



# YOORROOK

## for Transformation

Third Interim Report  
Volume 1





Cover photo: Scar Tree, Wotjobaluk Country.  
Courtesy Uncle Jim Berg, Gunditjmara Elder.

The scarred Trees are a witness to a way of life, and freedom for People to roam at will throughout their own Country. They are a reminder of the past, and they are linked to all Trees. Take the memory of these scarred Trees with you forever. Share their story with your family.

UNCLE JIM BERG, GUNDITJMARA ELDER

From ‘Silent Witness – A window to the past’:  
A personal collection of Scar Trees images and poems by Uncle Jim Berg, Gunditjmara Elder.

With tears on  
the landscape  
and scars on our  
heart, our truth  
needs to be told.<sup>1</sup>

AUNTY JILL GALLAGHER

Published by order, or under the authority, of the  
Parliament of Victoria, June 2025.

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Grindstone Creative

1. Transcript of Aunty Jill Gallagher, 28 March 2024, 56 [35]–[45].

The Yoorrook Justice Commission (Yoorrook) acknowledges the Traditional Owners of Country of the lands and waters currently known as Victoria, and pays respect to them, their cultures and their Elders past and present.

Yoorrook is required to investigate and report on injustice against First Peoples. Our mandate uses a broad and inclusive definition of First Peoples, which includes the Traditional Owners of a place in Victoria, including family and clan groups, and their ancestors. It also includes all Aboriginal and Torres Strait Islander people living in Victoria or who previously lived in Victoria.

Native title and heritage laws have specific legal processes to recognise Traditional Owner groups. Yoorrook acknowledges the creation of these processes are part of the impact of colonisation. Yoorrook is committed to being inclusive and to the promotion of self-determination. The use by Yoorrook of a particular name or word is not an endorsement of a particular view. Yoorrook's Terms of Reference do not permit it to inquire into specific decisions or outcomes in relation to native title or heritage laws. Yoorrook extends deep respect to all Traditional Owners.

**The Hon. Professor  
Margaret Gardner AC**  
Governor of Victoria  
Government House  
Government House Drive  
Melbourne VIC 3004

**Ms Ngarra Murray  
and Mr Rueben Berg**  
Co-Chairs  
First Peoples' Assembly of Victoria  
48 Cambridge Street  
Collingwood VIC 3066

18 June 2025

Your Excellency, Ms Murray and Mr Berg,

In accordance with the amended Letters Patent dated 4 April 2023, we are pleased to present to you the third interim report of the Yoorrook Justice Commission. This report meets Yoorrook's obligations to investigate and report on historical and ongoing systemic injustices in relation to the following terms of reference: land and waters, cultural violations, dispossession, killing and genocide, unfair labour practices, health and healthcare, invasion of privacy, information and data, economic and political life, and other systemic social injustices including education and housing.

Yours sincerely,



**Professor  
Eleanor A Bourke AM**  
Wergaia / Wamba Wamba  
Chairperson



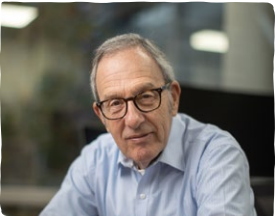
**Adjunct Professor  
Sue-Anne Hunter**  
Wurundjeri /  
Ngurai Illum Wurrung  
Deputy Chair



**Travis Lovett**  
Kerrupmara-Gunditjmara /  
Boandik  
Deputy Chair



**Distinguished Professor  
Maggie Walter**  
Palawa  
Commissioner



**The Hon. Tony North KC**  
Commissioner

Volume 1

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**Part B: Executive summary  
and recommendations**

**Part C: Critical themes**

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**Part D: Land injustice**

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**Part E: Education**

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## Content warning

Please be aware that this report touches on sensitive material that may be distressing. Some chapters contain graphic descriptions and strong language. It touches on topics such as violence and massacres, systemic injustices against First Peoples including assimilation and protectionist policies, and the separation of families and policies of child removal, abuse within institutions, deaths in custody and healthcare settings, devastation of Country, desecration of cultural heritage and theft of Ancestor remains.

The report occasionally draws on historical sources which use antiquated racist language to refer to First Peoples and racist depictions of First Peoples.

The report may contain references to self-harm and suicide.

The report contains stories and mention of First Peoples who have passed away.

We suggest readers consider their wellbeing before, during and after reading. If you are distressed by material in this report, or if you or a loved one require support, there are services to support you.

## Services and Supports

### In the case of an emergency (000).

Below are a series of support services that may be useful. Further support services, including for specialist services by area, are available on the [Yoorrook website](#).

### 13 Yarn

The first national crisis support line for mob who are feeling overwhelmed or having difficulty coping. They offer a confidential one-on-one yarning opportunity with a Lifeline-trained Aboriginal & Torres Strait Islander Crisis Supporter.

**Hours:** 24/7

**Phone:** 13 92 76

**Email:** [enquiries@13yarn.org.au](mailto:enquiries@13yarn.org.au)

[www.13yarn.org.au](http://www.13yarn.org.au)

### First Peoples' Health and Wellbeing

First Peoples' Health and Wellbeing is an Aboriginal community controlled health service aiming to improve access to affordable primary health care in urban Melbourne. Clinics are located in Thomastown and Frankston, and online appointments are available.

**Hours:** Mon-Thurs 9:00am to 5:00pm, Fri 9:00am to 1:00pm

**Email:** [info@fphw.org.au](mailto:info@fphw.org.au)

[www.firstpeopleshealthandwellbeing.org.au](http://www.firstpeopleshealthandwellbeing.org.au)

### Yarning SafeNStrong

The Victorian Aboriginal Health Service (VAHS) have established a free and confidential 24/7 counselling service for Aboriginal and Torres Strait Islander Peoples. Yarning SafeNStrong is available to people and families who need to have a yarn with someone about their wellbeing.

**Hours:** 24/7

**Phone:** 1800 959 563

**Email:** [ysns@vahs.org.au](mailto:ysns@vahs.org.au)

[www.vahs.org.au/yarning-safenstrong](http://www.vahs.org.au/yarning-safenstrong)



Part A

# Introduction



# Acknowledgements

The Commissioners thank everyone who contributed to this inquiry, including those who made submissions, attended roundtables and site visits, and appeared in hearings. Yoorrook particularly acknowledges the vital contributions of First Peoples who shared their lived experiences of state systems. By sharing their experiences of injustice, they provided the foundation for this report and its recommendations to address injustice. Their contributions have created the momentum for change to build a better future.

Yoorrook thanks everyone who gathered and analysed the evidence-base for this inquiry and produced this report. Yoorrook's staff supported witnesses and participants who shared experiences of trauma and loss, drawing on their trauma-informed and cultural safety expertise. They ensured hearings, roundtables, submissions, site visits and other processes ran smoothly, managed and analysed a large volume of evidence, and drafted this report. Yoorrook staff also communicated Yoorrook's work to huge audiences via media and social media.

Yoorrook's Counsel Assisting team of Tony McAvoy SC (Wirdi), Fiona McLeod AO SC, Timothy Goodwin (Yuin), Sarala Fitzgerald and Sarah Weinberg ensured Yoorrook's hearings were critical to the accountability that this inquiry has brought. They expertly exposed the evidence that shows the urgent need for reform and how it can be brought about. They conducted hearings with deep sensitivity and respect for First Peoples witnesses.

Yoorrook's Solicitors Assisting, King & Wood Mallesons, led by Emily Heffernan, Ben Kiely and Chris Holland, and through a core team of Esther Faine-Vallantin, Jacqui Dinsdale and Jacob Kairouz, supported all aspects of Yoorrook's work. Their work included evidence gathering, hearings (including witness statements and preparation), legal support for report writing (procedural fairness processes) and legal advice on Yoorrook's operations – working closely with Yoorrook staff, particularly in Yoorrook's Legal, Policy and Research team.

Yoorrook acknowledges and thanks all the contractors who supported Yoorrook's work over this inquiry, including the Lotjpa Independent Legal Service run by the Victorian Aboriginal Legal Service and Victoria Legal Aid, First Peoples' Health and Wellbeing, Law in Order, Connected Minds, David Callow Photography, Greg Ford, Mark Thomson, Gathermore Floral Events, Kapish, Expressions Australia, Grindstone, Marden and Bentley Dean, Julie Buxton, Adams Print, Lauren Hodes, Professor Julie Andrews, Associate Professor Katherine Ellinghaus, Amanda Lourie, Jennifer Wolcott, Keren Murray, Ngaree Blow, Redgum Legal and Consulting, Philip Marshall and Christine Ratnasingham.

Yoorrook's logo and other design elements were created by artist Dixon Patten. Dixon is a Gonnai, Gunditjmara and Yorta Yorta man who has bloodlines from Dhudhuroa/Jaithmathang, Djab Wurrung, Monaro, Wemba Wemba, Barapa Barapa, Wadi Wadi, Yuin and Wiradjuri. His website is: [bayila.com.au](http://bayila.com.au) The artwork used to represent Yoorrook's methodological framework was designed by proud Gurang and Ngarigo artist Anjee-Lee Bamblett.



# Chairperson’s foreword

First Peoples lived across ancient and diverse landscapes, with connections to land and waters — from wooded highlands and volcanic plains to coastal inlets and sweeping river systems. Every nation was intricately bound to Country through lore, language, culture and custom. This is the heart of First Peoples’ identity.

For over 60,000 years, our ancestors built complex cultures, technologies and languages, through droughts and rising seas in this place now known as Victoria. Colonisation devastated our First Peoples’ world and cultures.

Our lands were taken, and with them, something deeper: the essence of culture, and the ability to continue traditional practices and maintain identity. Death, violence, disease, dispossession and government control changed the landscape.

The Yoorrook Justice Commission’s focus for this third and final interim report, *Yoorrook for Transformation*, is how to right this enduring wrong. Across 39 chapters and five volumes, *Yoorrook for Transformation* delivers clear and practical recommendations for reform across Land, Education, Health, Housing, Economic and Political Life, and Access to Records. These are not abstract proposals but are based on lived truths and designed to be acted on.

To begin its public hearings, Yoorrook returned to Portland on Gunditjmara Country where colonisation began in this state. It was there, in 1834, that the first permanent European settlement was illegally established in Victoria. What followed was massacres, disease, sexual violence, child removal, cultural erasure and linguicide — which amounted to the near destruction of First Peoples across the state.

During hearings, Yoorrook heard painful truths — and honest admissions. Ministers and public servants acknowledged they had not been taught the full and true history of Victoria in school. In fact, many had never heard it at all.

Throughout Yoorrook’s lifetime, Commissioners received at least 16 formal apologies from government ministers and state representatives for the harms committed by the State. These apologies alone are not enough.

*Yoorrook for Transformation* sets out some recommendations to be advanced through the treaty process and others through urgent actions and reforms that should begin now. These recommendations take the voices, lived experience and evidence of First Peoples into the places where decisions are made and where change must happen.

This report builds on the resistance and foundation laid by generations of First Peoples advocates and Elders. A major reform has been the establishment of the First Peoples’ Assembly of Victoria and the Treaty Authority. These historic milestones have made Victoria a leader in the journey towards truth and justice.

Real transformation must come from First Peoples’ leading the solutions and the decisions that affect our lives. Treaty and self-determination are essential for this. Treaty is how we protect our progress now and into the future; it’s how we ensure that what has been built cannot be undone by politics or time. Self-determination is crucial for making decisions impacting First Peoples’ lives.

Finally, to all of you who courageously shared stories with Yoorrook: thank you, it could not have been done without you. You have changed history. Your truths have become part of a permanent record that will shape Victoria’s future. I thank you.

I also extend my deepest gratitude to the Yoorrook staff, past and present, Solicitors Assisting, and Counsel Assisting who have helped bring critical evidence and the dark past to the light.

To my fellow Commissioners — Sue-Anne Hunter, Travis Lovett, Maggie Walter, Tony North, and former Commissioners Uncle Wayne Atkinson and Kevin Bell — thank you for your dedication and contribution.

As Yoorrook draws to a close, there is hope about the future. Yoorrook has paved the way for the Victorian Government to implement important and long overdue reforms to systems it has acknowledged are broken. We are standing at the edge of genuine, lasting change.

The Victorian Government must take the opportunity and the responsibility to enable a better future for First Peoples, and for all Victorians. We share this place. Its future belongs to all of us. Together, through truth, justice and transformation, we can build a new relationship based on shared understanding, strength and bound by respect.

To Premier Allan and the Victorian Government, I urge you all to implement the *Yoorrook for Transformation* recommendations with courage and commitment.

**Professor Eleanor A Bourke AM**  
Chairperson, Yoorrook Justice Commission



## About this report

This is Yoorrook's third and final interim report. It considers systemic injustices in land, health, education, housing, economic and political life, and access to records. It fulfils the requirement outlined in the amended Letters Patent dated 4 April 2023 to deliver a further interim report.

### A note on content

First Peoples are advised that this report may contain photos, quotations and names of First Peoples who are deceased.

This report discusses sensitive topics that some readers may find distressing. These include violence, massacres, systemic injustices against First Peoples encompassing assimilation and protectionist policies, forced child removal, abuse within institutions, deaths in custody and healthcare settings, devastation of Country, desecration of cultural heritage and theft of Ancestor remains. The report also contains references to self-harm and suicide.

Some chapters contain graphic descriptions and strong language. The report occasionally draws on historical sources that use antiquated racist language to refer to First Peoples and racist depictions of First Peoples.

Yoorrook urges you to consider how and when you read this report and what supports you might need.

If you are upset or affected by any content in this report or if you or a loved one need support, help is available from the following services:

- in an emergency, call 000
- for healthcare support, contact First Peoples' Health and Wellbeing on 9070 8181 [info@fphw.org.au](mailto:info@fphw.org.au) [www.firstpeopleshealthandwellbeing.org.au](http://www.firstpeopleshealthandwellbeing.org.au)
- contact 13YARN (13 92 76) [www.13yarn.org.au](http://www.13yarn.org.au) for crisis support for mob who are feeling overwhelmed or having difficulty coping
- contact Yarning SafeNStrong to have a yarn about your wellbeing on 1800 959 563 [ysns@vahs.org.au](mailto:ysns@vahs.org.au) [www.vahs.org.au/yarning-safenstrong/](http://www.vahs.org.au/yarning-safenstrong/)
- call Lifeline on 13 11 14 for 24/7 free and confidential crisis support
- call Beyond Blue 1300 22 4636 for 24/7 support for anxiety, depression and suicide prevention.

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# Structure of this report

This report comprises five volumes and 11 parts:

**Part A**, the introduction (this section), includes the Letter of Transmission, acknowledgements, Chairperson’s foreword, and a brief introduction to the report’s terminology and methodology.

**Part B** includes an executive summary and a list of recommendations.

**Part C** provides an overview of five critical themes raised by First Peoples throughout Yoorrook’s inquiry. These are ‘the past is the present’, ‘sovereignty’, ‘self-determination’, ‘rights’ and ‘accountability’. It examines the historical foundations of systemic injustices experienced by First Peoples in Victoria and how current injustices, including systemic racism, are not just historical, but persist today with critical impacts on First Peoples, their families and communities. Part C concludes by examining consistent themes that span all areas of this inquiry including First Peoples’ sovereignty, self-determination, rights and accountability. Whole of government recommendations are made to address these issues.

**Part D** examines critical issues in relation to land injustice. It begins with an overview of the centrality of Country and some of the key policies, laws and rights that are engaged by the land rights and recognition system. It then outlines how colonisers stole Country and the ongoing impact of Country being stolen. It also provides an overview of recognition systems and then investigates the three main systems in Victoria recognising First Peoples’ land and cultural heritage rights — the *Native Title Act 1993* (Cth), *Traditional Owner Settlement Act 2010* (Vic) and *Aboriginal Heritage Act 2006* (Vic) — and approaches to joint management. Part D concludes by examining ‘resources’ (water, earth, sea and living things), climate change, renewables and emergencies. Findings on critical issues and recommendations for urgent action are made in each chapter.

**Part E** examines critical issues in the Victorian schooling system and tertiary sector. It begins with an overview of key policies, laws and rights engaged by the schooling system and the historical context of the schooling system. It then examines key issues in the Victorian schooling system in relation to racism and cultural safety, school curriculum, workforce and accountability. The chapters on the tertiary sector begin with an overview of the key policies, laws and rights, and historical context in the tertiary education sector. They then examine critical issues in relation to First Peoples students, staff and leadership in tertiary institutions, including racism and lack of cultural safety, followed by curriculum and teaching methods for key professions. Findings on critical issues and recommendations for urgent action are made in each chapter.

**Part F** adopts a similar approach to examining the Victorian healthcare system. It begins with an overview of the key policies, laws and rights engaged by the healthcare system and then outlines the historical context and the ongoing harm to First Peoples’ health and wellbeing caused by colonisation. Following an examination of health inequities, key issues are considered: mental health, family violence and health in the criminal justice system. Part F concludes by highlighting the critical role and benefits of First Peoples-led health services. Key systemic injustices are identified and recommendations for urgent action put forward.

**Part G** outlines critical issues in housing outcomes for First Peoples. It begins with an overview of relevant government policy frameworks in Victoria, systemic barriers to housing security, and concludes with action needed to achieve a self-determined housing system. Recommendations for urgent reform are made in each chapter.

**Part H** examines critical issues in achieving economic prosperity for First Peoples in Victoria, including in employment, First Peoples’ businesses and board representation. It then investigates political life and First Peoples’ exclusion from government processes and institutions. It looks at the long history of First Peoples’ resistance and engagement with political systems to advocate for their rights and effect change. Recommendations for reform are made at the end of each chapter.

**Part I** considers First Peoples’ access to records. It examines the barriers for First Peoples to access, own and control records created and held by a range of government, non-government and private entities, and how this continues to impede First Peoples’ data sovereignty rights and self-determination. Recommendations for urgent action are made.

**Part J** outlines how redress for the range of injustices, rights violations and other harms First Peoples in Victoria have experienced and continue to experience should be approached by the Victorian Government. Recommendations for forms of redress are made at the end of the chapter.

**Part K** contains appendices to the report, including a list of witnesses, glossary and further policy background information relating to each main area of inquiry.

## Terminology

Yoorrook uses the term First Peoples to include all Traditional Owners of a place in the state of Victoria including family and clan groups and their ancestors, as well as Aboriginal and/or Torres Strait Islander persons who are living or have lived in Victoria before or since the start of colonisation. This definition is provided in Yoorrook’s Letters Patent. Where appropriate, Yoorrook may also use other terms such as Traditional Custodians, Aboriginal people, First Nations, Indigenous or Koori to describe First Peoples, especially where they have identified themselves in this way.

When citing submissions, consultations, evidence, research or data Yoorrook adopts the terminology used in the original document; this includes using terms such as Aboriginal, Aboriginal and Torres Strait Islander, First Nations, Indigenous, Koori and Koorie.

When referring to certain words, the Commission adopts the terminology used in the original document/submission.

Wherever possible, Yoorrook uses First Peoples’ words and ways of speaking.

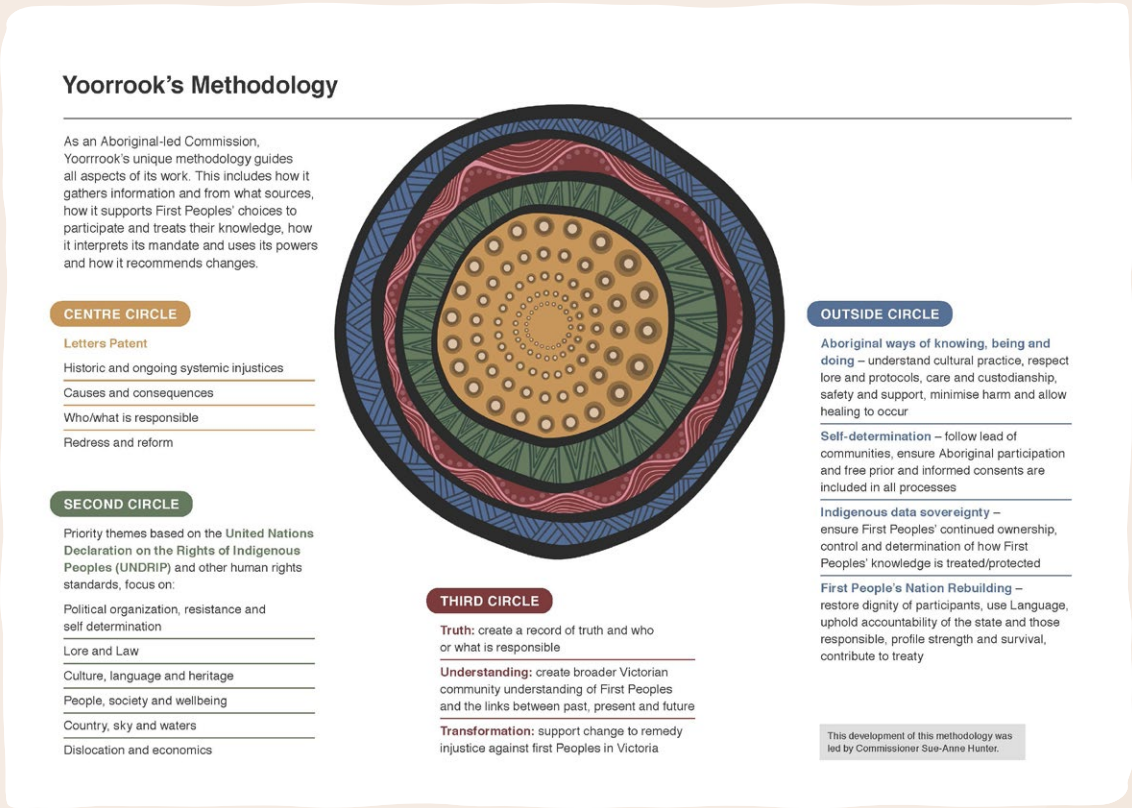
# How Yoorrook approached this inquiry

Consistent with the methodological framework described in *Yoorrook with Purpose*,<sup>1</sup> 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 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.

