regarding an Aboriginal child, then:</p> <p>c) subject to the consent of the person to whom the report relates, the Department must automatically notify a Victorian Aboriginal legal service provider to be funded by the Victorian Government so that the child's parents and/or primary care giver are offered legal help and, where appropriate non-legal advocacy.</p>
	<p>13. The Victorian Government must ensure that an impact evaluation of the Child Protection Risk Assessment Framework (SAFER) is commenced within 12 months, and in the case of First Peoples children:</p> <p>a) is First Peoples led and overseen by a First Peoples governance group</p> <p>b) has methodology that includes a review of individual cases by the Commissioner for Aboriginal Children and Young People, and</p> <p>c) makes recommendations that include actions to reduce child protection practitioner racial bias when applying the Framework.</p> <p>14. The Department of Families, Fairness and Housing must ensure that:</p> <p>a) all incoming child protection staff, as part of their pre-service education, complete cultural awareness and human and cultural rights training covering issues including:</p> <ul style="list-style-type: none"> i. the history of colonisation and in particular the impact of 'protection' and assimilation policies ii. the continuing systemic racism and paternalism inherent in child protection work today that must be identified, acknowledged and resisted iii. the value of First Peoples family and child rearing practice iv. upholding human rights including Aboriginal cultural rights, and v. the strength of First Peoples families and culture and culturally appropriate practices <p>b) all child protection staff and Department executives undertake regular, mandatory cultural safety training, to be designed and delivered by a Victorian First Peoples business or consultants on a paid basis, and</p> <p>c) completion rates for training are published by the Department annually.</p>

	<p>15. In relation to determining the identity of First Peoples children:</p> <p>a) the Department of Families, Fairness and Housing, in consultation with the Commissioner for Aboriginal Children and Young People and relevant Aboriginal Community Controlled Organisations, must improve how they identify and de-identify First Peoples children in the Victorian children protection system, and</p> <p>b) the Commissioner for Aboriginal Children and Young people must undertake regular audits and publish the results to ensure child protection practitioners are correctly identifying and de-identifying First Peoples children and doing so in a timely way.</p>
	<p>16. The Department of Families, Fairness and Housing must urgently take steps to ensure full compliance with its obligations to:</p> <p>a) convene an Aboriginal Family Led Decision Making meeting before making any significant decision about an Aboriginal child, and record the outcome, and</p> <p>b) consult with the Aboriginal Child Specialist Advice and Support Service on all significant decisions affecting an Aboriginal child and record the outcome.</p>
	<p>17. The Victorian Government must amend the <i>Children, Youth and Families Act 2005 (Vic)</i> to:</p> <p>a) specify that priority be given to keeping siblings together in placement decisions (both in out of home care and permanent placements)</p> <p>b) include in the decision-making principles a presumption that removal of a First Peoples child from their family or community causes harm</p> <p>c) provide that a child protection practitioner must record how they have considered the presumption of harm caused by removal in their decision to remove a First Peoples child, and</p> <p>d) provide that the Children’s Court is required to include in its reasons for a removal decision how the presumption of harm caused by removal has been considered.</p> <p>These amendments must be made urgently while a new First Peoples led child protection system and accompanying Act is designed and implemented in accordance with recommendation 1.</p>

	<p>18. The Victorian Government must:</p> <p>a) ensure Children’s Court of Victoria judicial officers determine child protection matters state-wide, and</p> <p>b) abolish the current practice of having non-specialist magistrates determining child protection matters in some rural and regional court locations.</p>
	<p>19. The Victorian Government must as soon as possible expand and sufficiently resource the Marram-Ngala Ganbu (Koori Family Hearing Day) state-wide.</p>
	<p>OUT OF HOME CARE</p> <p>20. The Victorian Government must address barriers to First Peoples becoming carers for First Peoples children in the child protection system by:</p> <p>a) simplifying application and vetting processes and improving support for people navigating the process</p> <p>b) ending the substantive inequality between kinship carers and foster carers by removing the automatic commencement of kinship payments at level one such that payments are made at a rate that reflects the complexity of kinship care, and</p> <p>c) ensuring kinship carers have appropriate access to training, support, and services at a level that is at least equivalent to the training, support and services offered to foster carers.</p>
	<p>21. The Victorian Government must amend the <i>Children, Youth and Families Act 2005 (Vic)</i> to require the Department of Families, Fairness and Housing to ensure that all children who are placed in out of home care receive a developmental disability assessment and health assessment consistent with the National Out of Home Care Standards and in a timely way.</p>
	<p>22. The Victorian Government must amend the Children, Youth and Families Act 2005 (Vic) to provide the Children’s Court with greater powers to ensure that cultural plans are developed, implemented and monitored, particularly when out of home care orders are being extended and children’s separation from their families is prolonged.</p>