For a more detailed description of Yoorrook’s methodological framework see *Yoorrook with Purpose* pages 6 to 9.

**Figure i:** Yoorrook’s methodological framework. Artwork by Anjee-Lee Bamblett.



## 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 employed the social and emotional wellbeing (SEWB) support model.<sup>2</sup> The SEWB model 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. In total, 81 individuals who provided evidence were supported by the SEWB team.

## Yoorrook’s community engagement

Since it commenced, Yoorrook has received over 1300 submissions and engaged with over 9000 First Peoples across Victoria.

Yoorrook drew on the existing engagement conducted for *Yoorrook for Justice*<sup>3</sup> and conducted new engagements. In total, Yoorrook held more than 400 events including information sessions, speaking engagements, Elder yarns and roundtable discussions with Traditional Owner groups and Aboriginal Community Controlled Organisations (ACCOs).

Yoorrook harnessed traditional and digital media coverage to ensure the widest possible audience heard the stories and evidence brought before the Commission. 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 April 2022 and May 2025, Yoorrook was mentioned in at least 21,347 media stories across print, online, television and radio, with a potential audience reach of 115,924,642 (excluding online).

## Evidence gathering

### Key informant briefings

Commissioners held key informant briefings and closed roundtables with experts, academics and ACCOs on the topics of land injustice, health, housing, education, economic prosperity, political life and access to records. Yoorrook also received background briefings and associated documents from the State. These briefings were instrumental in refining the focus of Yoorrook’s inquiry and resulted in the seven issues papers released for this inquiry.

### Submissions

In response to the issues papers released for this inquiry, Yoorrook received over 100 submissions from academics and organisations.

Since commencement Yoorrook received over 1300 submissions from individuals, families, councils, universities, academics, First Peoples-led organisations and mainstream organisations. Over 1000 of these submissions are publicly available on Yoorrook’s website. Over 300 additional submissions were received but were not published but informed the direction of Yoorrook’s work.



Roundtables and site visits

Commissioners and Yoorrook staff attended 37 roundtables and site visits to hear from First Peoples about systemic injustice issues in relation to land, education, health, housing, economic and political life, and access to records. Yoorrook heard about the systemic issues impacting First Peoples and success stories and programs making a positive difference in the lives of First Peoples in these critical areas.

Yoorrook deeply thanks all participants for their time, courage and truth-sharing.

Table i.1: Site visits and roundtables, October 2023 to May 2024.

Organisation/group/topic	Location	Date
On-Country site visits and roundtables		
Barengi Gadjin Land Council	Horsham	26 October 2023
Bunurong Land Council	Frankston, Melbourne	2 November 2023
Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation	Thornbury, Melbourne	10 November 2023
Nindi-Ngujarn Ngarigo Monero	Marlo	13 November 2023
Boonwurrung Land and Sea Council	St Kilda, Melbourne	23 November 2023
Dja Dja Wurrung Clans Aboriginal Corporation	Bendigo	25 November 2023
Gunaikurnai Land and Waters Aboriginal Corporation	Cape Conran	30 November 2023
Wollithiga Clan Aboriginal Corporation	Echuca	5 December 2023
First People of Millewa Mallee Aboriginal Corporation	Mildura	5 December 2023
Tati Tai Kaiejn Aboriginal Corporation	Euston	6 December 2023
Nimmie Caira Land & Water Aboriginal Corporation	Robinvale	7 December 2023
Bangerang Aboriginal Corporation	Shepparton	7 December 2023
Wamba Wemba Aboriginal Corporation (site visit only)	Swan Hill	9 December 2023
Wadawurrung Traditional Owners Aboriginal Corporation	Charlemont, Geelong	14 December 2023
Gunditj Mirring Traditional Owners Aboriginal Corporation	Portland	19 January 2024

Organisation/group/topic	Location	Date
Health, education, housing and other site visits and roundtables		
Housing and homelessness roundtable	Collingwood, Melbourne	20 November 2023
Moolap Primary School site visit	Moolap	30 November 2023
Middle Park Primary School site visit	Middle Park, Melbourne	4 December 2023
Bubup Wilam site visit	Thomastown, Melbourne	6 December 2023
Reservoir East Primary School site visit	Reservoir, Melbourne	8 December 2023
Kurnai College site visit	Morwell	11 December 2023
Experts on Access to Records roundtable	Collingwood, Melbourne	13 December 2023
Rumbalara Aboriginal Cooperative Elders Facility site visit	Shepparton	31 January 2024
Yorta Yorta Aboriginal Corporation site visit	Shepparton	1 February 2024
Western District ACCO Collective roundtable	Geelong	6 February 2024
Ngwala Willumbong site visit	St Kilda, Melbourne	9 February 2024
Aboriginal Community Elders Service site visit	Brunswick East, Melbourne	19 February 2024
Koorie Heritage Trust roundtable	Melbourne	20 February 2024
Loddon Mallee Aboriginal Reference Group roundtable	Online	8 March 2024
Aboriginal Health Liaison Officers roundtable	Collingwood, Melbourne	13 March 2024
Western Health Galinjera Maternity Program site visit	St Albans, Melbourne	15 March 2024
Mercy Hospital Nangnak Baban Murrup Maternity Group Practice site visit	Heidelberg, Melbourne	15 March 2024
Bunjilwarra Koori Youth Alcohol and Drug Healing Service site visit	Hastings	5 April 2024
Koorie Youth Council roundtable	Collingwood, Melbourne	8 April 2024
PROV site visit	North Melbourne, Melbourne	14 May 2024
Births, Deaths and Marriages site visit	Melbourne CBD	21 May 2024
St Vincents' Hospital site visit	Fitzroy, Melbourne	23 May 2024



### Hearings

Public hearings were held at Yoorrook’s office on Wurundjeri Country in Collingwood and at Coranderrk reserve. Hearings were also held on Gunditjmara Country in Portland and on Tati Tati Country in Robinvale. Hearings were scheduled in blocks and were sequenced to build public understanding of systemic issues.

Hearing block six on land injustice had 13 hearing days from March 2024 to April 2024 and involved a total of 68 witnesses (there were 67 unique witnesses — some individuals appeared more than once in the same hearing block). Hearing block seven on social injustice had 13 hearing days from May 2024 to June 2024 and involved 73 witnesses (68 unique witnesses). A final hearing day known as descendants’ day heard from three witnesses in one day. Recordings of these hearings were livestreamed from the main hearing room and released on Yoorrook’s website.

In total across hearing blocks six to eight, there were over 134 people who gave evidence across 27 hearing days. A full witness list is available in Part K, Appendix A. Yoorrook thanks all witnesses for sharing their truths, insights, expertise and generosity.

### Evidence production and analysis

Yoorrook built on the existing body of knowledge and the vast experience of First Peoples who have been affected by injustices and who have pushed for reform over many years.

Yoorrook drew on external literature including various conceptual frameworks and models to inform its analysis (e.g. settler-colonial theories, SEWB models, social determinants of health, ACCO models of service delivery and rights-based models). Yoorrook also examined evidence of previous major inquiries and actions taken since those inquiries to inform its findings and recommendations.

### Notices to Produce

Yoorrook also issued 143 Notices to Produce (NTPs) and Requests for Information (RFIs) to State and non-State entities to access documentation and data that may not otherwise be available to the public. In response, Yoorrook received at least 10,000 documents through the NTP process.

### Data analysis

Yoorrook staff reviewed and coded all evidence received by Yoorrook (including submissions, hearings evidence, roundtables, site visits, NTPs and RFIs) and thematically analysed this data to identify key themes. These key themes were iteratively refined over time as new evidence was received, and through lines of inquiry which were tested in hearings and other evidence. This analysis also identified key areas for improvement, which informed the final recommendations.

Throughout this report, Yoorrook has identified significant gaps in State data collection and public reporting practices. Much of the statistical information used in this report, especially current Victorian figures, was provided by the State at the request of Yoorrook. These data were analysed and presented throughout the report both in text and infographics. Yoorrook also drew on publicly available statistical data. Wherever possible, Yoorrook used Victoria-specific data. However, national data was used to supplement some state data gaps. A summary of key data for each substantive area of inquiry is presented at the beginning of the chapter as a key facts page and in the summary report.



## Endnotes

1. Yoorrook Justice Commission, *Yoorrook with Purpose* (Interim Report, June 2022) 6–10.
2. See Yoorrook Justice Commission, *Yoorrook with Purpose* (Interim Report, June 2022) 10–11.
3. Yoorrook Justice Commission, [Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems](#) (Report, 31 August 2023).



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Part B

**Executive  
summary and  
recommendations**



# Executive summary



# Introduction

The Yoorrook Justice Commission was established in 2021 to examine the extent and impact of historical and ongoing systemic injustice against First Peoples in Victoria since the start of colonisation, and to recommend appropriate forms of redress. Yoorrook is the first formal truth-telling process in Australia. It was established as a Royal Commission under the *Inquiries Act 2014* (Vic). Yoorrook is independent of government and is designed and led by First Peoples.

In 2024, Yoorrook held inquiries into land and social injustice issues impacting First Peoples. During these inquiries, Yoorrook received extensive evidence about historical and ongoing injustices, rights violations and other harms against First Peoples in relation to lands and waters, health, housing, education, economic prosperity, political life and access to records. Yoorrook heard that injustices towards First Peoples are not just a thing of the past, but continue to operate as an ongoing, everyday reality.

Systemic racism, as well as individual racist attitudes, lie at the heart of these injustices. Systemic racism refers to laws, policies or practices that may, on their face appear neutral, but which in practice unfairly disadvantage certain racial groups and advantage others. Yoorrook heard that throughout Victoria’s history people in power have used false ideas about race to justify taking First Peoples’ land, to exclude First Peoples from access to health services, education and other economic opportunities, and to maintain systems, policies and practices that unfairly disadvantage First Peoples. Yoorrook received evidence about the ongoing presence of racism towards First Peoples across all societal institutions.

In the face of these injustices, First Peoples continue to resist State-inflicted inequality, institutional discrimination and dispossession that negatively impacts their lives and wellbeing. Yoorrook received evidence from First Peoples self-determining their own priorities and actions, revitalising culture and languages, driving health, wellbeing and education initiatives, building Indigenous economies, and creating the structural and governance changes necessary to forge their own futures.

Yoorrook’s Letters Patent require it to investigate and report on historical and ongoing systemic injustice perpetrated by State and non-State entities against First Peoples since the start of colonisation. This report meets Yoorrook’s obligations in relation to the following terms of reference: land and waters, cultural violations, dispossession, killing and genocide, unfair labour practices, health and healthcare, invasion of privacy, information and data, economic and political life, and other systemic social injustices including education and housing.

# How Yoorrook conducted these inquiries

Yoorrook published issues papers inviting submissions on land injustice, housing and homelessness, health, education and economic prosperity. Yoorrook heard directly from First Peoples and First Peoples-led community organisations. It also received submissions, oral testimony and other evidence from academics, historians, researchers, elected government representatives including the Premier, Deputy Premier, Attorney-General and other Ministers, senior public servants from the Victorian Government and its agencies, church groups, universities and other interested Victorians. Evidence included:

- **submissions:** across the whole Commission, Yoorrook received more than [1300 submissions](#) from individuals, families, councils, universities, academics, Aboriginal-led organisations and others.
- **hearings:** hearings relating to land injustice, housing and homelessness, health, education and economic prosperity were held over [27 public hearing days](#) with more than 134 people giving evidence across these hearings. Hearings were held on Wurundjeri Country in Collingwood and at Coranderrk reserve, as well as on Gunditjmara Country in Portland and Tati Tati Country in Robinvale.
- **roundtables and visits:** 37 roundtables and site visits held across the state explored the topics of land injustice, housing and homelessness, health, education and economic prosperity and access to records.
- **documents:** across the whole Commission, at least 10,000 documents were received in response to the Yoorrook’s Notices to Produce and Requests for Information from State and non-State entities.

Yoorrook is grateful to all the people and organisations who gave their time and expertise to these inquiries.

## Part C – Critical themes

Part C of this report, ‘critical themes’, provides an overview of five key themes raised by First Peoples throughout Yoorrook’s inquiries. These are ‘the past is the present’, ‘sovereignty’, ‘self-determination’, ‘rights’ and ‘accountability’. These themes provide a framework to examine the causes and consequences of systemic injustice against First Peoples, as well as a way forward for Victorians to effectively acknowledge and address them.

### The past is the present

First Peoples’ lives are profoundly shaped by the enduring impact of colonial invasion and contemporary policies that continue to exclude and harm First Peoples. Yoorrook heard how successive Victorian Governments have enacted laws, adopted policies and engaged in practices that rob First Peoples of access to lands and waters and deny equitable access to social services and resources. Yoorrook heard that this legacy lives on in inequitable health and wellbeing outcomes, home ownership, employment, education outcomes and economic prosperity for First Peoples today. Premier Jacinta Allan MP referred to this as an ‘unbroken line’ between past atrocities and government actions, and First Peoples’ contemporary experiences.<sup>1</sup>

### Sovereignty

Throughout Yoorrook’s hearings the State acknowledged that First Peoples’ ‘sovereignty was never ceded’.<sup>2</sup> For First Peoples, this statement means that First Peoples were the sovereigns of the lands now known as Victoria before the British invaded and the State’s sovereignty over these lands has not been lawfully acquired. Calls for the recognition of First Peoples’ sovereignty are tied to Country and are a demand for real outcomes, not only symbolic platitudes. Yoorrook heard that in Victoria treaty-making is imperative to reconcile contested sovereignties.

### Self-determination

Self-determination is critical to ending systemic injustice. Self-determination means transferring decision-making power, authority, control and resources to First Peoples on nation-based, collective, regional and statewide levels so that First Peoples can make decisions about the things that affect them. This includes decisions about systems design, revenue raising, resource allocation, and powers and composition of bodies and institutions, including accountability and oversight bodies, so that these are First Peoples-led. The *United Nations Declaration on the Rights of Indigenous Peoples* (‘*UNDRIP*’) outlines the four dimensions of self-determination: economic, political, social and cultural self-determination. These four components of self-determination provide the framework for Yoorrook’s analysis and recommendations. In practice, First Peoples are already engaging in self-determination, including through nation rebuilding initiatives, but this requires more support. Yoorrook heard that the Victorian Government has so far failed to properly deliver on its stated commitment to enabling self-determination.

### Rights

First Peoples’ rights encompass a wide range of legal, political, cultural, social, economic, land and resource rights that recognise First Peoples’ unique status and address historical and ongoing injustices. These rights are inherent and grounded in First Peoples’ ongoing sovereignty. They are set out in international instruments and national and state laws and policies, including the treaty process. *UNDRIP* is central to the international framework. It recognises First Peoples’ ‘inherent rights’, including self-determination, and provides the universal minimum standard for assessing state laws, policies, regulations and agreements that affect First Peoples. While the Victorian Government claims to adopt *UNDRIP* standards and use it as a benchmark, it has not incorporated *UNDRIP* into state laws, audited its systems for compliance or negotiated an action plan with First Peoples for implementation. Guided by First Peoples, Victoria must align state law, policy and agreements with *UNDRIP* as a foundation for meaningful change, accountability and self-determined systems.

### Accountability

The Victorian Government’s lack of accountability in relation to First Peoples’ affairs is a theme that cuts across every area of Yoorrook’s inquiry. Yoorrook heard extensive evidence about the State’s failure to implement and adequately fund its policies and fulfil its promises to First Peoples. The Victorian Government provided Yoorrook with a list of over 70 First Peoples-related policies, strategies, frameworks and programs currently in effect. Yoorrook heard evidence that the Victorian Government has failed to adequately fund and deliver the stated outcomes of many of these policies and frameworks. This pattern of unfulfilled promises, lack of transparency and chronic underfunding perpetuates inequity and undermines trust between First Peoples and the government. Yoorrook heard that establishing a First Peoples-led accountability mechanism to hold government to account is essential to create change and engender trust and confidence in government systems and processes.



Part D – Land injustice

Yoorrook gathered an unprecedented body of evidence about injustices, rights violations and other harms experienced by First Peoples in relation to land and waters. Yoorrook’s hearings in this inquiry began on Gunditjmara Country near Portland. Throughout this inquiry Yoorrook heard how First Peoples have been caring for Country for thousands of generations. The centrality of Country to First Peoples is outlined in Chapter 6: Country. The relationship between First Peoples and Country ‘is characterised by a deep sense of respect, responsibility and reciprocity’.<sup>3</sup> Connection to Country is the foundation of First Peoples’ identity, culture and wellbeing. It links First Peoples to their knowledges, lores and languages.

Yoorrook heard that colonisers came to the state now known as Victoria in search of land and wealth. British colonisers invaded Gunditjmara Country in 1834 and Kulin Country in 1835. The incursions were illegal under colonial laws at the time. Colonisers used violence and supported oppressive laws and practices to steal Country and generate wealth at the expense of First Peoples. As of 11 March 2025, the Colonial Frontier Massacre project had evidence of 50 reported massacres in Victoria between 1831 and 1854, in which at least 978 First Nations people were killed.<sup>4</sup> At least a further 258 First Nations people were killed in massacres in locations on or close to the present Victorian border.<sup>5</sup> Yoorrook heard that these actions were enabled and justified by racist ideology with the explicit and complicit support of politicians, colonial authorities and the State. These actions are examined in Chapter 7: How colonisers stole Country.

Evidence about the impact of these actions is set out in Chapter 8: Impacts of Country being stolen. Colonisers forced First Peoples off their Country and onto reserves and missions where they controlled First Peoples’ lives, separated children from their families and suppressed cultural practices, spirituality and language. Colonisers and their descendants cleared the land to make way for farming, mining and development. In doing so, they damaged the land and waters and destroyed cultural heritage and other sacred sites. Non-Aboriginal farming practices, the prevention of firestick farming and the neglect of ecosystems and waterways increased environmental degradation and the risk of bushfires and floods. Yoorrook heard that some waterways have been mismanaged to the point of ecological collapse. While First Peoples have been locked out of building intergenerational wealth including from lands, waters and resources, Yoorrook heard how the State, churches and private landowners all profited and continue to profit from the atrocities of dispossession.

From 1834, mass killings, disease, sexual violence, exclusion, linguicide, cultural erasure, environmental degradation, child removal, absorption and assimilation combined to bring about the near-complete physical destruction of First Peoples in Victoria. Yoorrook found that the decimation of the First Peoples population in Victoria between 1 per cent and 5 per cent of the pre-colonisation population by 1901 was the result of ‘a coordinated plan of different actions aimed at the destruction of the essential foundations of the life of national groups’.<sup>6</sup> This was genocide.

Following decades of First Peoples’ sustained activism and advocacy for the return of land and the protection of culture, Victoria and the Commonwealth established systems to recognise First Peoples’ land and cultural heritage rights. However, Yoorrook heard that these systems are not fit for purpose, not aligned and do not go far enough to realise First Peoples’ inherent rights to Country. Chapter 9: How we got here — overview of recognition systems examines the three main systems in Victoria recognising First Peoples’ land and cultural heritage rights:

- *Native Title Act 1993* (Cth) (‘NTA’)
- *Traditional Owner Settlement Act 2010* (Vic) (‘TOSA’)
- *Aboriginal Heritage Act 2006* (Vic) (‘AHA’).

Chapter 10: Native title, Chapter 11: Traditional Owner settlements, and Chapter 12: Cultural heritage examine *NTA*, *TOSA* and *AHA* – how these laws work, their alignment with First Peoples’ rights and their capacity to deliver justice, recognition and self-determination.

In Victoria, ‘joint’ management of land between Traditional Owners and other entities emerged in the early 2000s. These land management arrangements were developed as a response to the complexities of establishing native title and the injustices arising from unsuccessful claims. Joint management is a step towards recognising First Peoples’ rights and authority to care for Country. However, as examined in Chapter 13: Joint management, it does not achieve land justice. Aboriginal title has strict conditions maintaining existing use and access rights. Yoorrook heard that First Peoples face challenges in engaging as partners due to conflicting understandings, insufficient resources and government failures to fulfil commitments. Yoorrook heard that to achieve land justice, the Victorian Government must support First Peoples to move from joint management to sole management of land, aligning with self-determination principles.

Water is a vital, living part of Country. When colonisers and the State stole First Peoples’ land, they took First Peoples’ water and deprived First Peoples of their rights to access, use and manage water resources. This dispossession continues. Based on the fiction of *aqua nullius*,<sup>7</sup> the State has created a market-based system of water entitlements that excludes First Peoples from realising water rights, from water ownership and from the sizeable economic benefits which have flowed from the sale of water to third parties.<sup>8</sup> Chapter 14: Water outlines the State’s historical and ongoing denial of First Peoples’ water rights and the reforms required to enable Traditional Owners to meaningfully engage in water management.

Since colonisation, the State has asserted ownership over First Peoples’ natural resources and collected billions of dollars in revenue from their exploitation and use. The theft and the commodification of First Peoples’ resources is examined in Chapter 15: Earth, sea and living things. Yoorrook heard how Victoria’s economy has relied on natural resources, from the gold rush to energy to irrigated agriculture. While First Peoples have been excluded from the resources sector and its benefits, numerous private entities have and continue to profit from the use of resources, including fish, game, minerals, coal and gas. There are significant opportunities to realise First Peoples’ rights and aspirations in the resources sector and in the management and healing of public land. Treaties, both statewide and with Traditional Owner groups, provide a vehicle for realising these goals. Other emerging and new markets based on First Peoples’ natural resources should be developed and regulated in a way that fully recognises Traditional Owner sovereignty, values and intellectual property, and shares economic benefits.

First Peoples’ capacity to fulfil their responsibilities to Country is challenged by climate change. Country faces increasing risks from chronic climate changes leading to heat stress, prolonged drought, rising sea levels and acute events including riverine and coastal flooding, bushfires and increasingly severe storms. These events damage Country and have significant short and long-term effects on First Peoples communities.<sup>9</sup> Meeting these challenges requires coordinated global action to mitigate climate change through emissions reduction and local action to adapt to climate change and respond to emergencies. It is essential that First Peoples are resourced to be involved in a coordinated and self-determined way in efforts to mitigate and adapt to climate change and to protect and heal Country. Chapter 16: Climate change, renewables and emergencies, sets out the evidence about climate change-related challenges and opportunities for First Peoples in Victoria.



Part E – Education

Education is the cornerstone of a just and thriving society and is often a focus of efforts to improve First Peoples’ health, safety and wellbeing. Yoorrook received evidence about First Peoples’ experiences in the Victorian schooling and tertiary education systems. The evidence shows a stark disparity in educational opportunities and outcomes between First Peoples and their non-Indigenous counterparts.

Schooling

The Victorian schooling system is failing First Peoples’ children and young people. As described in Chapter 17: Schooling overview, despite a host of rights, laws, major policies and oversight mechanisms applicable to First Peoples’ education in Victoria, Yoorrook saw systemic injustice in educational attainment, the appropriateness of the curriculum and cultural safety for First Peoples students, education staff and their families. Victoria’s overarching education legislation, the *Education and Training Reform Act 2006* (Vic), needs to be strengthened to enable a more inclusive and culturally safe education system and to ensure First Peoples’ cultural rights are taken seriously across all schools and early childhood services.

Educational inequalities have been a feature of First Peoples’ lives since the start of colonisation. Yoorrook received historical evidence about the State systematically imposing substandard and limited education on First Peoples through oppressive laws, missions and reserves, and the near total control over First Peoples’ lives by the Board for the Protection of Aborigines. Chapter 18: Historical context — the past is the present explains that when education was provided it often limited First Peoples’ aspirations. It was also a systemic tool of attempted assimilation. As the Deputy Premier and Minister for Education the Hon Ben Carroll MP acknowledged, First Peoples’ experiences of schooling in Victoria have been shaped by low expectations of their abilities, racist curriculum, segregation, child removal and exclusion.<sup>10</sup> This pattern of educational inequity continues to the present day.

Yoorrook heard evidence that First Peoples students face structural impediments not experienced by others, with racism and lack of cultural safety undermining their educational success. Chapter 19: Racism and cultural safety documents the continued problem of racism and lack of cultural safety in the Victorian schooling system and provides recommendations to address it.

Schooling Chapter 20: Curriculum examines the Victorian school curriculum and the need for strengths-based and trauma-informed teaching practice. Yoorrook heard that the Victorian school curriculum does not tell the full story of Victoria’s history, and many educators remain ill-equipped to teach compulsory curriculum to the required standard. Teaching is also not systematically linked to learning outcomes or assessed rigorously and informed by ongoing professional development. The evidence demonstrates the urgent need for transformative change in Victoria’s school curriculum and teaching approaches related to First Peoples. Curriculum reform has the potential to challenge racist narratives, promote cultural safety and help create a richer and more inclusive learning environment for all students.

First Peoples’ school experiences in Victoria are also negatively impacted by the critical under-representation of First Peoples educators, leaders and public servants in the education system. This under-representation compromises schools’ cultural capability, to the detriment of all students. Chapter 21: Workforce examines the issues driving under-representation and lack of cultural safety for First Peoples in the workforce, including the prevalence of racism and inadequate support, as well as the need for improved pathways for First Peoples students pursuing teaching qualifications and leadership opportunities.

Chapter 22: Accountability and self-determination examines the 25-year-long failure of First Peoples education strategies to achieve their stated objectives — from the *Yalca Education and Training Partnership* (Yalca) in 2001 to the *Marrung Aboriginal Education Plan 2016–2026*.<sup>11</sup> Yoorrook heard that an underlying cause of these failures to achieve outcomes is because of a lack of accountability for results. Accountability goes beyond mere compliance with policies and procedures. It requires a deep-seated commitment to ensuring that the educational experiences of First Peoples students are positive, empowering, culturally safe and reflective of First Peoples’ culture, history and perspectives. This cannot be achieved through more and more policies and strategies that have either meaningless targets or no effective means to enforce them. Nor can it be achieved through mere partnerships or consultation.

Tertiary education

First Peoples in Victoria have been engaging in the higher education sector since the 1950s: studying, teaching, graduating, and creating programs and centres that support others to follow in their path. Despite this, the numbers of First Peoples participating in tertiary education are significantly lower than those of the general population.

Within the tertiary education system there are still significant barriers to First Peoples’ achievement and to Victorian universities fulfilling their obligations to First Peoples. These include historical and continuing exclusion of appropriate First Peoples content and knowledges in university curricula, lack of engagement with First Peoples communities and Traditional Owner groups, and failure to deliver appropriate training to frontline professionals to enable them to provide culturally appropriate services to First Peoples.

Chapter 23: Tertiary overview and historical context outlines the history and legacy of First Peoples’ leadership and achievements in the tertiary education sector despite systemic and ongoing injustice. This includes a history of unethical research and teaching, theft of cultural artefacts, ancestral remains and sacred objects, and the historical exclusion of First Peoples. Chapter 24: First Peoples students, workforce, and leadership examines the experiences of First Peoples students and staff in tertiary institutions, including experiences of racism, lack of cultural safety and the marginalisation of knowledge systems. Chapter 25: Curriculum and education identifies significant gaps in tertiary curriculum and teaching methods for key professions such as medicine, law and education as well as positive examples of innovation in the sector.



## Part F – Health

First Peoples in Victoria experience profound health injustice. Colonisation and colonial systems have inflicted systemic harms on First Peoples’ health and wellbeing. These harms have compounded, resulting in the now well-described ‘gap’ in health and wellbeing outcomes between First Peoples and non-First Peoples. The healthcare system has also inflicted systemic harm on First Peoples.

Chapter 26: First Peoples and the Victorian health system highlights First Peoples’ holistic concepts of health and wellbeing, the complexity of the Victorian health system and the key rights, legislation, policies and oversight mechanisms that relate to First Peoples’ health and wellbeing and access to healthcare.

Chapter 27: The past is the present documents how the process of colonisation has impacted First Peoples’ health and wellbeing. First Peoples maintained strong health and wellbeing practices prior to colonisation. When the colonisers arrived, they perpetrated profound harms against First Peoples through the disruption of traditional systems of health and wellbeing and government policies that severed connections with family, community and Country. For First Peoples, Victorian health services were places of systemic harm due to racism, segregation practices, the removal of children from their families and institutionalisation. The lingering impact of past policies combined with contemporary injustices in the health system continue to harm First Peoples’ health and wellbeing today.

Chapter 28: Health inequities outlines the systemic health inequities experienced by First Peoples today, which stem from the historical and contemporary impacts of colonisation. The chapter explores various factors that influence health and wellbeing (the determinants of health), including factors that support good health and wellbeing such as connection to culture, Country and community. Despite numerous government policies and commitments to improve health outcomes for First Peoples in Victoria, for many measures there has not been a demonstratable improvement. Reasons for this include failures by the State to adequately fund the commitments it makes, address systemic racism in healthcare, provide adequate investment in First Peoples’ health services and prevention, and support First Peoples’ self-determination in health.

The Victorian mental health system is failing to support the mental health and social and emotional wellbeing of First Peoples. Chapter 29: Mental health and social and emotional wellbeing explores the inequities experienced by First Peoples in Victoria with respect to their mental health and social and emotional wellbeing. This includes exposure to discriminatory practices, inadequate cultural safety and barriers to accessing appropriate care. Available data, though limited, indicates that mental health outcomes for First Peoples in Victoria may be worsening, not improving. While the Victorian Government has made some steps towards more culturally safe and responsive treatment and care, ongoing weaknesses in the current legislative framework and funding environment negatively impact First Peoples.

Chapter 30: Family violence examines the profound health injustices experienced by First Peoples in relation to family violence. This includes high rates of family violence and mainstream service responses that are often reactive, punitive and culturally unsafe, creating further barriers for First Peoples to seek support. These institutional failures create a healthcare environment that often compounds, rather than alleviates, the health impacts of family violence for First Peoples. Yoorrook heard that there is an urgent need for transformative change in how Victoria’s health system responds to family violence affecting First Peoples. It is imperative that the State prioritises prevention and early intervention, including measures to address the underlying drivers of family violence like housing, education and racism towards First Peoples women. There needs to be greater cultural safety in mainstream family violence services as well as more investment for First Peoples-led responses which are holistic, culturally safe and effective.

Racism is endemic across the Victorian health system. Yoorrook received a significant body of evidence outlining the extent of racism in the sector, the different forms of racism and the significant harms experienced by First Peoples as a result. Minister for Health and Minister for Health Infrastructure, the Hon Mary-Anne Thomas MP acknowledged that ‘[h]ospitals can be unsafe places for First Peoples’ in ways that other Victorians cannot ‘begin to comprehend’.<sup>12</sup> Minister Thomas recognised that First Peoples experience racism ‘as patients and staff [and] by other staff and [from] other patients’.<sup>13</sup> Chapter 31: Racism, workforce and accountability examines how racism reduces access to care, affects the quality of care delivered, and negatively impacts First Peoples’ health and wellbeing. Yoorrook also heard that despite the critical role of First Peoples in the healthcare workforce, mainstream workplaces are unsupportive and culturally unsafe, with inadequate oversight and accountability mechanisms.

Chapter 32: Health and the criminal justice system examines how systemic racism undermines healthcare delivery in the criminal justice system. This includes reactive rather than preventative approaches, inadequate assessment and identification of health needs and poor continuity of care. This manifests in punitive responses, First Peoples’ health needs being ignored, disbelieved or not identified, inadequate access to services, and lack of oversight and accountability. Despite previous calls by Yoorrook and numerous inquiries for transformative change across the criminal justice system, the Victorian Government has failed to enact the reforms required.

Chapter 33: Aboriginal community controlled healthcare highlights the strengths of Aboriginal Community Controlled Organisations (ACCOs) and the ongoing systemic injustices encountered by the sector. ACCOs offer holistic and culturally safe care that is tailored to the needs of the local community and recognises the wider social and cultural determinants of health. This model of holistic and culturally safe care is delivering better health outcomes for First Peoples. Despite the crucial role and positive impacts of ACCOs, Yoorrook heard that the sector remains severely underfunded and faces excessive reporting burdens.

## Part G – Housing

For First Peoples, appropriate housing is vital for cultural connection, actively enriching ‘spiritual wellbeing, mental health and engagement in core cultural practices’<sup>14</sup> while establishing ‘the foundation for building family and community resources and intergenerational wealth’.<sup>15</sup> First Peoples face housing insecurity, at rates far exceeding the general population. This is characterised by endemic homelessness, over-representation in social housing, discrimination in the private rental market, and significantly lower rates of home ownership than non-First Peoples. Housing Minister Harriett Shing MP described the housing crisis facing First Peoples as an ‘abject failure’ by government.<sup>16</sup> Part G – Housing outlines how the consequences of colonial dispossession continue to shape housing outcomes for First Peoples today. Chapter 34: Housing overview and historical context examines relevant government policy frameworks in Victoria, continued systemic barriers to housing security, and Chapter 35: Housing and First Peoples in Victoria outlines the action needed to achieve a self-determined, properly supported housing system.

## Part H – Economic and political life

First Peoples in Victoria have been consistently excluded from opportunities to generate wealth. Colonial systems prevented First Peoples from participating in economic life and wealth creation, including through education, employment opportunities and owning property. Current economic disparities and barriers to First Peoples’ prosperity are direct legacies of colonial practices and state-sanctioned exclusion. Chapter 36: Economic prosperity traces the impacts of colonisation on First Peoples economies. It examines current disparities and barriers to economic prosperity for First Peoples in Victoria, including in employment and support for First Peoples businesses and capital investment. Establishing a dedicated fund for First Peoples’ capital raising and investment would significantly advance economic self-determination and prosperity.

Colonial systems have long excluded First Peoples in Victoria from participating in the processes and institutions of government. This is documented in Chapter 37: Political life. Despite this exclusion, First Peoples have a long history of resistance and of directly engaging with political systems to advocate for their rights and effect change. Yoorrook acknowledges that the Victorian Government is leading the nation in its formal commitment to statewide and Traditional Owner treaties. This commitment, together with the establishment of the First Peoples’ Assembly of Victoria and the Treaty Authority, are historic. They represent a shift towards greater inclusion of First Peoples in political processes. In addition to these significant steps, permanent representation and self-governing mechanisms are needed to properly empower First Peoples to make decisions about the issues that impact them.

## Part I – Access to records

Chapter 38: Access to records is central to uncovering and retelling the story of Victoria. For many First Peoples individuals, the release of information may also be essential to their health and wellbeing.<sup>17</sup> Access to records is important in practising and revitalising First Peoples’ traditions and cultural practices.<sup>18</sup> Access to personal and family records is particularly critical in the out-of-home care context and for families the State separated, who need to piece together their personal histories and reconnect with family, culture and Country.<sup>19</sup> Despite this, there is no simplified, consistent and efficient approach to accessing and managing records for First Peoples in Victoria. Barriers to access, own and control records continue to impede First Peoples’ data sovereignty rights and self-determination. There is a need to decolonise state archives and record-keeping sites. Indigenous Data Sovereignty principles show how this might be begun.

## Part J – Call to action

### Redress

The Terms of Reference for Yoorrook require it to consider ‘redress’ as a component of the truth-telling process. ‘Redress’ refers broadly to any measure that attempts to correct or remedy rights violations and other harms, including providing compensation or restitution. The State providing redress to First Peoples is a critical component of truth-telling and of addressing historical and ongoing injustices.

Yoorrook heard that First Peoples in Victoria have experienced and continue to experience a range of injustices, rights violations and other harms, including:

- theft of land and waters, dispossession and denial of First Peoples’ property rights, resulting in cultural and economic loss
- the imposition and use of oppressive laws, policies and practices to forcibly expel First Peoples from their lands
- the incarceration of First Peoples by the State and by religious institutions on missions and reserves
- acts of genocide, massacres, wars, unlawful killings and other violence (including rape and other sexual violence)
- linguicide and the destruction and suppression of language and culture
- the forced removal of children from their families and communities
- the decimation of the First Peoples population through disease and other health issues
- the servitude of First Peoples and theft of their wages
- the theft and destruction by the State and educational institutions of cultural knowledge, artefacts, ancestral remains and sacred objects
- the exclusion of First Peoples from soldier settlement schemes, and the use of soldier settlement schemes to take First Peoples’ land
- the invasion of First Peoples’ privacy, including through the collection, possession, use and control of data and information about First Peoples
- the exclusion and disadvantaging of First Peoples in the healthcare, education and housing systems and in economic and political life.

Call to Action Chapter 39: Redress examines how redress for these actions should be approached by the Victorian Government in its negotiations with First Peoples (including as part of the treaty process).



# Yoorrook’s recommendations for change

Yoorrook makes 100 recommendations across four categories:

- transformative change through the treaty process (recommendations 1 to 5)
- urgent reforms: self-determination, rights and accountability (recommendations 6 to 13)
- urgent reforms:
  - land (recommendations 14 to 46)
  - education (recommendations 47 to 69)
  - health (recommendations 70 to 85)
  - housing (recommendations 86 to 90)
  - economic (recommendations 91 to 95)
  - political life (recommendations 96)
  - access to records (recommendations 97 to 98)
- redress (recommendations 99 to 100).

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 12-24 months. Yoorrook recognises that work to fulfil these urgent recommendations may be supplemented by consultations within the treaty process. However, treaty processes must not be used as an excuse for delay where the evidence gathered by Yoorrook demonstrates a clear case for standalone reform in the immediate short term.

Where Yoorrook makes recommendations that require oversight agencies and First Peoples 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 rights obligations, the State must adequately resource this. Lack of resources must not be used as an excuse for failing to act in a timely manner.

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

Endnotes

1. Transcript of Premier Jacinta Allan MP, 29 April 2024, 10 [9]–[17].

2. See for e.g. Witness Statement of Minister Natalie Hutchins MP, 18 April 2024, 1; Transcript of Minister Harriet Shing MP, 24 April 2024 (Part 2), 5 [22]–[23]; Transcript of Minister Harriet Shing MP, 24 June 2024, 3 [35]; Transcript of Minister Ben Carroll MP, 14 June 2024, 3 [35]–[45]; Transcript of Minister Ingrid Stitt MP, 17 June 2024, 73 [23]–[24]; Transcript of Minister Mary-Anne Thomas MP, 21 June 2024, 4 [7]–[9]; Witness Statement of Minister Steve Dimopoulos MP, 8 March 2024, 2 [8]; Transcript of Premier Jacinta Allan MP, 29 April 2024, 9 [1]–[2], 18 [15]–[45].

3. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 14.

4. These figures reflect data from the Colonial Frontier Massacre project site list, as of 11 March 2025. Yoorrook notes that the data is updated on a regular basis, which can lead to changes to the number of massacres and victims. The total number of massacres in Victoria recorded as of 11 March 2025 was 50, including one massacre where Aboriginal people were recorded as the aggressors against colonists, the ‘[Faithfull Massacre, Benalla](#)’ in 1838. There were also two recorded massacres of First Peoples by First Peoples: ‘[LaTrobe Valley](#)’ in 1840 and ‘[Tambo Crossing](#)’ in 1842.

The total number of Aboriginal people killed was 978, this includes 1 Aboriginal person who died at the ‘[Faithfull Massacre, Benalla](#)’, and 90 Aboriginal people who died at the ‘[LaTrobe Valley](#)’ 1840 and ‘[Tambo Crossing](#)’ 1842 massacres.

The total number of recorded colonists killed in massacres in Victoria was 10, including 8 killed at the ‘[Faithfull Massacre, Benalla](#)’ and 2 killed at the ‘[Apsley, Western Wimmera](#)’ massacre in 1854.

Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Site List Timeline](#)’ (Webpage, Accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/timeline.php>>.

5. These figures reflect data on the online massacre map, as of 11 March 2025. Yoorrook notes that the data is updated on a regular basis, which can lead to a change to the number of massacres and victims. There were 11 massacres that were located on the NSW/Victoria border along or very close to the Murray river, resulting in the deaths of approximately 244 Aboriginal people. There were two massacres located near to the South Australia/ Victoria border (noting this border has also changed several times since Federation), resulting in the deaths of at least 14 Aboriginal people.

Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Site List Timeline](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/timeline.php>>.

6. Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Carnegie Endowment for International Peace, 1944), 147.

7. *Water Act 1989* (Vic) s 7(1). See also University of Melbourne Law School, Submission 334, 8.

8. Transcript of Uncle Brendan Kennedy, 24 April 2024 (Part 1), 33 [11]–[14].

9. Lowitja Institute, Submission 331 (Land, Sky, Waters), 5–6, 12–13; Royal Australian College of General Practitioners, Submission 439, 6.

10. Transcript of Minister Ben Carroll MP, 14 June 2024, 5 [1]–[17].

11. Department of Education, Employment and Training (Vic), *Yalca: A Partnership in Education and Training for the New Millennium* (2001); Department of Education and Training (Vic), *Marrung: Aboriginal Education Plan 2016–2026* (July 2016).

12. Witness Statement of Minister Mary-Anne Thomas MP, 14 June 2024, 3 [15].

13. Witness Statement of Minister Mary-Anne Thomas MP, 14 June 2024, 3 [15].

14. Aboriginal Housing and Homelessness Forum, [Mana-na woorn-tyeen maar-takoort Every Aboriginal Person has a Home: The Victorian Aboriginal Housing and Homelessness Framework](#) (2020), 26.

15. Aboriginal Housing and Homelessness Forum, [Mana-na woorn-tyeen maar-takoort Every Aboriginal Person has a Home: The Victorian Aboriginal Housing and Homelessness Framework](#) (2020), 26.

16. Transcript of Minister Harriet Shing MP, 24 April 2024, 17 [15].

17. Victorian Koorie Records Taskforce, ‘*wilam naling ... knowing who you are; Improving Access to Records of the Stolen Generations* (Report, 2006), 15.

18. Karen Adams, Shannon Faulkhead, Rachel Standfield, Petah Atkinson, ‘Challenging the colonisation of birth: Koori women’s birthing knowledge and practice’ (2018) 31 *Women and Birth*, 81–88, 82.

19. Victorian Koorie Records Taskforce, *wilam naling ... knowing who you are; Improving Access to Records of the Stolen Generations* (Report, 2006), 15.



## Recommendations



# Transformative change through the treaty process

## RECOMMENDATION 1

The Victorian Government must fund the First Peoples’ Assembly of Victoria to establish an ongoing truth-telling body to continue to take First Peoples’ testimony and build the public record.

**Chapter 1: The past is the present**

## RECOMMENDATION 2

The Victorian Government must acknowledge the ongoing reality of legal and political pluralism in Victoria, engage with First Nations as nations, and provide the resources to support the transition to genuine nation-to-nation relationships.

**Chapter 2: Sovereignty**

## RECOMMENDATION 3

The Victorian Government must transfer decision-making power, authority, control and resources to First Peoples, giving full effect to self-determination in relation to their identity, information, data, traditional ecological knowledge, connection to Country, their rights to their lands, waters and resources, in the Victorian health, education and housing systems and across economic and political life. Transferring or creating decision-making power includes but is not limited to:

- a. System design and administration;
- b. Obtaining and allocating rights and interests in land, waters and natural resources;
- c. Powers of, and appointments to bodies and institutions; and
- d. Accountability and oversight functions including new First Peoples-led oversight processes or complaints pathways.

**Chapter 3: Self-determination**

## RECOMMENDATION 4

Through negotiation with the First Peoples’ Assembly of Victoria, the Victorian Government must establish independent funding streams, including through hypothecation of a portion of land, water and natural resource-related revenues, to support the Self-Determination Fund and other First Peoples-led initiatives.

**Chapter 3: Self-determination**

## RECOMMENDATION 5

The Victorian Government must provide guaranteed ongoing funding and support the establishment of independent funding streams at both Statewide and local levels to support healing Country, relationships and connection from the legacy of colonisation, including by funding:

- a. First Peoples-led organisations to deliver programs that support healing and rebuilding relationships between clans/groups to address the ongoing impacts of dispossession including where harms have occurred from participation in recognition regimes; and
- b. Healing processes, led by local First Peoples groups, to assist non-First Peoples to tell their truths and walk together with First Peoples.