	<p>23. The Victorian Government must urgently:</p> <p>a) ensure that the Framework to Reduce Criminalisation of Young People in Residential Care is applied in all cases</p> <p>b) establish a mechanism within the Commission for Children and Young People through which young people can report that a residential care provider or Victoria Police has failed to apply the Framework, so that the Commissioner can advocate for that young person, including (in the case of police) by referring the matter to an independent police oversight body</p> <p>c) ensure that, when the Commissioner for Aboriginal Children and Young People is placed on a statutory footing, these functions are performed by that Commissioner with respect to those children and young people, and</p> <p>d) fund the development and delivery of training to residential care providers and Victoria Police on implementing the Framework in practice.</p>
	<p>24. The Commission for Children and Young People and Commissioner for Aboriginal Children and Young People must:</p> <p>a) monitor compliance with the Framework to Reduce Criminalisation of young people in residential care current 18-month action plan</p> <p>b) review individual cases</p> <p>c) specify targets for reduced police contact, and</p> <p>d) publicly report on outcomes.</p>
	<p>PERMANENCY AND REUNIFICATION</p> <p>25. The Victorian Government must amend the <i>Children, Youth and Families Act 2005 (Vic)</i> to allow the Children's Court of Victoria to extend the timeframe of a Family Reunification Order where it is in the child's best interest to do so.</p>
	<p>26. The Victorian Government must:</p> <p>a) recognise that the human and cultural rights of First Peoples children in permanent care to have, express, develop and maintain their culture, and to maintain contact with their Aboriginal family, kin and community, are not presently adequately respected and ensured in practice, and</p> <p>b) urgently work with the First Peoples' Assembly of Victoria and relevant Aboriginal organisations to formulate and implement all necessary legislative, administrative and other means for respecting and ensuring those rights, including by authorising Aboriginal Community Controlled Organisations to monitor the cultural care plans of Aboriginal children who are the subject of permanent care orders.</p>

<p>Urgent reforms: criminal justice system</p> <p>Recommendations 27 to 44</p>	<p>POLICE</p> <p>27. The Victorian Government must establish and adequately resource a new independent police oversight authority, headed by a statutory officer who has not been a police officer, to:</p> <p>a) investigate and determine all complaints about police (except for minor customer service matters)</p> <p>b) investigate and report on all police contact deaths and serious incidents</p> <p>c) conduct independent monitoring of and reporting on police custody and detention</p> <p>d) on its own motion, monitor, audit, systemically review and report on the exercise of police powers and interactions with the public including customer service matters</p> <p>e) undertake own motion, public interest investigations, and</p> <p>f) publish reports in the public interest.</p> <p>The new authority must:</p> <p>g) have powers to arrest, search property and compel the production of information including from Victoria Police, and</p> <p>h) include a dedicated division for complaints from First Peoples that is under First Peoples leadership.</p>
	<p>28. Access to pre-charge cautions in the adult criminal legal system in appropriate cases should be increased by all necessary legislative, administrative and others means including by:</p> <p>a) legislating a positive duty upon Victoria Police to:</p> <ul style="list-style-type: none"> i. take into account an Aboriginal person's unique background and systemic factors when making decisions on cautioning or diversion ii. demonstrate the steps taken to discharge this obligation, and iii. record reasons for their decisions <p>b) introducing a legislative presumption in favour of alternative pre-charge measures in appropriate cases (for example, verbal warnings, written warnings, cautions and referrals to cautioning programs), and</p> <p>c) Victoria Police publishing cautioning data its Annual Report, including specific data comparing cautioning rates for Aboriginal and non-Aboriginal people.</p>
	<p>29. The <i>Equal Opportunity Act 2010 (Vic)</i> must urgently be amended to prohibit race and other forms of discrimination in the administration of State laws and programs, including all functions performed by Victoria Police, Corrections Victoria and child protection authorities.</p>