**Chapter 3: Self-determination**

# Urgent reforms: Self-determination, rights and accountability

## RECOMMENDATION 6

To build respect, participation and representation of First Peoples in public life, the Victorian Government must include the First Peoples’ Assembly of Victoria and/or its Co-Chairs in high-level functions and ceremonial events of the State.

**Chapter 3: Self-determination**

## RECOMMENDATION 7

Amend the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and other relevant legislation to recognise and protect the rights to health and education as recognised under international human rights law.

**Chapter 4: Rights**

## RECOMMENDATION 8

Building on the principles recognised in the Treaty Negotiation Framework and the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic) and led by and in consultation with the First Peoples’ Assembly of Victoria, the Victorian Government must:

- a. Incorporate UNDRIP principles into Victorian legislation, including:
  - i. as part of Statewide treaty legislation;
  - ii. by establishing a process of audit of existing legislation to identify incompatibility to ensure that UNDRIP principles prevail; and
  - iii. by ensuring that any future legislative change is compatible with UNDRIP principles.
- b. Support and facilitate the adoption and implementation of UNDRIP principles by non-state entities; and



- c. To implement these steps, work with First Peoples to develop a State Action Plan on implementation of UNDRIP, ensuring that First Peoples are involved in the design, monitoring and evaluation of the implementation plan.

Chapter 4: Rights

RECOMMENDATION 9

To ensure State accountability and give effect to First Peoples’ self-determination in relation to First Peoples-related policies and programs:

- a. Building on Recommendation 4 in *Yoorrook for Justice* and through negotiation with the First Peoples’ Assembly of Victoria, the Victorian Government must support the establishment of an accountability mechanism to transfer monitoring functions and full decision-making power, authority, control and resources to First Peoples for First Peoples-related policies and programs;
- b. For all policies, strategies, frameworks and plans related to First Peoples for which the Victorian Government is responsible, the Victorian Government must develop an easily accessible online tool showing implementation stages, funding, days outstanding and date of completion, and identify the person responsible for implementation; and
- c. The Victorian Government must reduce and streamline reporting requirements for Aboriginal Community Controlled Organisations and Traditional Owner bodies for service and program delivery and managing requests and notifications, including by negotiating single funding agreements with organisations.

Chapter 5: Accountability

RECOMMENDATION 10

To support the informed participation by Traditional Owners in treaty negotiations (Statewide and local), the Victorian Government must:

- a. Facilitate access by the First Peoples’ Assembly of Victoria and relevant Traditional Owner groups to annual data concerning the revenues collected by the Victorian Government in respect of:
  - i. freehold land;
  - ii. Crown land & waterways;
  - iii. minerals and resources;
  - iv. gas and petroleum;
  - v. forestry;
  - vi. fisheries;
  - vii. renewables; and
  - viii. water (surface, groundwater).
- b. Facilitate ongoing access by the First Peoples’ Assembly of Victoria and relevant Traditional Owner groups to registers of third party interests in the matters described in paragraphs (a)(ii) – (viii) above including:
  - i. interest ID number.
  - ii. enabling legislation;
  - iii. term (start/end date);
  - iv. any rights of renewal or regrant; and
  - v. annual royalties payable to the State.

- c. Empower the First Peoples’ Assembly of Victoria to oversee the provision and comprehensiveness of the datasets in (a) and (b) and to store any relevant data.

Chapter 5: Accountability

RECOMMENDATION 11

The Victorian Government must conduct a review of the datasets that it currently collects and publishes, as against the *National Agreement on Closing the Gap Targets*, and:

- a. Publish a copy of the review, by 30 June 2026; and
- b. Following consultation with relevant ACCOs and First Peoples organisations, ensure that all data sets are regularly publicly reported, by 30 June 2027.

Chapter 5: Accountability

RECOMMENDATION 12

The Victorian Government must:

- a. As an employer of a significant number of First Nations staff within Departments, Agencies and Statutory Authorities:
  - i. formally recognise the cultural rights and cultural and colonial loads of First Nations staff within those settings;
  - ii. introduce a positive duty upon relevant managers (or head of the organisation) to ensure cultural safety in the case of First Nations staff;
  - iii. create new First Peoples-led oversight processes for the investigation of complaints in respect of alleged occurrences of non-compliance with this duty; and
  - iv. consider the adequacy of existing remuneration and/or leave models to recognise First Nations staff’s contributions and responsibilities.
- b. In the case of all other Victorian workplaces, amend the *Occupational Health and Safety Act (Vic) 2004* to ensure cultural safety obligations on employers are embedded in legislation.

Chapter 5: Accountability

RECOMMENDATION 13

The Victorian Government must introduce into the employment contracts, performance and/or remuneration assessment processes for senior executives (SES-1 or above) assessment criteria regarding their performance in:

- a. Promoting the employment, retention and promotion of First Peoples staff;
- b. Directly engaging with relevant First Peoples communities, representative bodies and service provider organisations;
- c. Prioritising the actions within their Department/Agency necessary to support the treaty-making process; and
- d. Overseeing timely and fulsome implementation of recommendations within relevant reports.

Chapter 5: Accountability

# Urgent reforms: Land

## RECOMMENDATION 14

The Victorian Government must provide redress to First Peoples and their families affected by Soldier Settlement Schemes, including:

- a. An acknowledgment and apology by the Victorian Government to First Peoples affected by Soldier Settlement Schemes and their families;
- b. Appropriate support for First Peoples affected by Soldier Settlement Schemes and their families; and
- c. Redress including land grants and/or compensation.

### Chapter 7: How colonisers stole Country

## RECOMMENDATION 15

Led and decided by First Peoples and Traditional Owner groups, the Victorian Government and local Government authorities must provide resources and support to establish markers, memorials, signs and information acknowledging relevant First Peoples’ histories and perspectives at culturally and historically significant sites, including:

- a. Sites of historical injustice;
- b. Massacre sites;
- c. Former missions and reserves;
- d. Sites relevant to frontier wars and First Nations people who served in war;
- e. Sites relevant to First Peoples’ leadership; and
- f. Other sites as determined by Traditional Owners or Aboriginal Representative Bodies.

### Chapter 8: Impacts of Country being stolen

## RECOMMENDATION 16

Led by First Peoples and Traditional Owner groups, the Victorian Government and local government authorities must reinstate First Peoples’/Indigenous place names across Victoria, initially prioritising prominent public spaces and significant parks, reserves and waterways, and road names and ensure these place names are reflected on relevant maps, signs and official documents. Place names should be determined by relevant Traditional Owner groups and the First Peoples’ Assembly of Victoria should authorise and coordinate this process at the Statewide level.

### Chapter 8: Impacts of Country being stolen

## RECOMMENDATION 17

In consultation with First Peoples and relevant Traditional Owner groups, the Victorian Government must fund environmental restoration, which may include:

- a. Testing and decontamination processes for land returned or being returned to Traditional Owners, either as part of the settlement package or retrospectively where land is unusable due to contamination or degradation;
- b. Other forms of environmental and cultural restoration; and
- c. Procurement opportunities for First Peoples where possible.

### Chapter 8: Impacts of Country being stolen

## RECOMMENDATION 18

The Victorian Government must amend the *State Aid to Religion Abolition Act 1871* (Vic) to introduce a mechanism for case-by-case consideration and approval of proposed land sales, which includes consideration of:

- a. Whether relevant Traditional Owners have been consulted in respect of the sale; and
- b. Whether it is proposed that a portion of the proceeds from the sale be shared with the Traditional Owners of that land.

### Chapter 8: Impacts of Country being stolen

## RECOMMENDATION 19

Consistent with their commitments to First Peoples, Churches should identify, as a priority, opportunities within the State of Victoria to:

- a. Return land acquired for little or no consideration, or reserved by the Crown or Governor for Church purposes, to Traditional Owners of that land; and
- b. Share a portion of proceeds from the future sale of land of the nature described in (a) with Traditional Owners of that land (irrespective of whether it is subject to the *State Aid to Religion Abolition Act 1871* (Vic)).

### Chapter 8: Impacts of Country being stolen

## RECOMMENDATION 20

The Victorian Government must:

- a. Adopt a principle that First Peoples are entitled to sufficient lands, waters, resources to support their social, emotional and cultural wellbeing; and
- b. To the extent that the existing systems are unable to deliver those lands, waters and resources, agree Traditional Owner treaties to provide an equitable share of lands, waters and resources to First Peoples.

### Chapter 9: How we got here — overview of recognition systems



## RECOMMENDATION 21

Through the treaty process, the Victorian Government must negotiate with the First Peoples' Assembly of Victoria and Traditional Owners to guarantee, uphold and enhance First Peoples' inherent rights to Country through a self-determined, empowering and healing model, including by taking the following steps:

- a. Enabling recognition of First Peoples' rights to land (at a minimum, reflecting UNDRIP principles);
- b. Enabling opportunities to disregard by agreement previously extinguished First Peoples' rights to lands, waters and resources (including under s 47C of the *Native Title Act 1993* (Cth));
- c. Advocating to the Commonwealth Government for amendment to the *Native Title Act 1993* (Cth) to provide for certain prior extinguishment to be disregarded, expanding on the current categories and for the limitation of extinguishment with respect to future acts;
- d. Establishing a default mechanism to transfer to Traditional Owners entitlements to land, waters, resources on the sale, surrender or expiration of third party leasehold, licences, entitlements and other interests;
- e. Not granting new rights or entitlements in Crown lands, waters and resources without providing opportunities for Traditional Owners to themselves acquire the relevant interest, or benefit from the revenues generated;
- f. Ensuring that Traditional Owners have the opportunity to participate in the State's 'right of first refusal' processes when the State is proposing to sell or repurpose Crown or Government-owned land;
- g. Establishing ongoing funding for Traditional Owner groups to purchase on the open market privately held land of cultural significance or which would support Traditional Owners' community objectives;
- h. Enacting reforms enabling traditional cultural use rights on public land (more broadly than the rights recognised within individual TOSA and NTA agreements and determinations);
- i. Enacting reforms enabling First Peoples to commercially use and develop their lands, waters and resources; and
- j. Treating Traditional Owners as rights holders, not standard 'land users', including by exempting them from obligations to pay taxes, rates and charges in the case of lands, waters and natural resources.

**Chapter 9: How we got here — overview of recognition systems**

## RECOMMENDATION 22

The Victorian Government must provide additional funding and support for the Self-Determination Fund and the Treaty Authority to deliver processes for determining the right people for Country.

**Chapter 9: How we got here — overview of recognition systems**

## RECOMMENDATION 23

The First Peoples' Assembly of Victoria must promote access to support and resources via the Self-Determination Fund for all Traditional Owner groups in Victoria, both recognised and not yet recognised. The Victorian Government must support and facilitate this objective.

**Chapter 10: Native title**

## RECOMMENDATION 24

In relation to native title, the Victorian Government must advocate to the Commonwealth Government to:

- a. Reverse the burden of proof for connection to Country so that the state is required to disprove an asserted connection, rather than Traditional Owners prove connection;
- b. Adjust the test to reflect the effects of colonisation. Connection must become a flexible concept rather than a bright-line test. A lesser degree of connection must be accepted where it results, for instance, from relocation from Country or removal of children; and
- c. Enact reforms so that the extinguishment of native title is not necessarily permanent but may revive once the extinguishing interest ends.

**Chapter 10: Native title**

## RECOMMENDATION 25

The Victorian Government must make a submission to the Australian Law Reform Commission supporting reform of the future acts regime.

**Chapter 10: Native title**

## RECOMMENDATION 26

Taking into account the changed context of the treaty process and the aim of enhancing rights, the Victorian Government must implement all of the recommendations of the *First Principles Review of the Traditional Owner Settlement Act 2010* (Vic) in full, including prioritising the following key areas:

- a. Just and fair settlements;
- b. The calculation of compensation;
- c. Funding for Traditional Owner groups; and
- d. Land Use Activity Agreement compliance.

**Chapter 11: Traditional Owner settlements**

## RECOMMENDATION 27

Taking into account the changed context of the treaty process and the aim of enhancing rights, the Victorian Government must implement all the recommendations made in the Victorian Aboriginal Heritage Council's *Taking Control of Our Heritage* report.

**Chapter 12: Cultural heritage**

## RECOMMENDATION 28

The Victorian Government must provide ongoing and sustainable funding to Traditional Owner groups to empower them to conduct cultural heritage work on their Country.

**Chapter 12: Cultural heritage**

## RECOMMENDATION 29

The Victorian Government must consider and implement reforms to strengthen the recognition and protection of intangible heritage under the *Aboriginal Heritage Act 2006* (Vic).

**Chapter 12: Cultural heritage**

## RECOMMENDATION 30

The Victorian Government must provide funding for the Victorian Aboriginal Heritage Council and Traditional Owner groups to develop and implement a strategy for the provenancing and return to Traditional Owners and/or other culturally appropriate handling of remains.

**Chapter 12: Cultural heritage**

## RECOMMENDATION 31

The State must also work with the Commonwealth to identify and negotiate the safe return of cultural, secret and sacred objects held in interstate, overseas and private collections.

**Chapter 12: Cultural heritage**

## RECOMMENDATION 32

The Victorian Government must provide secure, ongoing funding, resources and land to Traditional Owners to establish and maintain appropriate infrastructure, including museum-regulated spaces, to keep and preserve cultural, secret and sacred objects, artefacts and knowledge.

**Chapter 12: Cultural heritage**

## RECOMMENDATION 33

The Victorian Government must provide funding for Traditional Owner groups to undertake, informed by their perspectives of key priorities on their Country:

- Research and strategic mapping of Aboriginal cultural values and landscapes;
- Projects for the identification, protection and/or restoration of cultural values and landscapes; and
- Management of data.

**Chapter 12: Cultural heritage**

## RECOMMENDATION 34

To support self-determination, the Victorian Government must amend public land legislation to provide:

- Opportunities for transition to direct management by First Peoples of public land, led by the aspirations of Traditional Owners, and continuing to provide public access where appropriate;
- Transfer of authority to Traditional Owners to determine management priorities and methodologies, including informed by Traditional Owners' knowledge of Country; and
- Related sources of ongoing funding.

**Chapter 13: Joint management**

## RECOMMENDATION 35

The review of Victoria's public land legislation must properly capture Traditional Owner aspirations and priorities and enable flexibility and evolution over time. The review of public land legislation must not limit future treaty-making or in any way impede Traditional Owners from asserting their rights and interests.

**Chapter 13: Joint management**

## RECOMMENDATION 36

Further to recommendations 18.1 and 18.2 of the final report of the Commonwealth Royal Commission into National Natural Disaster Arrangements (October 2020), the Victorian Government must:

- Support and resource the establishment by First Peoples of an independent First Peoples Cultural Fire Authority, led and staffed by First Peoples to facilitate three key functions:
  - enable a pathway for Traditional Owner-led cultural fire development and practice to occur within the current regulatory environment;
  - house the function for developing policy that seeks to reform and decolonise the regulatory environment in seeking pathways to fully transition Traditional Owner-determined fire to Traditional Owner groups; and
  - enable a pathway for Traditional Owner carbon and emissions reduction practice.
- Conduct a review of existing fire related legislation, policies, procedures and codes of practice in the State of Victoria to identify opportunities to better recognise and integrate:
  - First Peoples' fire knowledge and practices; and
  - First Peoples' knowledge of Country and Aboriginal cultural heritage values (tangible and intangible) requiring protection.
- Provide Traditional Owner groups with ongoing funding to develop and implement cultural fire plans for Country.

**Chapter 13: Joint management**



### RECOMMENDATION 37

The Victorian Government must recognise Victoria’s First Peoples’ water sovereignty as part of treaty as requested by First Peoples’ Assembly of Victoria or any other First Nation negotiating on its own behalf and through substantive reform of legislation by:

- a. Recognising Traditional Owners’ fundamental and inherent rights to water, including by way of amending Victorian water laws to:
  - i. incorporate UNDRIP standards (as a minimum); and
  - ii. recognise First Peoples’ cultural water rights (including the use of water for commercial purposes, and to support the development of cultural economies) including (without limitation) through amendments to the *Traditional Owner Settlement Act 2010* (Vic) and the *Water Act 1989* (Vic).
- b. Embedding, investing in and implementing a cultural flows model into Victorian water law, practice and governance.

**Chapter 14: Water**

### RECOMMENDATION 38

The Victorian Government must commit to:

- a. Accelerating the development of legislative proposals to recognise waterways as living entities and Traditional Owners as a unique voice of those living entities.
- b. Supporting Traditional Owners to achieve their water related aspirations as reflected in individual *Water is Life* Nation Statements.
- c. Enabling First Peoples to assume ‘waterway manager’ responsibilities within the meaning of the *Water Act 1989* (Vic).
- d. Supporting additional Traditional Owner interfaces with, and representation on, other water resource managers including Water Corporations, Catchment Management Authorities and the Victorian Environmental Water Holder.
- e. Providing funding to support Traditional Owners to undertake works to restore waterway health and cultural flows on their Country.
- f. Supporting commercial uses and the growth of water-based cultural economies.
- g. Removing barriers, increasing funding and accelerating action to:
  - i. allocate or support the purchase of water for First Peoples’ cultural flows and economies within existing entitlement frameworks; and
  - ii. support Traditional Owners to directly use and/or realise the economic value of water accessed or returned.
- h. Prioritise allocation to Traditional Owners of unallocated or newly available water including through:
  - i. water freed up by the cessation of industries like coal power;
  - ii. new or alternative water such as desalinated or recycled water; and
  - iii. the establishment of buy-back schemes.
- i. Reviewing, updating (as required) and fully funding relevant strategies such as *Water is Life* to align with the above.

**Chapter 14: Water**

### RECOMMENDATION 39

The Victorian Government must treat Traditional Owners as rights holders, not standard ‘water users’, including by exempting them from obligations to pay taxes, rates and charges.

**Chapter 14: Water**

### RECOMMENDATION 40

The Victorian Government must establish and implement mechanisms for hypothecation of a proportion of water revenues (surface and groundwater) collected in the State of Victoria to be placed into the Self-Determination Fund for the benefit of Victorian Traditional Owners. The proportion should be agreed in negotiation with the First Peoples’ Assembly of Victoria and relevant Traditional Owners.

**Chapter 14: Water**

### RECOMMENDATION 41

The Victorian Government must establish a legislative regime for the recognition of legal identity in waterways and other natural resources which includes the appointment of Traditional Owners as guardians for those entities.

**Chapter 14: Water**

### RECOMMENDATION 42

The Victorian Government must partner with Traditional Owner groups in respect of future forestry management and operations (native and plantation) on public lands, especially to:

- a. Implement effective benefit-sharing arrangements; and
- b. Protect culturally significant public land and ecosystems from damage.

**Chapter 15: Earth, sea and living things**

### RECOMMENDATION 43

In consultation with the First Peoples’ Assembly of Victoria, the Victorian Government must conduct a review of:

- a. Existing mechanisms for Traditional Owner consultation and consent in the development of minerals, resources and extractive projects (whether on private or public land) at least to ensure consistency with the principles of free, prior and informed consent in UNDRIP;
- b. Traditional Owner participation in the development and implementation of rehabilitation and remediation plans, making them consent authorities;

c. Mechanisms for greater Traditional Owner participation in:

- i. rehabilitation works; and
- ii. the management of post-mining land (including under Part 7C of the *Mineral Resources (Sustainable Development) Act 1990* (Vic)).

d. Opportunities for the return to Traditional Owners of post-mining land (including for commercial and cultural economy purposes) as a default provision.

**Chapter 15: Earth, sea and living things**

**RECOMMENDATION 44**

Led by First Peoples, the Victorian Government must enable, support and prioritise the development of a First Peoples’ Renewable Energy Strategy for Traditional Owner groups underpinned by UNDRIP principles, which:

- a. Recognises First Peoples’ self-determination and direct interest in relation to the renewables; and
- b. Provides perpetual funding, resourcing and support for First Peoples to engage at all stages with the renewable energy sector.

**Chapter 16: Climate change, renewables and emergencies**

**RECOMMENDATION 45**

Led by First Peoples, the Victorian Government must enable and support the development of a First Peoples’ Climate Justice Strategy for Traditional Owner groups underpinned by UNDRIP principles, which provides perpetual funding, for Traditional Owner groups to deliver environmental projects on their Country which will assist in mitigating, adapting and/or responding to climate change including through the Self-Determination Fund.

**Chapter 16: Climate change, renewables and emergencies**

**RECOMMENDATION 46**

Working with First Peoples, the Victorian Government must conduct a review of all emergency management legislation (including the *Emergency Management Act 2013* (Vic), *Country Fire Authority Act 1958* (Vic), *Forest Act 1958* (Vic), *Public Health and Wellbeing Act 2008* (Vic) and their related regulations standard operating procedures, policies and other relevant documents:

- a. Formalise an ongoing role for Traditional Owner groups and ACCOs in incident planning, response and recovery frameworks.
- b. Provide Traditional Owner groups, ACCOs and ACCHOs, with secure, ongoing, self-determined funding to assist in the preparation for, response to and recovery from natural disasters (including fire, flood), emergency incidents, and health emergencies in the future.
- c. In the processes in (b), give weight to Traditional Owner voices regarding the protection of Country and cultural heritage.

**Chapter 16: Climate change, renewables and emergencies**

# Urgent reforms: Education

**RECOMMENDATION 47**

Working with First Peoples, the Victorian Government must continue to ensure that ongoing sustainable funding is provided to First Peoples-led early education services, including to expand service delivery and meet demand for services.

**Chapter 17: Schooling overview**

**RECOMMENDATION 48**

Guided by First Peoples, the Victorian Government (or Minister for Education, as appropriate), must amend the *Education and Training Reform Act 2006* (Vic) to:

- a. Expressly recognise Victoria’s First Peoples;
- b. Acknowledge First Peoples’ rights, cultures, histories and perspectives in education;
- c. Protect and prioritise First Peoples’ cultural safety and right to a culturally safe education;
- d. Include an actionable right to protection of cultural rights and cultural safety in all Victorian schools;
- e. Ensure the representation and perspectives of Victorian and other First Peoples in the school curriculum; and
- f. Create a First Peoples Education Council as a governance mechanism for oversight and accountability of First Peoples’ school education.

**Chapter 17: Schooling overview**

**RECOMMENDATION 49**

Guided by First Peoples, the Department of Education must develop a distinct policy on school exclusions for First Peoples, covering attendance, classroom exclusion, suspensions (formal and informal), modified timetables, and expulsions. The policy must:

- a. Set clear standards, expectations, and processes for approving and reviewing exclusions;
- b. Require the Department to:
  - i. collect and publicly report detailed data on exclusions, disaggregated by age, gender, disability status, and Aboriginal and Torres Strait Islander status;
  - ii. publish annual analysis of this data, broken down by Aboriginal and Torres Strait Islander status, school, and geographical location;
  - iii. set clear goals and targets for reducing exclusions of First Nations students, with consequences for schools failing to meet targets;
  - iv. promote collaboration between schools, families, and community organisations to address the underlying causes of exclusions and improve attendance and disciplinary outcomes; and
  - v. ensure a higher standard of consideration for the behavioural and cognitive needs of First Nations students with disabilities in expulsion decisions.

**Chapter 19: Racism and cultural safety**



### RECOMMENDATION 50

Guided by First Peoples, the Department of Education must:

- a. Develop a flexible school zoning policy that prioritises the cultural safety of First Peoples, ensuring access to culturally appropriate education and support networks;
- b. Establish a policy for schools to regularly engage with local First Peoples communities, Traditional Owners, and Elders to ensure a culturally safe and relevant education. This policy must include:
  - i. ongoing funding for First Peoples’ cultural programs and partnerships; and
  - ii. fair and appropriate remuneration for First Peoples’ specialised skills and services.
- c. Create a cultural safety framework for schools that includes:
  - i. an anonymous reporting mechanism for racism and breaches of cultural safety;
  - ii. actions and measures for compliance;
  - iii. data collection, analysis, and public reporting;
  - iv. governance, oversight, and accountability mechanisms;
  - v. sanctions for breaches; and
  - vi. ongoing evaluation and improvement processes.

**Chapter 19: Racism and cultural safety**

### RECOMMENDATION 51

Guided by First Peoples, the Department of Education must:

- a. Direct the Victorian Curriculum and Assessment Authority (VCAA) and the Victorian Registration and Qualifications Authority (VRQA) to implement mandatory cultural competency standards;
- b. Direct the VCAA to elevate First Peoples from a consultative to a leadership role in reviewing the Aboriginal and Torres Strait Islander Histories and Cultures curriculum, ensuring the accurate representation of history, the impacts of colonisation, and First Peoples’ strength and resistance from Prep to Year 12, including acknowledgement of past curriculum harms;
- c. Audit the curriculum to include Victorian and national First Peoples’ perspectives across all learning areas from Prep to Year 12; and
- d. Assess the capacity of teaching staff to deliver First Peoples’ content and teach First Nations students, in line with Professional Standards, and review the adequacy of those Standards.

**Chapter 20: Curriculum**

### RECOMMENDATION 52

Guided by First Peoples, the Department of Education must:

- a. Support schools with ongoing First Peoples-led professional training, guidelines, and resources for effective curriculum delivery;
- b. Employ First Peoples to lead teacher training on curriculum delivery to ensure accurate and engaging content reflecting truth-telling and First Peoples’ perspectives; and
- c. Mandate the integration of the Aboriginal and Torres Strait Islander Histories and Cultures curriculum in planning days.

**Chapter 20: Curriculum**

### RECOMMENDATION 53

Guided by First Peoples, the Victorian Government (or Minister for Education, as appropriate), must:

- a. Implement First Peoples-led cultural competency induction and ongoing professional development for teachers;
- b. Advocate for the Australian Institute for Teaching and School Leadership (AITSL) to review Professional Standards to better incorporate First Peoples’ perspectives and cultural competency;
- c. Advocate for Initial Teacher Education to include First Peoples’ perspectives and cultural competency;
- d. Mandate culturally appropriate, trauma-informed practices training for teachers, delivered by ACCOs in every school; and
- e. Ensure the new First Nations Strategy, Policy and Programs division includes mechanisms for culturally safe disability assessments and supports for First Peoples students.

**Chapter 20: Curriculum**

### RECOMMENDATION 54

Guided by First Peoples, the Department of Education must:

- a. Invest in high-quality, First Peoples-authored or endorsed teaching materials to support the Aboriginal and Torres Strait Islander Histories and Cultures cross-curriculum priority;
- b. Set targets for school libraries to audit and decolonise collections, removing outdated or racist materials and ensuring libraries include:
  - i. truth-telling and respect for all Australians;
  - ii. diverse First Peoples’ voices and perspectives;
  - iii. First Peoples’ knowledge, strengths, and resilience; and
  - iv. works by First Nations authors.

**Chapter 20: Curriculum**

### RECOMMENDATION 55

Guided by First Peoples, the Department of Education must:

- a. Increase the number of First Peoples teachers through targeted recruitment, retention programs, and clear incentives for schools that meet set targets;
- b. Establish a state-funded scholarship program for First Peoples to support their access, participation, and completion of teacher qualifications, including funding for unpaid student placements;
- c. Commission an independent survey of First Peoples school staff to assess experiences of racism, discrimination, and cultural safety, and their impact on staff retention;
- d. Strengthen racism and discrimination complaints processes to ensure staff safety and accountability for perpetrators;
- e. Recognise and remunerate First Peoples teachers for additional colonial and cultural workload, and incorporate this into the *Marrung Aboriginal Education Strategy 2016–2026*; and
- f. In relation to the Koorie Engagement and Support Officer (KESO) role:
  - i. clearly define the role and its responsibilities;
  - ii. shift Community Understanding and Safety Training (CUST) delivery from KESOs to ACCOs and fund this; and
  - iii. mandate CUST for all school teachers.

**Chapter 21: Workforce**

### RECOMMENDATION 56

Guided by First Peoples, the Department of Education must increase opportunities for First Peoples’ leadership in schools by:

- a. Implementing professional development, sponsorship, and mentoring programs, along with dedicated leadership positions for First Peoples teachers and staff; and
- b. Increasing First Peoples representation on school councils to reflect the First Peoples population in the school or region.

**Chapter 21: Workforce**

### RECOMMENDATION 57

Guided by First Peoples, the Victorian Government must undertake a comprehensive overhaul and reconstruction of Government and First Peoples schooling interaction. This includes:

- a. Establishing a First Peoples Education Council comprised of and led by First Peoples with a mandate to:
  - i. oversee and ensure accountability for First Peoples schooling educational outcomes; and
  - ii. lead reforms over curriculum and resource allocation for First Peoples’ education;

- b. Replacing the *Marrung Aboriginal Education Strategy 2016–2026* at the end of its life with a new strategy that includes measurable outcomes and annual reporting to Parliament to track and address progress effectively.

**Chapter 22: Accountability and self-determination**

### RECOMMENDATION 58

Guided by First Peoples, the Victorian Government must ensure outcomes for First Peoples’ students are linked to measurable targets in:

- a. School Annual Implementation Plans;
- b. Executive performance plans;
- c. School and principal Key Performance Indicators; and
- d. School funding.

**Chapter 22: Accountability and self-determination**

### RECOMMENDATION 59

Guided by First Peoples, the Victorian Government must improve implementation, oversight and accountability of Student Support Groups (SSGs) and Individual Education Plans (IEPs) by:

- a. Mandating measures for timely implementation, accountability, self-determination and cultural safety in SSGs and IEPs; and
- b. Mandating inclusion of student and carer/family voice in IEPs.

**Chapter 22: Accountability and self-determination**

### RECOMMENDATION 60

Guided by First Peoples, the Victorian Government must ensure that all schools use Equity Funding to directly benefit the students for whom it is intended.

**Chapter 22: Accountability and self-determination**



### RECOMMENDATION 61

Guided by First Peoples, the Victorian Government must transfer control, resources and decision-making power over curriculum, pedagogy, governance, and resource allocation for First Peoples’ education to First Peoples, to be negotiated through the Treaty process.

**Chapter 22: Accountability and self-determination**

### RECOMMENDATION 62

Victorian universities must engage in public truth-telling about their historical engagement with First Peoples and the ongoing legacy of these actions.

**Chapter 23: Tertiary overview and historical context**

### RECOMMENDATION 63

Guided by First Peoples, Victorian tertiary education providers must enter into reciprocal agreements with Traditional Owners to advance First Peoples’ priorities, including First Peoples leadership, land use and how to embed First Peoples’ knowledges, histories and cultures.

**Chapter 23: Tertiary overview and historical context**

### RECOMMENDATION 64

The Victorian Government must amend the *Victorian Universities Act 2010* (Vic) to:

- a. Expressly recognise Victorian First Peoples;
- b. Acknowledge First Peoples’ rights, cultures, histories and perspectives in tertiary education; and
- c. Incorporate key accountability indicators for the measures set out in Education – Tertiary Chapters 24 and 25.

**Chapter 23: Tertiary overview and historical context**

### RECOMMENDATION 65

The Victorian Government must establish an oversight body for the tertiary education sector with ongoing funding, powers and responsibility for:

- a. Ensuring cultural support initiatives and First Nations student support systems are embedded into mainstream university business;
- b. Addressing racism against First Peoples by duty-holders, including tertiary education providers; and
- c. Developing governance, oversight and accountability mechanisms, including sanctions for breaches.

**Chapter 24: First Peoples students, workforce, and leadership**

### RECOMMENDATION 66

Victorian universities must allocate permanent, ongoing funding for First Peoples’ leadership and First Peoples student support services from mainstream funding streams.

**Chapter 24: First Peoples students, workforce, and leadership**

### RECOMMENDATION 67

Guided by First Peoples, Victorian universities must recognise and recompense First Peoples staff for the ‘colonial load’ they carry.

**Chapter 24: First Peoples students, workforce, and leadership**

### RECOMMENDATION 68

Guided by First Peoples, the Victorian Government must:

- a. Advocate to the Federal Minister for Education to direct the Tertiary Education Quality and Standards Agency (TEQSA) and other relevant professional bodies, to the extent necessary to mandate registered Victorian universities to include specific content about Victorian First Peoples in their courses;
- b. Advocate for the inclusion of the cross-curriculum priority: ‘Learning about Victorian First Peoples histories and cultures’ across all units in pre-service and post-graduate teacher courses; and
- c. Advocate to the relevant professional bodies for social work, medicine and nursing to stringently enforce university compliance with compulsory course requirements relating to First Peoples, and to the legal professional bodies to require compulsory First Peoples-related subjects in law degrees.

**Chapter 25: Curriculum and education**

### RECOMMENDATION 69

The Victorian Institute of Teaching, in conjunction with universities, must develop a qualification, such as a Graduate Diploma of First Peoples Curriculum Teaching.

**Chapter 25: Curriculum and education**

# Urgent reforms: Health

## RECOMMENDATION 70

Led by First Peoples, the Victorian Government must (working with the Federal Government, where necessary):

- a. Increase funding to First Peoples-led health services to ensure they are sufficiently resourced to deliver to First Peoples, regardless of where they live, a similar range of services, including:
  - i. maternal and child health services;
  - ii. financial support programs for those struggling with cost of living and food security; and
  - iii. alcohol and drug services (including withdrawal and residential rehabilitation services).
- b. Fund First Peoples-led organisations to deliver:
  - i. a holistic range of aged care services, both residential and non-residential; and
  - ii. palliative care services.

Chapter 28: Health inequities

## RECOMMENDATION 71

Led by First Peoples, the Victorian Government must expand and fund ACCOs to deliver accessible and culturally safe funeral and burial services.

Chapter 28: Health inequities

## RECOMMENDATION 72

The Victorian Government must:

- a. Develop a regulatory framework to increase compliance with the Cultural Safety Principle set out in section 27 of the *Mental Health and Wellbeing Act 2022* (Vic); and
- b. Amend section 27 of the *Mental Health and Wellbeing Act 2022* (Vic) to require that all entities involved in the response, treatment, or care of First Peoples comply with the Cultural Safety Principle.

Chapter 29: Mental health and social and emotional wellbeing

## RECOMMENDATION 73

The Victorian Government must:

- a. Amend the *Mental Health and Wellbeing Act 2022* (Vic) to replace the Health Led Response Principle with robust statutory obligations on both Victoria Police and health professionals in relation to First Peoples, removing all Protective Service Officer powers to respond to mental health crises and significantly investing in health-led responses and divesting from Victoria Police.
- b. Introduce and fund a compulsory workforce training requirement for police to facilitate a health-led response in relation to First Peoples.

Chapter 29: Mental health and social and emotional wellbeing

## RECOMMENDATION 74

The Victorian Government must develop a robust and publicly available strategy to reduce compulsory assessment and treatment of First Peoples on the basis that compulsory treatment is a ‘last resort.’

Chapter 29: Mental health and social and emotional wellbeing

## RECOMMENDATION 75

In relation to First Peoples, the Victorian Government must:

- a. Review the implementation of the *Mental Health and Wellbeing Act 2022* (Vic) relating to restrictive interventions.
- b. Assess the extent to which the Government is ‘acting immediately’ to ensure restrictive interventions is only used as a last resort.
- c. Develop a regulatory framework for the reduction of restrictive interventions to give effect to section 125 of the *Mental Health and Wellbeing Act 2022* (Vic).

Chapter 29: Mental health and social and emotional wellbeing

## RECOMMENDATION 76

In relation to First Peoples, the Victorian Government must require mental health service providers and government agencies to report publicly on an annual basis on:

- a. Their use of restrictive interventions and compulsory assessment and treatment;
- b. Steps taken to comply with the obligation to reduce and eventually eliminate restrictive interventions;
- c. Compliance with the Cultural Safety Principle; and
- d. Responses to mental health crises including exercise of police powers and the transition to health-led crisis responses.

Chapter 29: Mental health and social and emotional wellbeing



### RECOMMENDATION 77

The Victorian Government must ensure that First Peoples’ complaints against police in relation to the exercise of powers under the *Mental Health and Wellbeing Act 2022* (Vic) are not investigated by police.

**Chapter 29: Mental health and social and emotional wellbeing**

### RECOMMENDATION 78

The Victorian Government must improve the responsiveness of the Mental Health Tribunal by:

- a. Increasing First Peoples-led support before and representation on the Tribunal.
- b. Enabling the Mental Health Tribunal to hear First Peoples’ stories and receive relevant cultural information, including the way in which connection to culture, community, kin and Country can support good mental health and wellbeing.
- c. Empower the Mental Health Tribunal to make findings and orders in relation to mental health services and treating teams.

**Chapter 29: Mental health and social and emotional wellbeing**

### RECOMMENDATION 79

Led by First Peoples, the Victorian Government must fund the establishment of a Victorian First Peoples prevention of family violence peak body bestowed with legislative powers including to oversee the introduction and implementation of family violence death review mechanisms for formal reporting.

**Chapter 30: Family violence**

### RECOMMENDATION 80

Led by First Peoples, the Victorian Government must provide sustainable, long-term funding to ACCOs to:

- a. Expand existing services and deliver new initiatives to respond to family violence; and
- b. Establish First Peoples Women’s Centres for First Peoples women affected by family violence, including a comprehensive suite of culturally safe, holistic specialist and preventative supports such as SEWB, mental health, alcohol and drug support and crisis accommodation.

**Chapter 30: Family violence**

### RECOMMENDATION 81

Led by First Peoples, the Victorian Government must:

- a. Invest in primary prevention initiatives (e.g. universal prevention programs for all Victorians) which address racism, before family violence occurs; and
- b. Develop and invest in initiatives to educate, prevent and reduce the likelihood of escalation of behaviour and/or repeat offences of users of violence once they have been identified.

**Chapter 30: Family violence**

### RECOMMENDATION 82

Led by First Peoples, the Victorian Government must:

- a. Take legislative, administrative and other steps to eliminate racism against First Peoples from Victorian health settings;
- b. Legislate and fund the development of cultural safety service standards to be met by public and community health services (including those operating in custodial health settings). The standards should protect the cultural safety of First Peoples patients and families and First Peoples staff; and
- c. Explore the feasibility of setting up an accreditation process to assess services against the cultural safety service standards that is appropriately resourced and led by a First Peoples organisation with experience in the health sector.

**Chapter 31: Racism, workforce and accountability**

### RECOMMENDATION 83

The Victorian Government must:

- a. Fund all workforce actions in the Victorian Aboriginal Health and Wellbeing Partnership Agreement Action Plan, with a focus on extending student placements, internships, cadetships and graduate placements; and
- b. Increase First Peoples’ leadership and representation in the Department of Health, health services and health service boards. This must be reported on in annual reports.

**Chapter 31: Racism, workforce and accountability**

RECOMMENDATION 84

Led by First Peoples, the Victorian Government must:

- a. Transfer oversight and responsibility of First Peoples’ prison healthcare from the Department of Justice and Community Safety to the Department of Health.
- b. Provide First Peoples people in custody with primary healthcare, social and emotional wellbeing support, specialist services and access to disability supports at equivalent standard to that provided in the community, as well as ensuring First Peoples’ cultural safety.
- c. Work with the Federal Government to ensure that First Peoples in prison have access to the Pharmaceutical Benefits Scheme (PBS) and the Medicare Benefits Schedule (MBS).
- d. Revise the system for auditing and scrutiny of custodial healthcare services, to ensure that there is a robust oversight of all providers of prison healthcare (both public and private) and public reporting of the outcomes.
- e. Reform the prison complaints process to ensure that First Peoples’ prison complaints, including complaints against private prisons and contractors, are handled by an appropriately resourced independent oversight body with sufficient powers to refer matters for criminal investigation. The body must be accessible to First Peoples in prison and complainants must have adequate legislative protection.

Chapter 32: Health and the criminal justice system

RECOMMENDATION 85

Led by First Peoples, the Victorian Government must:

- a. Develop a model for an equitable proportion of funding to ACCOs delivering health services immediately.
- b. According to a clear published plan and timeline, transition all Victorian Government departments’ funding for ACCOs’ service delivery (where those ACCOS are delivering health services) to outcomes-focussed recurrent funding that includes indexation.
- c. Establish an ACCO Perpetual Infrastructure Fund to provide long-term ongoing self-determined minor capital, maintenance, planning and management resources for ACCOs delivering health services across all holistic wrap-around services.
- d. Prioritise pay parity, training, upskilling and leadership development of all staff in the ACCO sector in accordance with the *Victorian Health Workforce Strategy* and ensure that ACCOs delivering health services have a self-determining role in how this is implemented.

Chapter 33: Aboriginal community controlled healthcare

Urgent reforms: Housing

RECOMMENDATION 86

The Victorian Government must fully fund and implement *Mana-na woorn-tyeen maar-takoort: The Victorian Aboriginal Housing and Homelessness Framework* and the projects under the Framework, including in particular by:

- a. Addressing housing supply issues;
- b. Appropriately funding and supporting ACCOs to deliver housing solutions;
- c. Increasing support for private rental and home ownership;
- d. Delivering an Aboriginal-focused homelessness system;
- e. Fully funding and implementing the *Blueprint for an Aboriginal-specific Homelessness System in Victoria*; and
- f. Fully funding and implementing the recommendations in *Aboriginal private rental access in Victoria: Excluded from the Start*.

Chapter 35: Housing and First Peoples in Victoria

RECOMMENDATION 87

The Victorian Government must reduce First Peoples’ overrepresentation on the Victorian Housing Register by making Aboriginal and Torres Strait Islander status a criterion for Priority Access to social housing.

Chapter 35: Housing and First Peoples in Victoria

RECOMMENDATION 88

The Victorian Government must urgently increase funding and support for Traditional Owner groups and ACCOs to provide homelessness services, transitional housing and a culturally safe housing model that meets the range of specific needs of First Peoples.

Chapter 35: Housing and First Peoples in Victoria



RECOMMENDATION 89

The Victorian Government must take steps to urgently increase First Peoples’ housing supply, including by:

- a. Making equitable and stable investments to grow and maintain ACCO community housing supply;
- b. Providing funding to ACCOs to implement alternative models such as build and own, managed by private agent or partnership arrangements;
- c. Extending the Big Housing Build and increase targets from 10% to 25% funding allocation for First Peoples’ housing over the next 5 years;
- d. Transferring fit-for-purpose public housing units to ACCOs and providing repair and refurbishment funding;
- e. Funding ACCOs to respond to barriers facing prospective First Peoples homeowners including expanding knowledge and education strategies on how to enter the home ownership market; and
- f. Developing new and innovative shared equity and rent-to-buy schemes for First Peoples in Victoria.

Chapter 35: Housing and First Peoples in Victoria

RECOMMENDATION 90

The Victorian Government must expand support for ACCOs and Traditional Owner groups to provide self-determined housing to First Peoples, including by:

- a. Providing feasibility and start-up costs;
- b. Facilitating community engagement and design of new housing projects; and
- c. Providing funding, resourcing and assistance to engage in and maintain registration as housing providers.

Chapter 35: Housing and First Peoples in Victoria

Urgent reforms:  
Economic prosperity

RECOMMENDATION 91

The Victorian Government must:

- a. Revise the implementation timeline and proposed goals of the *Yuma Yirramboi Strategy*, including developing a publicly accessible monitoring and accountability plan for the strategy.
- b. Incentivise major corporations in Victoria’s private sector to embed more First Peoples businesses in supply chains.
- c. Change procurement monitoring and targets from number of contracts to total dollars spent to accurately reflect investment.
- d. Develop, resource and implement an Indigenous Preferred Procurement Program.

Chapter 36: Economic prosperity

RECOMMENDATION 92

The Victorian Government must assist recruitment, development, and retention of First Peoples in the workplace by:

- a. Amending the *Occupational Health and Safety Act 2004* (Vic) to include an obligation on employers and employees to take steps to ensure cultural safety and capability in Victorian workplaces.
- b. Creating a pipeline of First Peoples talent for identified industries with skills shortages, including bolstering access to education and vocational training for First Peoples to prepare them for high-value employment sectors.
- c. Monitoring and ensuring proper pay and conditions against defined targets for First Peoples in the public sector.
- d. Monitoring and ensuring proper remuneration for the cultural load borne by First Peoples in the workplace.
- e. Ensure the private sector develops recruitment, development, mentoring and retention strategies for First Peoples and support the private sector in developing such strategies.