	<p>30. In relation to the decriminalisation of public intoxication:</p> <p>a) the Chief Commissioner of Police must ensure that Victoria Police conduct is closely monitored to ensure police members do not use existing powers to unnecessarily take intoxicated people into custody, for example by 'up-charging', and</p> <p>b) the Victorian Government's planned independent evaluation of the monitoring of police conduct must:</p> <ul style="list-style-type: none"> i. be First Peoples led, with appropriate governance by them ii. cover at least the first 12 months and then three years of implementation, and iii. have results that are made public.
	<p>31. The following mandatory criteria must be introduced for the selection and appointment of the Chief Commissioner of Police and when undertaking annual executive performance reviews of the Commissioner:</p> <p>a) knowledge, experience, skills and commitment to changing the mindset and culture of Victoria Police, to end systemic racism and to ensure the human rights of First Peoples are respected, protected and promoted in all aspects of police operations</p> <p>b) understanding of the history of colonisation and in particular the role of Victoria Police in the dispossession, murder and assimilation of First Peoples, and the ongoing, intergenerational trauma and distrust of police this has caused</p> <p>c) recognition of ongoing systemic racism within Victoria Police and the need for this to be identified, acknowledged and resisted, and</p> <p>d) experience, skills in, and commitment to, changing the culture of Victoria Police to end systemic racism and to ensure the human rights of First Peoples are respected, protected and promoted in all aspects of police operations and the organisation.</p>

	<p>BAIL</p> <p>32. The <i>Bail Act 1977 (Vic)</i> must immediately be amended to:</p> <p>a) create a presumption in favour of bail for all offences with the exception of murder, terrorism and like offences</p> <p>b) place the onus on the prosecution to prove that bail should not be granted due to a specific, serious or immediate risk to the safety of a person or to the administration of justice, with the exception of murder, terrorism and like offences</p> <p>c) prohibit remand if a sentence of imprisonment is unlikely if there is a finding of guilt (unless it is necessary to protect the safety of a person or the proper administration of justice pending hearing)</p> <p>d) repeal the bail offences contained in current sections 30, 30A and 30B</p> <p>e) require all bail decision-makers to explain what information they have considered to understand how a person's Aboriginality is relevant, and provide the reasons for any refusal to grant an application for bail made by an Aboriginal person, and</p> <p>f) require the Victorian Government and Victoria Police to publicly report, at least annually, bail and remand rates for Aboriginal people, and summary data of the reasons given by bail decision-makers for refusing bail.</p>
	<p>33. The Victorian Government must:</p> <p>a) develop, deliver and publicly report on a cultural change action plan to ensure all bail decision-makers exercise their powers and functions on the basis that imprisonment on remand (including that of First Peoples) is used only as a last resort, and</p> <p>b) ensure that the development and ongoing monitoring of performance of the action plan is First Peoples led.</p>
	<p>34. 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.</p>
	<p>YOUTH JUSTICE</p> <p>35. The Victorian Government must urgently introduce legislation to raise the minimum age of criminal responsibility in Victoria to 14 years without exceptions and to prohibit the detention of children under 16 years.</p>

	<p>36. The Victorian Government's planned new Youth Justice Act must:</p> <ul style="list-style-type: none"> a) explicitly recognise the paramountcy of human rights, including the distinct cultural rights of First Peoples, in all aspects of the youth justice system b) embed these rights in the machinery of the Act, and c) require all those involved in the administration of the Act to ensure those rights.
	<p>COURTS, SENTENCING AND CLASSIFICATION OF OFFENCES</p> <p>37. The Victorian Government must:</p> <ul style="list-style-type: none"> a) amend the Sentencing Act 1991 (Vic) to include a statement of recognition acknowledging: <ul style="list-style-type: none"> i. the right of First Peoples to self-determination ii. that First Peoples have been disproportionately affected by the criminal justice system in a way that has contributed to criminalisation, disconnection, intergenerational trauma and entrenched social disadvantage iii. the key role played by the criminal justice system in the dispossession and assimilation of First Peoples iv. the survival, resilience and success of First Peoples in the face of the devastating impacts of colonisation, dispossession and assimilationist policies, and v. that ongoing structural inequality and systemic racism within the criminal justice system continues to cause harm to First Peoples, and is expressed through decision-making in the criminal justice system and the over-representation of First Peoples in that system b) amend the Sentencing Act to require courts to, in appropriate cases, consider alternatives to imprisonment for all offenders, with particular attention to the circumstances of Aboriginal offenders c) amend the Sentencing Act to, in relation to sentencing: <ul style="list-style-type: none"> i. require courts to take into account the unique systemic and background factors affecting First Peoples, and ii. require the use of Gladue-style reports for this purpose, and d) ensure that: <ul style="list-style-type: none"> i. there is comprehensive cultural awareness training of lawyers and the judiciary to support the implementation of these requirements, and ii. the design and delivery of such training must be First Peoples led and include education about the systemic factors contributing to First Peoples over-imprisonment.