Chapter 36: Economic prosperity

RECOMMENDATION 93

The Victorian Government must take steps to ensure increased First Peoples representation on both company and government boards through improved accountability and transparency measures, including requirements to publicly disclose board diversity and report annually on First Peoples representation.

Chapter 36: Economic prosperity

RECOMMENDATION 94

The Victorian Government must ensure that the Self-Determination Fund is adequately resourced on a guaranteed, ongoing basis to meet its current and future purposes.

**Chapter 36: Economic prosperity**

RECOMMENDATION 95

The Victorian Government must negotiate with First Peoples to establish a capital fund, through the Self-Determination Fund or other means, to enable investment by First Peoples and First Peoples organisations in capital markets and other initiatives to promote economic prosperity.

**Chapter 36: Economic prosperity**

Urgent reforms: Political life

RECOMMENDATION 96

The Victorian Government must negotiate with First Peoples the establishment of a permanent First Peoples’ representative body with powers at all levels of political and policy decision making.

**Chapter 37: Political life**

Urgent reforms: Access to records

RECOMMENDATION 97

The Victorian Government must commit funding and resources to systemic reform to facilitate, embed and ensure Indigenous Data Sovereignty and Indigenous Data Governance in relation to First Peoples’ records, including through treaty by funding, resourcing and supporting the establishment of a Victorian First Peoples-controlled statewide body for First Peoples’ data, records and data governance expertise.

**Chapter 38: Access to records**

RECOMMENDATION 98

The Victorian Government must:

- a. Provide ongoing and sustainable funding for existing First Peoples-controlled archives, including for operational costs;
- b. Increase resources for organisations supporting First Peoples to access their records;
- c. Prioritise the digitisation and searchability of First Peoples’ records, including working with First Peoples to reframe how records are described; and
- d. Provide First Peoples with priority access to records and archives identified as relating to First Peoples.

**Chapter 38: Access to records**



# Redress

## RECOMMENDATION 99

The Victorian Government must:

- a. Officially acknowledge the responsibility of its predecessors for laws, policies and practices that contributed to systemic injustices against Victorian First Peoples;
- b. Make official apologies to First Peoples in Victoria; and
- c. Negotiate with the First Peoples’ Assembly of Victoria a form of words for official apologies to First Peoples individuals and communities.

### Chapter 39: Redress

## RECOMMENDATION 100

Through both Statewide and Traditional Owner treaties, the Victorian Government must provide redress for injustice which has occurred during and as a result of the colonial invasion and occupation of First Peoples’ territories and all consequent damage and loss, including economic and non-economic loss for genocide, crimes against humanity and denial of freedoms.

In respect of the redress obligations for the taking of land, waters and resources from First Peoples, the Victorian Government must act consistently with the principles in UNDRIP Articles 8(2)(b) and 28, including the following:

- a. Redress for economic loss including past loss, loss of opportunities and loss to future generations;
- b. Interest on economic loss;
- c. Redress for non-economic loss including cultural loss, assessed as at the date of extinguishment; and
- d. Interest on non-economic loss.

Redress should take the form of:

- e. Restitution of traditional lands, waters and natural resources ownership rights to First Peoples;
- f. Monetary compensation;
- g. Tax relief; and
- h. Such other financial or other benefits as may be requested by the First Peoples’ Assembly of Victoria or the local treaty bodies in treaty negotiations.

‘Redress’ does not, in principle, include equitable benefit-sharing of natural resources or the revenue or other benefits derived from the use or exploitation of natural resources. First Peoples have a separate right to equitable benefit-sharing from the exploitation or use of the natural resources on their territories. Notwithstanding this, the First Peoples Assembly of Victoria and local treaty bodies should not be prohibited from allocating additional benefit share to meet redress obligations for historical wrongs.

### Chapter 39: Redress

Part C

# Critical themes



# Chapter 1: The past is the present

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**Every problem  
Aboriginal Victorians  
have today is a  
direct result of past  
policies, legislation,  
and discriminatory  
practice. This is the  
past and the present.<sup>1</sup>**

AUNTY MURIEL BAMBLETT

## Introduction

The lives of First Peoples in Victoria today are profoundly shaped by two interconnected forces: the enduring damage of colonial invasion and the contemporary policies that continue to exclude and harm First Peoples.

As evidenced in the chapters of this report, First Peoples in Victoria have experienced violence, destruction and systematic dispossession that reverberates through generations. Yoorrook heard how British colonisers came for First Peoples' lands and waters. Early invaders brought and spread disease and killed, massacred, kidnapped and enslaved First Peoples. Illegal settlers and then the State stole, subdivided and sold First Peoples' land. Victoria's parliament and public servants enacted laws and created policies that made it lawful to target First Peoples on the basis of race, to desecrate their Country and to tear them from kin and culture. First Peoples fiercely resisted these encroachments by defending their Country, cultures and autonomy.

Victoria was founded upon the attempted erasure of First Peoples and this erasure continues. The illegal arrival of colonisers set in motion a chain of events that is still unfolding. Yoorrook has heard how the historical and structural conditions of colonisation, fuelled by false ideas of racial inferiority, continue to impact First Peoples. From invasion to oppressive laws and practices, to ongoing systemic racism and discrimination, First Peoples' lives and experiences have been impacted by the harms of colonisation and continue to be impacted today.

Successive Victorian Governments have enacted laws, adopted policies and engaged in practices that robbed First Peoples of access to their lands and waters and denied equitable access to social services and resources. Yoorrook heard that this legacy lives on in inequitable health and wellbeing outcomes, home ownership, employment, education outcomes and economic prosperity for First Peoples today. The ongoing negative impacts of this continue to accrue and accumulate.

Over the course of its inquiry, Yoorrook received evidence from across the state (see About this report). First Peoples, including Elders, Traditional Owners and Aboriginal Community Controlled Organisations (ACCOs), alongside the Premier of Victoria, Ministers of the State Government, public servants, historians, health care workers, educators and other service providers, and non-Indigenous Victorians all contributed. They told Yoorrook about Victoria's violent past and the lineages of harm that continue to reverberate across the generations in the form of ongoing systemic injustice.

This chapter demonstrates that historical injustices persist in present-day systems and analyses how current government policies and practices perpetuate new forms of harm. Each substantive part of this report (Part D: Land injustice, Part E: Education, Part G: Housing, Part F: Health, Part H: Economic and political life) contains a historical timeline and a background chapter that sets out the relevant context and explores the theme of 'the past is the present' for that part. Specific evidence on each topic is used to explain how the impacts of this history are passed from generation to generation. The potential of truth-telling, both as part of Yoorrook and as an ongoing process, and of treaty-making between the State and First Peoples are explored in this chapter and others as crucial components of the way forward.



# Colonisation is ongoing

Colonisation has not ended; it is a continuing process. For First Peoples in Victoria, colonisation is an everyday lived experience. Isobel Paipadjerook Morphy-Walsh (Nirim Baluk bagrook, Dhaung Wurrung) described colonisation this way:

It is an active process. It didn’t end in 1883. It is going on now.<sup>2</sup>

ISOBEL PAIPADJEROOK MORPHY-WALSH

Similarly, Nerita Waight (Yorta Yorta, Narrandjeri), CEO of the Victorian Aboriginal Legal Service, told Yoorrook: ‘Since colonisation Aboriginal people live within a structure of violence ... The war continues. It just evolved’.<sup>3</sup> Dr Jacynta Krakouer (Mineng Noongar) also explained how colonisation continues to operate in public institutions:

[C]olonisation is not an event, but it is a structure, and so, as a result, it continues and is implemented within our systems, such as the child protection system, such as the education system. It is ongoing.<sup>4</sup>

DR JACYNTA KRAKOUER

The continuation of the colonisation process is well recognised by First Peoples. It is also articulated in academic literature. For example, Harry Blagg and Thalia Anthony have written that when First Peoples witness and experience state-perpetrated violence and neglect against them, ‘they see a functioning, unbroken chain of repression and institutional racist violence’ and that ‘[t]his chain remains largely unchanged since the dawn of colonisation’.<sup>5</sup> Recognising the capacity for state and societal norms and practices to shift and evolve over time, Blagg and Anthony argue that colonisation can be more aptly explained as an attempted ‘long-term, multi-faceted project of extinguishment and replacement’.<sup>6</sup>

Likewise, Australian historian the late Dr Patrick Wolfe has written that systemic injustice and intergenerational harm continue to impact First Peoples through ongoing structures of domination and the denial of self-determination.<sup>7</sup> Settler-colonialism seeks to replace Indigenous societies with settler-colonial societies.<sup>8</sup> Dr Wolfe has referred to this as ‘the logic of elimination’ of First Peoples.<sup>9</sup>

When invasion is recognized as a structure rather than an event, its history does not stop — or, more to the point, become relatively trivial — when it moves on from the era of frontier homicide. Rather, narrating that history involves charting the continuities, discontinuities, adjustments, and departures whereby a logic that initially informed frontier killing transmutes into different modalities, discourses and institutional formations.<sup>10</sup>

PATRICK WOLFE

Witnesses to Yoorrook further articulated this understanding of colonisation as an ongoing process. Researchers at the Indigenous Nation Building and Governance research hub within the Jumbunna Institute for Indigenous Education and Research at the University of Technology Sydney made a submission to Yoorrook, in which they argued that the systemic injustices and harms of colonisation perpetrated against First Peoples by the settler state ‘can only be understood systematically – that is, as structural, pervasive and causally interlinked’.<sup>11</sup> They stated that ‘settler-colonial injustice and harm will prevail for so long as non-Indigenous governments continue to obstruct First Peoples’ exercise of self-determination’.<sup>12</sup> This occurs when governments engage with First Peoples as coloniser to colonised — by ‘refusing to acknowledge First Peoples’ sovereign status’.<sup>13</sup> First Nations woman Associate Professor Michelle Evans, Director of Dilin Duwa Centre for Indigenous Business Leaderships at University of Melbourne, explained in her evidence to Yoorrook how historical inequities continue to create barriers for First Peoples today:

[I]t has been nine generations since the invasion and importation of white values and white systems and logics and it [has] only really been a mere two generations since the 1967 referendum, which has instigated this ripple effect of change and repeals of legislations that have had ... distinct controlling mechanisms around our families’ ability to build livelihoods that are independently driven. And so when we start to think in this historical and more generational piece we can start to understand the barriers are not just historical, but these are very, very present.<sup>14</sup>

ASSOCIATE PROFESSOR MICHELLE EVANS

The State itself also recognises the link between the past and present for First Peoples in Victoria. Premier of Victoria the Hon Jacinta Allan MP admitted that there is an ‘unbroken line’ between past atrocities and government actions, and contemporary injustice experienced by First Peoples:

[O]ur history continues to live on in our present and I want to acknowledge there is an unbroken line between the dispossession and violence of the past and the lives of First Peoples today. I also want to acknowledge and put very clearly on the record, that from the beginning until today the policies and practice of government have created the gap that exists between Aboriginal and non-Aboriginal Victorians. Whether ignorance or deliberate intent, we have driven that disparity. And as the Commission has noted, that disparity continues to play out in the lives and the life outcomes for Aboriginal people.<sup>15</sup>

PREMIER JACINTA ALLAN MP

Similarly, the Secretary of the Department of Families, Fairness and Housing, Peta McCammon, stated that ‘the contemporary experience of Aboriginal people cannot be de-coupled from the historical experience of dispossession and dislocation’.<sup>16</sup>

The wealth of evidence in this report supports these accounts. Taken together, this evidence clearly demonstrates that injustices towards First Peoples across all areas of public life are not just a thing of the past, but continue to operate as an ongoing, everyday reality. First Peoples continue to experience, and to resist, state-inflicted inequality, institutional discrimination and dispossession that negatively affects their lives and wellbeing.

# Racism

Racism has proved a useful tool of colonisation. Throughout Victoria’s history, false ideas about race have been used by people in power to justify taking First Peoples’ land, to exclude them from access to health services, education, housing, and other economic opportunities, and to maintain systems, policies and practices that unfairly disadvantage First Peoples. The Federation of Ethnic Communities’ Councils of Australia explains:

[R]acism has historically relied on the constructed idea of ‘race’ to justify hierarchisation of human beings and systems of oppression ... In Australia, the British settlement and colonisation were implemented through land dispossession, and a logic of elimination of First Nations people and substitution by settler-colonial structures and institutions. Settler colonialism also relied on whiteness, as an ideology and practice. Whiteness positions Western-centric modes of being, thinking and organising societies, as well as those individuals who embody them, as a ‘universal’ norm, and relies on ideas of race to categorise as inferior all those who do not correspond to those specific norms.<sup>17</sup>

FEDERATION OF ETHNIC COMMUNITIES’ COUNCILS OF AUSTRALIA

The Federation of Ethnic Communities’ Councils of Australia has also noted that it is important to understand the ‘ways in which the colonial systems of domination were built upon racism ... as their legacies continue to influence institutions today’.<sup>18</sup> Yoorrook received evidence on the ongoing presence of racism towards First Peoples across all societal institutions with which they need to interact. Racism, at multiple levels, is a current and ongoing experience for First Peoples in Victoria.

As emphasised in extensive global scholarship, racism is ‘more than individual attitudes, beliefs, or behaviours’.<sup>19</sup> Racism is a system of power,<sup>20</sup> that operates to assign value and opportunity to some people and not others, based on socially constructed ideas about race.<sup>21</sup> Associate Professor Katherine Thurber has described racism as ‘an organised social system that operates on multiple levels to reinforce, justify, and perpetuate a racial or ethnic hierarchy that devalues, disempowers, and differentially allocates resources to groups defined as “inferior” or “superior”’.<sup>22</sup>

Racism can manifest in various ways, including:

- interpersonal racism — through interactions between individuals or groups of people
- institutional racism — through policies, practices and behaviours that are normalised in organisations and institutions
- systemic or structural racism — through dominant norms that lead to discriminatory treatment and opportunities.<sup>23</sup>

These forms of racism, and how First Peoples continue to experience them across all areas of public life, are discussed throughout this report.<sup>24</sup>

Racism is also a form of discrimination.<sup>25</sup> In Victoria, the *Equal Opportunity Act 2010* (Vic) makes it unlawful to discriminate against someone or vilify them because of their race, ancestry, ethnicity or skin colour in certain areas of public life, including in the provision of goods and services, education and employment.<sup>26</sup> The *Equal Opportunity Act 2010* (Vic) states that it is unlawful to discrimination directly or indirectly – direct discrimination includes direct unfavourable treatment, indirect discrimination includes treatment that indirectly disadvantages someone because of their race.<sup>27</sup> At the Commonwealth level, the *Racial Discrimination Act 1975* (Cth) also makes it unlawful to discriminate against a person because of their race, colour, descent, national or ethnic origin, or immigrant status.<sup>28</sup> Despite these legal protections, Yoorrook heard that First Peoples continue to experience racism. This is also highlighted in the following quotes from First Peoples including, the late respected Elder, Aunty Fay Carter (Yorta Yorta, Dja Dja Wurrung), Nerita

Waight, and Co-Chair of First Peoples’ Assembly of Victoria Ngarra Murray (Wamba Wamba, Yorta Yorta, Dhudhuroa, Jupagulk, Baraparapa, Wiradjuri, and Dja Dja Wurrung):

Racism is alive and well. But it is more covert now. It is an undercurrent. Aboriginal people are still treated differently. We’re treated inhuman.<sup>29</sup>

AUNTY FAY CARTER

There is systemic racism in the way we are constantly over-represented, in police searches, move-on orders and arrests for public order offences ... It goes beyond police, it is in every part of the society ... from child protection, to housing, to employment. Aboriginal people are constantly marginalised by Victoria’s social system. There isn’t one Aboriginal person who hasn’t experienced racism in all its forms. It is everywhere.<sup>30</sup>

NERITA WRIGHT

[R]acism is rife in our lives. Like, it’s in all aspects of our lives, whether it’s in the health system or our Mob going to apply for housing or in the schools. It’s in our everyday interactions. ... [I]t is taxing on our health in all ways, and it’s something that we deal with as Aboriginal people right across the country.<sup>31</sup>

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

# Intergenerational trauma

The ongoing impact of past events was a continuing theme throughout the evidence.<sup>32</sup> Yoorrook heard that colonisation has inflicted profound harm on First Peoples,<sup>33</sup> causing significant trauma, grief and loss.<sup>34</sup>

First Peoples from across the globe describe this phenomenon as ‘intergenerational trauma’. Inaugural Co-Chair of the First Peoples’ Assembly of Victoria, Marcus Stewart (Taungurung) cited the Australian Law Reform Commission’s definition of intergenerational trauma:

[T]he subjective experiencing and remembering of events in the mind of an individual or the life of a community, passed from adults to children in cyclic processes as ‘cumulative emotional and psychological wounding’.<sup>35</sup>

AUSTRALIAN LAW REFORM COMMISSION

In its submission to Yoorrook, the Royal Australian College of General Practitioners described intergenerational trauma as follows:

Colonising practices can lead to intergenerational trauma — the psychological effects that collective trauma experienced by a group of people has on subsequent generations.<sup>36</sup>

ROYAL AUSTRALIAN COLLEGE OF GENERAL PRACTITIONERS

Professor Raymond Lovett (Ngiyampaa) explored the profound impact of intergenerational trauma on First Peoples in his testimony to Yoorrook. He described how First Peoples’ health is impacted by their Ancestors’ experiences, including forcible removal from their lands.<sup>37</sup> Professor Lovett also described how his research through the Mayi Kuwayu study has examined the effect of historical events on the health of First Peoples, who have not directly experienced these events but who have nonetheless experienced their effects through the intergenerational experiences of their family



members.<sup>38</sup> The Mayi Kuwayu study results indicate that First Peoples health and wellbeing outcomes today are impacted by these factors.<sup>39</sup>

CEO of the Victorian Aboriginal Community Controlled Health Organisation (VACCHO) Aunty Dr Jill Gallagher (Gunditjmara) told Yoorrook:

**We have had 250 years of trauma. People talk as though it's in the past ... It's in the present too. And it's within me right now.**<sup>40</sup>

AUNTY DR JILL GALLAGHER

Executive Director of Social and Emotional Wellbeing at VACCHO, Sheree Lowe (Djab Wurrung, Gunditjmara) provided evidence about the enduring nature of historical violence:

**In Victoria colonisation and colonialism has been especially brutal. Colonial violence has been enduring and takes many forms, from various government policies, intensive genocide and those that led to the Stolen Generation, a form of cultural genocide itself. To police brutality and the continuing torment of black deaths in custody, to the trauma that is a product from unchecked, unchallenged racism and discrimination whether structural, systemic, overt, casual, or unconscious bias. Inert culturally unsafe service systems and models of care designed to cater to the majority are incapable of understanding our needs and ways of being. It need not matter the form of violence. Its impacts are felt deeply. The trauma is compounding.**<sup>41</sup>

SHEREE LOWE

In evidence to Yoorrook, First Peoples discussed the wide-ranging impacts of intergenerational trauma.<sup>42</sup> VACCHO referred to the academic work of First Nations trauma expert Emeritus Professor Judy Atkinson (Jiman, Bundjalung), who has explained how colonisation creates intergenerational harm through various stages:<sup>43</sup>

- physical violence: invasion, disease, death and destruction<sup>44</sup>
- structural violence: enforced dependency, legislation, reserves and child removals<sup>45</sup>
- psycho-social dominance: cultural and spiritual genocide.<sup>46</sup>

Intergenerational trauma echoes through the generations and impacts the lives of many First Peoples today.<sup>47</sup> As VACCHO explained in its submission to Yoorrook:

**These traumas do not simply disappear as the sun sets on those directly brutalised over the last two centuries. They stay with us.**<sup>48</sup>

VICTORIAN ABORIGINAL COMMUNITY CONTROLLED HEALTH ORGANISATION

Marcus Stewart also told Yoorrook about the real and continuing impacts of intergenerational trauma:

**The impacts of trauma inflicted on First Peoples by Colonisation are still carried by our Community today. This intergenerational trauma gives rise to childhood mortality, educational deficits, unemployment, poverty and reduced life expectancy. It is also perpetuated by systemic injustices that permeate all levels of Australian society.**<sup>49</sup>

MARCUS STEWART, INAUGURAL CO-CHAIR OF FIRST PEOPLES' ASSEMBLY OF VICTORIA

Yoorrook heard that First Peoples do not just experience the pain and trauma at an individual level; it ripples through families and communities:

**These are collective traumas that are expressly felt by us all.**<sup>50</sup>

VICTORIAN ABORIGINAL COMMUNITY CONTROLLED HEALTH ORGANISATION

## Resistance

weerreentyan-wanoong

*we resisted*

Wooroowooroomeet Ngapoon Koorooke-ngeeye ba  
Parteeyt kalpeerna meerreeng-ngeey-ee

*our Old People and Warriors died for our Country*

kalpeerna ngalang-ee kalpeerna part-eeyt-ee

*in the battles, wars and massacres*

warrakeeleek-ngeeye, weeraka leeyt-ngeeye

*we are angry our heart hurts / our heart runs, for this*

weerrentya-ya-wanoong

*we continue to resist.*<sup>51</sup>

AUNTY DR VICKI COUZENS

The mainstream 'origin story' of Victoria's establishment relied on false premises: terra nullius, peaceful settlement and British civilising influence. As evidence in the later chapters of this report attests, this narrative, embedded in education systems and reproduced in place names and public monuments, serves to legitimise the dispossession of First Peoples. Yoorrook heard that this narrative is a myth.<sup>52</sup> Marcus Stewart told Yoorrook:

**The colonial nation-building project in Victoria was built on false mythologies about the 'civilising' mission of the colonialists. Australian children are not taught the full history of what our people have experienced at the hands of colonisers and the brutal aspects of our experiences are seldom acknowledged in discourse outside the First Peoples Community. This silence does a disservice to all Victorians.**<sup>53</sup>

MARCUS STEWART, INAUGURAL CO-CHAIR OF FIRST PEOPLES' ASSEMBLY OF VICTORIA

Evidence presented to Yoorrook instead reveals a history of systematic displacement met with persistent resistance.

Throughout this inquiry, Yoorrook received extensive evidence about the courageous efforts of First Peoples to protect, regain, and maintain control of their Country, cultures and kin.<sup>54</sup> Stories of First Peoples’ ongoing resistance are documented throughout this report. Yoorrook heard evidence about the fighting Gunditjmara warriors during the Eumeralla Wars<sup>55</sup> and the activism of William Barak, the ngurungaeta of the Wurundjeri-willam clan.<sup>56</sup> Yoorrook heard about the people who advocated for self-government at Coranderrk,<sup>57</sup> about Yorta Yorta man William Cooper who founded the Australian Aborigines League,<sup>58</sup> and about land rights campaigners including Aunty Sandra Onus (Gunditjmara) and Aunty Tina Saunders nee Frankland (Gunditjmara).<sup>59</sup> Yoorrook was told about the fight to protect First Peoples’ cultural heritage led by Uncle Jim Berg (Gunditjmara),<sup>60</sup> the revitalisation of language and practices including the possum skin cloak story led by Aunty Dr Vicki Couzens (Keerray Wooroong Gunditjmara) and others,<sup>61</sup> the advocacy of Uncle Professor Gary Foley (Gumbaynggirr), the late respected Elder Aunty Edna Brown (Gunditjmara) and others in establishing Aboriginal legal and health services in the 1970s, and First Peoples education trailblazers, including the late respected Elder Uncle Professor Colin Bourke (Gamilaroi).<sup>62</sup> Yoorrook heard about many others who were and continue to be an integral part of a centuries-long tradition of resistance, refusal, strength and survival.

# Ongoing truth-telling

Without the truth being told of what happened here in this place now called Victoria there can be no reconciliation, only a divided state as it is today. Tell the truth.<sup>63</sup>

UNCLE JIM BERG

This report establishes that the State of Victoria was built on a history of injustice. It emphasises how the harmful actions that shaped the State are not confined to the past but are ongoing — continuing to affect First Peoples communities today. In addition, the report highlights the profound and enduring damage caused by this history, particularly the intergenerational transmission of trauma. These effects reverberate through families and communities, leaving lasting scars that persist across generations.

A critical step in addressing this harm is acknowledging its existence and understanding why it continues to affect First Peoples today.<sup>64</sup> This process of recognition is the very essence of truth-telling. Through truth-telling, people can fully understand the extent of the damage, and it is only by confronting the past that meaningful healing and redress can begin.

The truth-telling function of Yoorrook will necessarily conclude at the end of its mandate. However, to continue the process of coming to terms with the past, the State must sustain and provide for this function. The mechanism for future truth-telling is a matter which could be addressed in treaty negotiations.<sup>65</sup> Truth-telling must take place in a self-determined way<sup>66</sup> that prioritises healing<sup>67</sup> and is accompanied by real action and change.<sup>68</sup> As Marcus Stewart told Yoorrook:

By sharing our history and our truths, the Assembly hopes that they will become everyone’s history and everyone’s truths. ... [T]ruth-telling is not a process unique to this moment. Rather, truth-telling has been occurring for generations within our Community and is an important part of our history ... Nor is truth-telling intended to inflict shame, torment or retribution on Victorians who are not First Peoples, or to allow us all collectively to wallow in the injustices of the past. Instead, the truth-telling process is a necessary step towards reckoning with our past, committing to unpicking the tangled impact of Colonisation facing First Peoples today, and to motivating us all to do better.<sup>69</sup>

MARCUS STEWART, INAUGURAL CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA



# The way forward

Yoorrook received extensive evidence about the truth of Victoria’s brutal history and how it continues to permeate First Peoples’ contemporary experiences. Following on from *Yoorrook for Justice*, this report tells the truth about the past and ongoing injustice across land, education, health, housing, economic and political life and access to records. It recommends reforms to recognise the truth, create systemic change, provide redress for past wrongs and shape the future together. Treaty-making between First Peoples and the State and truth-telling, both through Yoorrook and as an ongoing process, provide an unprecedented opportunity for the State and all Victorians to now do better — to properly acknowledge the full sweep of this history, to reckon with its ongoing impacts, to rebuild nations and to provide redress.

# Recommendation

## RECOMMENDATION 1

The Victorian Government must fund the First Peoples’ Assembly of Victoria to establish an ongoing truth-telling body to continue to take First Peoples’ testimony and build the public record.

Endnotes

1. Transcript of Aunty Muriel Bamblett, 6 December 2022, 95 [34]–[35]. See also Victorian Aboriginal Child and Community Agency, Submission 77 (Criminal Injustice), 7.

2. Transcript of Isobel Paipadjerook Morphy-Walsh, 20 May 2022, 175 [1]–[6].

3. Transcript of Nerita Waight, 13 June 2024, 5 [27].

4. Transcript of Dr Jacynta Krakouer, 8 December 2022, 240 [9]–[11].

5. Harry Blagg and Thalia Anthony, *Decolonising Criminology: Imagining Justice in a Postcolonial World* (Palgrave Macmillan, 2019), 32.

6. Harry Blagg and Thalia Anthony, *Decolonising Criminology: Imagining Justice in a Postcolonial World* (Palgrave Macmillan, 2019), 40.

7. Patrick Wolfe, ‘Settler Colonialism and the Elimination of the Native’ (2006) 8(4) *Journal of Genocide Research* 387, 387–390; Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (Palgrave McMillan, 2010), 49–50, 121–127.

8. Patrick Wolfe, ‘Settler Colonialism and the Elimination of the Native’ (2006) 8(4) *Journal of Genocide Research* 387, 388–390.

9. Patrick Wolfe, ‘Settler Colonialism and the Elimination of the Native’ (2006) 8(4) *Journal of Genocide Research* 387, 402. See also Victoria University Collection on Patrick Wolfe: Victoria University, ‘[Patrick Wolfe Collection](#)’ (Webpage).

10. Patrick Wolfe, ‘Settler Colonialism and the Elimination of the Native’ (2006) 8(4) *Journal of Genocide Research* 387, 402. See also Victoria University Collection on Patrick Wolfe: Victoria University, ‘[Patrick Wolfe Collection](#)’ (Webpage).

11. Jumbunna Institute, Submission 900, 2.

12. Jumbunna Institute, Submission 900, 4.

13. Jumbunna Institute, Submission 900, 4.

14. Transcript of Associate Professor Michelle Evans, 24 June 2024, 86 [22]–[30].

15. Transcript of Premier Jacinta Allan MP, 29 April 2024, 10 [9]–[17].

16. Transcript of Secretary Peta McCammon, 7 June 2024, 3 [42]–[47].

17. Australian Human Rights Commission and Federation of Ethnic Communities’ Councils of Australia, *An Anti-Racism Framework: Experiences and Perspectives of Multicultural Australia; Report on the national community consultations* (Report, 2024), 12.

18. Australian Human Rights Commission and Federation of Ethnic Communities’ Councils of Australia, *An Anti-Racism Framework: Experiences and Perspectives of Multicultural Australia; Report on the national community consultations* (Report, 2024), 12.

19. Australian Human Rights Commission and Federation of Ethnic Communities’ Councils of Australia, *An Anti-Racism Framework: Experiences and Perspectives of Multicultural Australia; Report on the national community consultations* (Report, 2024), 12.

20. See especially Camara Phyllis Jones, ‘Levels of Racism: A Theoretic Framework and a Gardener’s Tale’ (2000) 90(8) *American Journal of Public Health* 1212, 1212.

21. Katherine A Thurber et al, ‘Prevalence of Everyday Discrimination and Relation with Wellbeing among Aboriginal and Torres Strait Islander Adults in Australia’ (2021) 18(12) *International Journal of Environmental Research and Public Health* 6577, 6578.

22. Katherine A Thurber et al, ‘Prevalence of Everyday Discrimination and Relation with Wellbeing among Aboriginal and Torres Strait Islander Adults in Australia’ (2021) 18(12) *International Journal of Environmental Research and Public Health* 6577, 6578.

23. Australian Human Rights Commission and Federation of Ethnic Communities’ Councils of Australia, *An Anti-Racism Framework: Experiences and Perspectives of Multicultural Australia* (Report, 2024), 12.

24. See especially Chapter 19: Racism and cultural safety; Chapter 27: The past is the present.

25. See Chapter 4: Rights.

26. *Equal Opportunity Act 2010* (Vic) s 6, pt 4.

27. *Equal Opportunity Act 2010* (Vic) pt 4.

28. *Racial Discrimination Act 1975* (Cth) s 9.

29. Witness Statement of Aunty Fay Carter, 19 April 2022, 14, 67.

30. Transcript of Nerita Waight, 14 December 2022, 435 [44]–[49].

31. Transcript of Ngarra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 28 May 2024, 45 [38]–[45].

32. See Chapter 8: Impacts of Country being stolen, Chapter 27: The past is the present, Chapter 28: Health inequities and Chapter 29: Mental health and social and emotional wellbeing.

33. Victorian Aboriginal Community Controlled Health Organisation, Submission 445 (Education, Health, Housing), 12.

34. Victorian Aboriginal Community Controlled Health Organisation, Submission 445 (Education, Health, Housing), 12; Witness Statement of Marcus Stewart, inaugural Co-Chair of First Peoples’ Assembly of Victoria, 29 April 2022, 37 [106], citing Rule et al, *Bringing Them Home: Scorecard Report* (Report, 2015).

35. Witness Statement of Marcus Stewart, inaugural Co-Chair of First Peoples’ Assembly of Victoria, 29 April 2022, 37 [105], citing Australian Law Reform Commission, *Pathways to Justice — An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report, December 2017), [2.92].

36. Royal Australian College of General Practitioners, Submission 439, 3.

37. Transcript of Professor Raymond Lovett, 28 May 2024, 8 [11]–[40]. See Chapter 28: Health inequities.

38. Transcript of Professor Raymond Lovett, 28 May 2024, 11 [32]–12 [17].

Professor Raymond Lovett also provided to Yoorrook a confidential copy of a journal article (titled ‘The genealogy of Settler-colonisation in Australia and relation to Aboriginal and Torres Strait Islander people’s wellbeing in Australia’ that described this study. However, as this article was under review for publication, Yoorrook is not able to provide further details by way of citation.

39. Transcript of Professor Raymond Lovett, 28 May 2024, 11 [33]–[36].

40. Transcript of Aunty Dr Jill Gallagher, 27 May 2024, 57 [6]–[13].

41. Transcript of Sheree Lowe, 14 June 2024, 50 [16]–[42].

42. See Chapter 8: Impacts of Country being stolen, Chapter 27: The past is the present, Chapter 28: Health inequities, and Chapter 29: Mental health and social and emotional wellbeing. See also Transcript of Sheree Lowe, 27 May 2024, 67 [1]–[15]; Victorian Aboriginal Community Controlled Health Organisation, Submission 41 (Child Protection, Criminal Justice), 2–3, citing Judy Atkinson, *Trauma Trails: Recreating Song Lines* (Spinifex Press, 2022).

43. Judy Atkinson, *Trauma Trails, Recreating Song Lines* (Spinifex Press, 2002), 59–73.

44. Judy Atkinson, *Trauma Trails, Recreating Song Lines* (Spinifex Press, 2002), 59–65.

45. Judy Atkinson, *Trauma Trails, Recreating Song Lines* (Spinifex Press, 2002), 59, 64–69.

46. Judy Atkinson, *Trauma Trails, Recreating Song Lines* (Spinifex Press, 2002), 59, 69–73.

47. See Chapter 28: Health inequities, Chapter 29: Mental health and social and emotional wellbeing. See also Victorian Aboriginal Community Controlled Health Organisation, Submission 445 (Education, Health Housing), 14, 17, citing Leilani Darwin, Stacey Vervoort, Emma Vollert and Shol Blustein, *Intergenerational trauma and mental health* (Australian Institute of Health and Welfare, 2023).

48. Victorian Aboriginal Community Controlled Health Organisation, Submission 41 (Child Protection, Criminal Justice), 5.

49. Witness Statement of Marcus Stewart, inaugural Co-Chair of First Peoples’ Assembly of Victoria, 29 April 2022, 34 [95].

50. Victorian Aboriginal Community Controlled Health Organisation, Submission 41 (Child Protection and Criminal Justice), 5.

51. Witness Outline of Aunty Dr Vicki Couzens, 28 March 2024, 3 [24]–[28].

52. Transcript of Suzannah Henty, 28 March 2024, 6–7.

53. Witness Statement of Marcus Stewart, inaugural Co-Chair of First Peoples’ Assembly of Victoria, 29 April 2022, 14 [42].

54. See Chapter 7: How colonisers stole Country and Chapter 8: Impacts of Country being stolen; Chapter 27: The past is the present; Chapter 18: Historical context — the past is the present; Chapter 23: Tertiary overview and historical context and Chapter 34: Housing overview and historical context.

55. Transcript of Aunty Donna Wright, 25 March 2024, 4 [25]–[40].

56. See Chapter 7: How colonisers stole Country.

57. See Chapter 7: How colonisers stole Country.

58. See Chapter 37: Political life.

59. See Chapter 9: How we got here — overview of recognition systems and Yoorrook Justice Commission, ‘[One of the Most Significant Land Rights Cases in Victoria’s History – Onus vs. Alcoa](#)’ (Webpage, 2024).

60. See Chapter 12: Cultural heritage and Chapter 23: Tertiary overview and historical context.

61. See Chapter 15: Earth, sea and living things and Chapter 39: Redress.

62. See Chapter 18: Historical context — the past is the present.

63. Jim Berg, ‘Coastal Dreaming’ poem: Uncle Jim Berg, Submission 464 ([Video Submission](#)), 5.

64. See Chapter 20: Curriculum; See also Dr Mati Keynes, Submission 397, 6; Transcript of Dr Mati Keynes, 5 June 2024, 57 [31]–[34]; Voices of Aboriginal Students from the Eastern Suburbs, Submission 581, 1.

65. See Chapter 20: Curriculum; Olivia Bonanno, Submission 666 ([Video Submission](#)), 3–4; Anonymous 1065, Submission 1065, 2; Transcript of roundtable with Wollithiga Clan Aboriginal Corporation, 5 December 2023, 42–43, served on the State of Victoria on 12 April 2024. See also Ebony Aboriginal and Torres Strait Islander Institute, *Truth, Justice & Healing Project: ‘Hear My Heart’*, *Discussion Paper: “What are the strengths and weaknesses of truth-telling initiatives in Australia and globally?”* (Discussion Paper, September 2020); Professor Gregory Phillips, Submission 580.

66. Jimi Peters, Submission 470 ([Video Submission](#)); Transcript of Ngarra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 50 [24]–[31]. See also Reconciliation Australia, ‘[Coming to terms with the past? Identifying barriers and enablers to truth-telling](#)’ (4 April 2024).

67. Ebony Aboriginal and Torres Strait Islander Institute, *A Black Framework for Truth, Justice + Healing* (Final Report, 2023), 5, quoting Professor Gregory Phillips. See also Professor Gregory Phillips, Submission 580.

68. Professor Gregory Phillips, Submission 580, 2–6; Anonymous 451, Submission 451, 9; Patricia Hayes, Submission 270.

69. Witness Statement of Marcus Stewart, inaugural Co-Chair of First Peoples’ Assembly of Victoria, 29 April 2022, 14–15 [42]–[44].





# Chapter 2: Sovereignty

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**[T]he current system requires a paradigm shift and a big one ... [I]f we are truly recognised as sovereign nations, we would, therefore, have parity in our relationship ... They need to negotiate with us the relationship ... because really, right now, they need to be looking at restitution and restorative justice, which sits outside the current kind of way things are done.<sup>1</sup>**

DR AUNTY VICKI COUZENS

## Introduction

The recognition of First Peoples' sovereignty has long been an aim of First Peoples politically and culturally.<sup>2</sup> However, there is much confusion about the term, its meaning, and its place in the discussion about First Peoples' rights, culture and history. This chapter examines concepts of sovereignty, including First Peoples' assertions and the State's recognition that sovereignty has never been ceded, and the impact of this ongoing tension on the foundations of the Victorian State. It then explores treaty-making as the only path forward to bring together diverse perspectives and reconcile contested sovereignties.

### What is sovereignty?

#### Sovereignty in a Western sense

The term 'sovereignty' is difficult to define.<sup>3</sup> The language and concept are primarily Western in origin and emerged from Europe in the late 16th century.<sup>4</sup> Nonetheless, the conditions that fit the description of a sovereign entity or authority have been in existence for thousands of years in various parts of the world. Where groups of humans have occupied territory, there is likely to have been a system that fits the description of sovereignty. The meaning of sovereignty is contested and constantly evolving, but it remains a 'resilient' historical, political and philosophical principle.<sup>5</sup>

International law describes sovereignty as 'the supreme power by which any State is governed. This supreme power may be exercised either internally or externally':<sup>6</sup>

- external sovereignty asserts independence from other political societies and is typically regulated by international law.<sup>7</sup>
- internal sovereignty is inherent in the people (or vested in a ruler) and is typically regulated by constitutional law.<sup>8</sup>

Sovereignty involves the power and right to govern a defined part of the globe to the exclusion of others who occupy other parts of the globe;<sup>9</sup> in that respect, it signifies independence.<sup>10</sup> Importantly, internal sovereignty may be 'divided' in relation to the form of government that exercises sovereignty.<sup>11</sup> This explains how both federal and state governments can assert sovereignty over the same territory or lands—either Australia as a whole or the territory of each State.

Sovereignty is inextricably tied to territory — to Country, land and waters.<sup>12</sup> Western laws recognise that a sovereign enjoys supreme legal authority in and over a territory.<sup>13</sup> Under international law, territorial sovereignty not only requires a claim to title but a continuous display of the exercise of the powers of a nation-state, even if not exercised in fact at every moment on every point of a territory.<sup>14</sup>

In Australia, sovereignty also often refers to 'parliamentary sovereignty'. Parliamentary sovereignty is traditionally the right of parliament to make or unmake any law, and that no person or body is recognised as having the right to override or set aside legislation passed by parliament.<sup>15</sup> This is subject to the judicial power of the courts to strike down legislation for breaching the *Australian Constitution* — the foundational law.

More recently, sovereignty has been referred to as residing in the people of Australia, often called 'popular sovereignty'.<sup>16</sup> This form of sovereignty is a feature of the *Australian Constitution*, under which the people of the Commonwealth choose their representatives in parliament and have the ultimate power to change the *Constitution* through referendum.<sup>17</sup>

In summary, sovereignty in a Western sense incorporates law-making power, territory and members of a community.



## The ‘acquisition’ of sovereignty

Sovereignty has been described as a ‘colonising term’.<sup>18</sup> Traditionally under international law, nation-states (typically European) ‘acquired’ sovereignty by a number of methods, most prominently ‘conquest, cession, and occupation of territory that was terra nullius’.<sup>19</sup> Occupation of territory has also been called ‘settlement’.<sup>20</sup>

Conquest is no longer a valid basis for acquisition of sovereignty given it is contrary to Article 2(4) of the *United Nations Charter*, which states all nation-states shall refrain ‘from the threat or use of force against the territorial integrity or political independence of any state’.<sup>21</sup>

Cession is the transfer of sovereignty over territory by one owner who exercises sovereignty to another.<sup>22</sup> In other words, one group ‘cedes’ sovereignty to another group.

Occupation or settlement requires the land to be terra nullius, or ‘land belonging to no one’, under international law.<sup>23</sup> This has been described as a ‘cardinal condition of a valid “occupation”’.<sup>24</sup> To justify acquiring sovereignty over First Peoples’ lands and waters, European countries cast First Peoples as ‘backwards people’ who were not organised into distinct political societies bound together by law, did not cultivate the land as Europeans did, and required the ‘benefits of Christianity and European civilization’.<sup>25</sup> First Peoples were assumed to have ‘no recognized sovereign, else the territory could have been acquired only by conquest or cession’.<sup>26</sup>

To justify their ‘settlement’ of Australia and other First Peoples’ lands, British authorities used the principle of terra nullius and by extension the concept of aqua nullius, underpinned by the so-called ‘doctrine of discovery’ (see box: terra nullius and box: aqua nullius).

### TERRA NULLIUS

Terra nullius was the foundational legal doctrine used during colonisation to purportedly legitimise British settlement over Australia. It is a Latin term meaning ‘no one’s land’, ‘land belonging to no one’ or ‘land with no inhabitants’. As explored in this chapter and in Chapter 9: How we got here — overview of recognition systems, international law at the time permitted settlement as a means of acquiring sovereignty where the land was uninhabited and therefore terra nullius.<sup>27</sup> Uninhabited land included territory inhabited by people ‘taken to be without laws, without a sovereign and primitive in their social organisation’.<sup>28</sup> Where land was terra nullius it was presumed that no law existed in the territory, meaning that the laws of the British colonisers immediately came into force upon settlement.<sup>29</sup>

Yoorrook heard that early colonisers were aware of First Peoples’ systems of law, areas of occupation, organised resistance and other forms of governance;<sup>30</sup> terra nullius was deliberately misapplied at the time of Australia’s colonisation to deny First Peoples’ laws and rights to land.

Terra nullius was ultimately rejected by the High Court of Australia in the 1992 case of *Mabo v Queensland [No 2]* (*‘Mabo’*),<sup>31</sup> but its initial application has left a legacy of ‘injustices ... on such a scale that they cannot be readily disentangled’.<sup>32</sup> The State’s effective and legal control of First Peoples’ land and subsequent granting of freehold or leasehold interests has diminished opportunities for Traditional Owners to claim land rights over a large proportion of land in Victoria.<sup>33</sup> By legitimising the theft of First Peoples’ land, terra nullius has left a lasting barrier for Traditional Owners trying to assert their ownership rights over their traditional lands.