	<p>38. The Victorian Government must amend the Criminal Procedure Act 2009 (Vic) and the Children, Youth and Families Act 2005 (Vic) to remove the requirement that the prosecution (including police) consent to diversion and replace it with a requirement that the prosecution be consulted.</p>
	<p>39. The Victorian Government must:</p> <p>a) where appropriate decriminalise offences linked with disadvantage arising from poverty, homelessness, disability, mental ill-health and other forms of social exclusion, and</p> <p>b) review and then reform legislation as necessary to reclassify certain indictable offences (such as those kinds of offences) as summary offences, and for this purpose, by 29 February 2024, refer these matters to the Victorian Law Reform Commission (or similar independent review body) for urgent examination which includes consultation with the First Peoples' Assembly of Victoria and relevant Aboriginal organisations.</p> <p>The Victorian Government must promptly act on the review's recommendations.</p>
	<p>PRISONS</p> <p>40. The Victorian Government must:</p> <p>a) amend relevant legislation to expressly prohibit routine strip searching at all Victorian prisons and youth justice centres, and</p> <p>b) ensure that data on the use of strip searching is made publicly available and used to monitor compliance with the prohibition on routine use.</p>
	<p>41. Noting that cooperation with the Australian Government is required, the Victorian Government must immediately take all necessary legislative, administrative or other steps to designate an independent body or bodies to perform the functions of the National Preventive Mechanism of monitoring the State's compliance with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment in places of detention.</p>
	<p>42. The Victorian Government must immediately take all necessary steps to ensure prisoners (whether on remand or under sentence and whether in adult or youth imprisonment or detention) including Aboriginal prisoners can make telephone calls for free or at no greater cost than the general community.</p>

	<p>43. The Victorian Government must, as soon as possible and after consultation with the First Peoples' Assembly of Victoria and relevant Aboriginal organisations, take all necessary steps to structurally reform the Victorian prison system based on the recommendations of the Cultural Review of the Adult Custodial Corrections System and in particular the following recommendations:</p> <p>a) a new legislative framework for the adult custodial corrections system which focusses on rehabilitation, safety, cultural and human rights (recommendation 2.1)</p> <p>b) a new independent Inspectorate of Custodial Services including an Aboriginal Inspector of Adult Custodial Services (recommendation 2.3)</p> <p>c) enhanced data capability and information management system (recommendation 2.6), but which must apply Indigenous Data Sovereignty principles in relation to data of First Peoples</p> <p>d) improved professional development for the custodial workforce (recommendation 3.9), but taking into account the above recommendations for strengthening capability, competence and support in relation to human and cultural rights, and</p> <p>e) other recommendations in relation to Aboriginal prisoners (see recommendations 5.3 to 5.16).</p>
	<p>44. The Victorian Government must:</p> <p>a) take all legislative, administrative and other steps to implement the United Nations Standard Minimum Rules for the Treatment of Prisoners in relation to the use of solitary confinement at all Victorian prisons and youth justice centres, including an express prohibition on the use of solitary confinement on children and on the use of prolonged or indefinite solitary confinement on adults, and</p> <p>b) ensure that Victorian prisons and youth justice centres are adequately funded and properly operated so that the common practice of locking down prisoners in their cells for prolonged periods for administrative or management reasons in violation of their human and cultural rights is ended.</p>
<p>Law reform to enable truth telling Recommendations 45 and 46</p>	<p>45. By 29 February 2024 the Victorian Government must legislate to create new statutory protection for public records that ensure that information shared on a confidential basis with Yoorrook will be kept confidential for a minimum of 99 years once Yoorrook finishes its work and its records are transferred to the Victorian Government.</p>

46. The Victorian Government must:

a) review section 534 of the Children, Youth and Families Act 2005 (Vic) to identify a workable model that:

- i. places clear time limits on the operation of section 534 so that where the only individuals identified in a publication are adults who have provided their con-sent, and the Children's Court matter is historical in nature, then the prohibition does not apply, and
- ii. enables a Royal Commission or similar inquiry to publish information about a child who is subject to protection proceedings or a protection order, where the child provides that information, is capable of understanding the consequences of losing anonymity and provides their consent, and

b) ensure that any review of section 534 of the Children, Youth and Families Act is First Peoples led insofar as the proposed reforms affect First Peoples.