### AQUA NULLIUS

Similar to terra nullius, aqua nullius translates to ‘nobody’s water’ (see Chapter 14: Water). Dr Erin O’Donnell, a water law expert from the University of Melbourne, explained that aqua nullius is underpinned by a ‘belief that land belonged to no one and therefore water belonged to no one’.<sup>34</sup> Aqua nullius is a fiction as First Peoples’ sovereignty has never been ceded and, as Dr Katie O’Bryan of Monash University explained, aqua nullius is based on the ‘erroneous assumption that water belonged to no one when the British invaded’.<sup>35</sup>

Common law water rights were linked to land, resulting in ‘waves of dispossession’<sup>36</sup> of water starting at the time land was stolen.<sup>37</sup> These laws facilitated the exploitation of water for economic benefit<sup>38</sup> — an extractive way of thinking about natural ecosystems and landscapes that is antithetical to Traditional Owners’ relationship with Country.<sup>39</sup> Ongoing waves of dispossession continue, demonstrating the pervasiveness of colonial legal frameworks in barring First Peoples from their water rights.

### THE DOCTRINE OF DISCOVERY

The doctrine of discovery is an international legal and religious concept that has been used by settler states to justify colonisation and legitimise dispossession since the 1400s.<sup>40</sup> The origins of the doctrine can be traced to papal bulls (official documents issued by the pope of the Catholic Church) that provided religious authority for the invasion and colonisation of non-Christian lands without regard to the rights of the Indigenous peoples.<sup>41</sup>

The doctrine of discovery was based on notions of racial superiority, where European civilisation was presumed to be superior to First Peoples civilisations.<sup>42</sup> It was used to declare lands occupied by First Peoples as ‘empty’.<sup>43</sup> It has been described by Professor Robert Miller of the Arizona State University as a ‘six-hundred-year-old ethnocentric, racist and feudal legal doctrine’.<sup>44</sup> The formulation of the doctrine by Chief Justice Marshall of the United States Supreme Court in the 1823 decision *Johnson v McIntosh*<sup>45</sup> has been used in countries across the world, including Australia, to justify the assertion of state sovereignty.<sup>46</sup>

The Vatican officially repudiated the doctrine in 2023.<sup>47</sup> Despite this repudiation, the doctrine continues to remain an applicable legal principle in many countries.<sup>48</sup> In Australia, the doctrine of terra nullius became ‘a more extreme version’ of the doctrine and was used by British colonisers to justify colonisation.<sup>49</sup>

The international legal justification for acquisition of sovereignty over land occupied by Indigenous peoples was rejected in the famous *Western Sahara Advisory Opinion*, decided by the International Court of Justice in 1975. In that case, the Court said that ‘territories inhabited by tribes or peoples having a social and political organization were not regarded as terra nullius’, even if those peoples were ‘nomadic’ and the territory was ‘sparsely populated’.<sup>50</sup>

British ‘acquisition of sovereignty’ in Australia was dependent on the settlement of territory that was terra nullius.<sup>51</sup> The colonisers ‘ignored’ First Peoples when considering land title in Australia.<sup>52</sup> As Justice Brennan said in *Mabo*:

The theory that the [I]ndigenous inhabitants of a ‘settled’ colony had no proprietary interest in the land thus depended on a discriminatory denigration of [I]ndigenous inhabitants, their social organization and customs. ... [T]he basis of the theory is false in fact and unacceptable in our society ...<sup>53</sup>

JUSTICE GERARD BRENNAN

This meant that ‘the Crown’s sovereignty over a territory which had been acquired under the enlarged notion of terra nullius was equated with Crown ownership of the lands therein’.<sup>54</sup> In other words, dispossession of First Peoples from their lands and waters was justified by terra nullius and allowed for the British Crown to assert ownership over those lands and waters. This is the basis for the assertion of Australian sovereignty.

The notion that the lands and waters of Australia were terra nullius at the time of the arrival of the British was rejected as a ‘legal fiction’ in *Mabo*.<sup>55</sup> The High Court’s rejection of terra nullius meant that it was able to reject the common law rule that upon the acquisition of sovereignty, the British Crown acquired an absolute beneficial ownership of the land to the exclusion of the rights of First Peoples. This also means that the international legal requirement of terra nullius for acquisition of sovereignty under occupation or settlement was not, and is not, met in Australia.

Nevertheless, the British acquisition of sovereignty over the lands and waters of Australia cannot be challenged in an Australian court.<sup>56</sup> The courts have stated that it is not open as a matter of Australian law to doubt the conclusion that Australia was ‘settled’ rather than acquired by conquest or cession.<sup>57</sup> Domestic courts have found that legal sovereignty now resides in the Commonwealth of Australia and the states (including Victoria), subject to the *Australian Constitution*.<sup>58</sup> Further, First Peoples in Australia do not have standing as ‘nation-states’ recognised by the United Nations and cannot access the International Court of Justice to contest British assertions of the acquisition of sovereignty.<sup>59</sup>

First Peoples’ sovereignty

It is undesirable and inappropriate to define the meaning of First Peoples’ sovereignty. This is because the concept is Western, European and colonial in origin and difficult to define more generally. Most importantly, any conception of First Peoples’ sovereignty will be different for, and must be determined by, First Peoples themselves,<sup>60</sup> consistent with their right to self-determination, including the right to freely determine their political status.<sup>61</sup>

Nonetheless, despite the difficulties of definition, calls for recognition of First Peoples’ sovereignty persist. Also, despite the undesirability and inappropriateness of attempting to define sovereignty *for* First Peoples, some consistent themes emerge. Most essentially, the idea of First Peoples’ sovereignty cannot be separated from relationships with Country.<sup>62</sup>

The Uluru Statement from the Heart describes sovereignty from a First Peoples perspective as a ‘spiritual notion’:

[T]he ancestral tie between the land, or ‘mother nature’, and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors. This link is the basis of the ownership of the soil, or better, of sovereignty. It has never been ceded or extinguished, and co-exists with the sovereignty of the Crown.<sup>63</sup>

ULURU STATEMENT FROM THE HEART

However, this conception of sovereignty is not without criticism.<sup>64</sup> As Adjunct Associate Professor Mary Graham (Kombumerri, Wakka Wakka), Lyndon Murphy (Jinabara) and Associate Professor Morgan Brigg have stated, the language of sovereignty is used in the Uluru Statement from the Heart ‘as if it possesses a certain magic’ and ‘falls into common traps that see Indigenous people incorporated into mainstream political administration on European–Australian terms’.<sup>65</sup>

Rather, Associate Professor Morgan Brigg and Adjunct Associate Professor Mary Graham have suggested that ‘relationalism’ is a more appropriate term to describe First Peoples’ political order. This concept focuses on relations to Country, kin, ancestors, individuals, groups and totems: ‘[I]n Aboriginal political ordering, the tensions and difficulties of human co-existence are managed *relationally* rather than through the imposition of a *sovereign*’.<sup>66</sup>

Others question whether those that endorsed the Uluru Statement from the Heart had the authority to make any concession as to the validity of the British assertions of lawful sovereignty. Another question is whether the Uluru Statement from the Heart was intended to have any binding effect on First Peoples’ rights to self-determine their political standing in relation to the governments now taking their authority from British occupation of Australia. The answer to the first question is clearly ‘no’; the Uluru Convention did not possess that authority. The answer to the second question is that the Uluru Statement from the Heart was not intended to have a legally binding effect on any person or group of people.

The meaning and use of the word sovereignty varies for First Peoples. It is sometimes used in a way that is aligned to Western definitions of sovereignty.<sup>67</sup> Some First Peoples continue to use the term ‘sovereignty’ as a ‘resistance to colonisation’, infusing the term with meaning beyond the narrower Western definition.<sup>68</sup>

In relation to the external context, the late Kevin Gilbert (Wiradjuri) has highlighted that the international legal definition of sovereignty is consistent with the First Peoples meaning of the term, namely supreme controlling power over territory.<sup>69</sup>

Discussion of the internal context is more prevalent. Many calls for sovereignty focus on the right to self-rule<sup>70</sup> and self-determination.<sup>71</sup> Professor Larissa Behrendt (Euahleyai, Gamillaroi) examined several calls for the recognition of sovereignty by First Peoples leaders and concluded:

[P]olitical aspirations to the recognition of sovereignty include an aspiration to greater community autonomy but this falls short of advocating a separation from the Australian state. This notion captures the essence of *both* a separate cultural entity and historical dispossession *and* the exclusion and lack of consent involved in the creation of the modern Australian state.<sup>72</sup>

PROFESSOR LARISSA BEHRENDT

Associate Professor Sean Brennan, Professor Brenda Gunn (Metis) and George Williams state that many Indigenous peoples describe sovereignty as ‘the basic power in the hands of Indigenous people, as individuals and as groups, to determine their futures’.<sup>73</sup>



Professor Larissa Behrendt has described Indigenous sovereignty as a ‘spectrum of claims’ in three categories:

1. Equality rights, such as the right not to be discriminated against
2. Indigenous rights, such as rights to culture, heritage, language and native title
3. Empowerment rights, such as rights to make decisions and have control over decisions that affect the lives of Indigenous peoples.<sup>74</sup>

Aboriginal author Tony Birch describes it as ‘a multi-faceted concept ... both actual and spiritual ... [which] also exists in both psychological and political terms’.<sup>75</sup>

Yoorrook also received evidence regarding First Peoples’ views of sovereignty. The concept of sovereignty was explored by participants in a roundtable with Nimmie-Caira Land and Water Aboriginal Corporation:

How do I explain connection and sovereignty? I have to go to the sky. I have to go to creator, because that’s how it’s come down in lore for us ... I say it’s celestial, it’s religious ... it’s canonised, it’s — and it’s, you know, separate from political. I think that’s why there’s the push to bring the politics and the Bible together, because they know how powerful that Bible is. But we don’t go with the Bible. We have our own creator for our land, sky and waters.<sup>76</sup>

PARTICIPANT, NIMMIE-CAIRA LAND AND WATER ABORIGINAL CORPORATION  
ROUNDTABLE

Michael Graham (Dja Dja Wurrung, Wiradjuri), CEO of the Victorian Aboriginal Health Service, reflected on the significance of saying that sovereignty has never been ceded:

I did want to acknowledge we are on the land of the Wurundjeri people and pay respects to Elders past and present, and it’s always weird talking about what that actually means, because we say we never ceded, and yet that would then put us almost at war with the colonisers. But there’s no war tribunals. There’s only things like this to talk about. So it’s either at war or it was stolen and, you know, if it’s stolen then it’s time to give it back and maybe it’s both. But we don’t talk about that.<sup>77</sup>

MICHAEL GRAHAM

Uncle Gary Murray (Dhudhuroa, Yorta Yorta, Barapa Barapa, Dja Dja Wurrung, Wamba Wemba, Wergaia, Wiradjeri, Waywurru) also highlighted how often non-Indigenous people will recognise that sovereignty has never been ceded, for example in acknowledgments of Country. However, an understanding among non-Indigenous people of what this means is not always clear:

[T]hey recognise that we have never ceded our sovereignty — everybody says that, but it seems to be lip service. What does it really mean in a practical sense?<sup>78</sup>

UNCLE GARY MURRAY

Importantly, assertions of First Peoples’ sovereignty do not generally seek sovereignty over non-Indigenous people.<sup>79</sup>

These reflections highlight that calls for the recognition of First Peoples’ sovereignty persist, are tied to Country and are a demand for real outcomes, not only symbolic platitudes. In many ways, First Peoples’ descriptions of sovereignty mirror the common definitional themes in international and Australian law, namely law-making power (or the power to self-determine or self-rule), territory and a community of members.

No matter the definition, Australian courts have rejected the proposition that a form of First Peoples’ sovereignty continues to exist in Australian law, including after the decision in *Mabo*.<sup>80</sup> Nonetheless, implicit in the High Court’s rejection of terra nullius is the legal recognition of some form of First Peoples’ sovereignty, at least in existence prior to the arrival of British colonisers.<sup>81</sup>

Further, in the case of *Love v Commonwealth of Australia* the High Court of Australia found that the identification of the appellants in those cases as First Peoples was a matter for the Traditional Owner or First Nations group from which they asserted their identity.<sup>82</sup> Such findings cannot be understood as in and of themselves recognising coexisting First Peoples’ sovereignty, but they are consistent with an alternative rules-based order that has present day vitality and operation.

Ultimately, despite overlap between them, First Peoples’ concepts of sovereignty are broader than traditional Western definitions of the term. As Associate Professor Crystal McKinnon (Amangu Yamatji) has written:

Indigenous sovereignty is not solely about territory or land, or the power of one group being asserted over another. It is not defined nor contained by Western legal definitions nor Western legal frameworks. The Western legal definition of sovereignty is far too simplistic and one-dimensional. Indigenous sovereignty is so much more than this; it is about relationships to family to ancestors and to kin. It is about the land, territory and country. It is about our rights and our obligations to each other. It is about our knowledges and our understandings of ourselves and of others. It is about our spiritual and religious beliefs and our creators. It is also about our place within our country, our stars and our worlds. It encompasses everything about who we are as Indigenous people. It is the past, the present and Indigenous futures.<sup>83</sup>

ASSOCIATE PROFESSOR CRYSTAL MCKINNON

# What Yoorrook heard

## First Peoples’ sovereignty has never been ceded

First Peoples maintain that sovereignty has never been ceded.<sup>84</sup> As Professor Behrendt explains:

The notion of Indigenous people as a sovereign people derives from the fact that Indigenous people have never ceded their land and continue to feel separate, both in identity and in the way they are treated differently from other Australians.<sup>85</sup>

PROFESSOR LARISSA BEHRENDT

Beyond being a statement of fact, the statement ‘sovereignty was never ceded’ can be understood as shorthand for the dual claims that First Peoples were sovereign before the British invaded and that sovereignty has not been lawfully acquired. In declaring that ‘sovereignty was never ceded’, First Peoples should be understood as proclaiming that neither the British nor any other people have acquired land with First Peoples’ consent. First Peoples’ sovereignty existed before British invasion and continues to exist. As a matter of international law, the settlement or occupation of Australia by the British cannot be relied on for the acquisition of sovereignty because the territory was already occupied. Yoorrook heard multiple Traditional Owners give evidence to this effect.

Uncle Brendan Kennedy (Tati Tati) told Yoorrook:

We have never ceded our sovereignty, Tati Tati people, and all the Murray River Peoples and all Traditional Owners, First Nations peoples, we have never ceded our sovereignty ... We have never given consent to any — anyone other than Tati Tati to our Country. We have never authorised and we have never relinquished or bequeathed any of our Country, our water, our culture and our rights and we never will.<sup>86</sup>

UNCLE BRENDAN KENNEDY

We, Tati Tati and Wadi Wadi, are the sovereign nations that carries the responsibilities of caring for our Country, including all the waterways, landscapes, wildlife, ancestral site, totemic species, and cultural heritage, as well as our language, lore, song, dance, ceremony, customs. Our inherent right as Traditional Owners is our connection to place, land and animals dating back to over 2000 generations. We, Tati Tati and Wadi Wadi, state we have never ceded sovereignty, nor ever relinquished, given, or traded our inherent right to Country and culture to any foreign individuals, parties or governments.<sup>87</sup>

UNCLE BRENDAN KENNEDY, CITING CULTURAL FLOWS MANAGEMENT PLAN

Uncle Gary Murray said:

First Peoples are the sovereign original nations, clans, peoples, owners, occupiers, spiritual, physical, economic and legal users of all Victorian lands, minerals, skies, Victoria across some 38-plus nations. First Peoples have embedded priority rights, first rights, that is, to Victorian lands and waters including cross border lands ... To deny their existence is to deny the rising of the sun, moon and tide. We have an illegal occupation that is ongoing and the Victorian troop have failed to address in some substantive which way.<sup>88</sup>

UNCLE GARY MURRAY

[W]e have been here a long time. They can never take that away from us. We are here; we have never left.<sup>89</sup>

UNCLE GARY MURRAY

Inaugural Co-Chair of the First Peoples’ Assembly of Victoria Marcus Stewart (Taungurung) said:

Never has our sovereignty over these lands been ceded and never has it formally been recognised by a treaty. Our sovereignty reflects the ancestral tie between the land and First Peoples ... In the two-and-a-half centuries since Colonisation, we have been fighting for our land, our culture, our languages and our lives. We have been constantly regrouping in the face of seemingly insurmountable obstacles ... the tenacity, the strength and the resilience of First Peoples have brought us here. We are still here. And we aren’t going anywhere.<sup>90</sup>

MARCUS STEWART

Alan Thorpe (Gunai), Director and Facilitator of Dardi Munwurro, stated: ‘I never lose my sovereignty. I’m always a sovereign man and I will stay true to that. That’s how I operate’.<sup>91</sup> Similarly, Aunty Donna Wright (Kerrupmara, Nillaan, Gunditjmara, Dhauwurd wurrung, Djab wurrung, Kamilaroi) said, ‘there is the first law of the country and it’s our sovereignty’.<sup>92</sup>

In a roundtable with Bangerang Aboriginal Corporation, Yoorrook heard:

[S]ince the beginning we have a connection to Country. That’s never been disproven. That’s always been the case ... So that’s not disputed anywhere and can’t be, because the truth of — it is the truth.<sup>93</sup>

PARTICIPANT, BANGERANG ABORIGINAL CORPORATION ROUNDTABLE

Uncle Professor Mark Rose (Gunditjmara), Pro Vice-Chancellor Indigenous Strategy and Innovation at Deakin University, highlighted that in the United States, the language around land acknowledgements includes that the land is currently ‘occupied’. He said: ‘[T]he way they acknowledge Country over here, they don’t use the word “unceded”. They use the word “occupied”’.<sup>94</sup> This language is consistent with the fact that ‘settlement’ or ‘occupation’ under international law was only valid in circumstances where the land was terra nullius. This is not the case in either the United States or Australia.

## The State acknowledges that sovereignty has never been ceded

The Preamble to the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic) (*Treaty Act*) states: ‘Victorian traditional owners maintain that their sovereignty has never been ceded, and Aboriginal Victorians have long called for treaty’.<sup>95</sup>

Yoorrook heard from various State representatives (including ministers, deputies, secretaries and senior public servants) who spoke on behalf of the Victorian Government. Many State representatives who appeared before Yoorrook acknowledged that sovereignty was never ceded in an acknowledgement of Country.<sup>96</sup> However, only a few State representatives appeared to have engaged in unprompted deeper reflection on the topic.<sup>97</sup>

In her witness statement and in hearings, Premier of Victoria Jacinta Allan MP acknowledged that ‘sovereignty was never ceded, and that Traditional Owners’ spiritual and ancestral ties to their lands and waters can never be extinguished’.<sup>98</sup>



Minister for Treaty and First Peoples the Hon Natalie Hutchins MP gave an acknowledgement of Country that acknowledged sovereignty:

I acknowledge that First Peoples have never ceded their sovereignty, and that their connections to lands and waters are enduring. I acknowledge First Peoples’ unbroken and unwavering connection to culture, lore and law.<sup>99</sup>

MINISTER NATALIE HUTCHINS MP

The Surveyor-General of Victoria, Craig Sandy, said:

I acknowledge that under the direction of the governors and governments the role of Surveyors-General has accepted the premise of terra nullius; the survey and legal instruments produced from this work were one of the important steps which ultimately resulted in the dispossession and removal of First Peoples from their lands in this State; the land systems established in New South Wales initially and subsequently in Victoria did not recognise the occupation and possession of First Peoples.<sup>100</sup>

SURVEYOR-GENERAL CRAIG SANDY

When questioned on the idea that British surveying systems were an attempt to override First Peoples’ sovereignty, Surveyor-General Craig Sandy said:

Yes, so that is the principle of terra nullius, and I’ve acknowledged that Surveyor-Generals past, whether it was a disregard or an ignoring, predominantly did their work based on that principle.<sup>101</sup>

SURVEYOR-GENERAL CRAIG SANDY

Then Minister for Water the Hon Harriet Shing MP<sup>102</sup> acknowledged: ‘Sovereignty has never been ceded. This is a fact that is never ignored or downplayed in its importance to my work’.<sup>103</sup> In her evidence, Minister Shing further reflected on what sovereignty means:

I want to perhaps reflect on the notion of sovereignty and we will, I hope, have an opportunity to talk further about this. I’ve grappled for a long time with the notion of sovereignty when we talk about sovereignty having never been ceded, because to my mind the words that ‘It always was and it always will be Aboriginal land and Country’ sit more easily than the notion — the imperialist notion of sovereignty which arises because of the notion of conquest, of the overriding of an existing framework of connection. And that has been reflected upon in the abolition of the notion of terra nullius, the subset of which I think is the idea of what this means for water. And I think that in walking with purpose, language is an incredibly important part of making sure that we are not further entrenching that dispossession.<sup>104</sup>

I grapple with the concept of sovereignty and imperialist notion of the acquisition of rights, the seizing of rights by a measure of conquest. Where, for me, the resonance of a statement indicates it always was, always will be Aboriginal land Country and water, strikes a balance that recognises that, in fact, Western systems of law create a framework upon which Traditional Owners have for far too long been required to enter in order to have voice.<sup>105</sup>

MINISTER HARRIET SHING MP

Minister Shing conceded that the sovereignty of First Peoples was not reflected in laws, policies and practices related to her water portfolio.<sup>106</sup>

Deputy Premier and Minister for Education the Hon Ben Carroll MP said:

I acknowledge that sovereignty was never ceded and that the impact of dispossession and colonisation to First Peoples continues to be felt today. I acknowledge the ongoing and thriving cultures, acknowledging tradition of First Peoples in all of their complexity. First Peoples were the first educators and their skill as teachers has kept culture and Country safe and vibrant for tens of thousands of years.<sup>107</sup>

MINISTER BEN CARROLL MP

Minister for Energy and Resources the Hon Lily D’Ambrosio MP acknowledged the imposition of British sovereignty was only enabled by ‘the State-sanctioned dispossession of First Peoples’ land and waters on a devastating scale’.<sup>108</sup>

Minister for Environment the Hon Steve Dimopoulos MP acknowledged in his witness statement that ‘sovereignty has never been ceded’.<sup>109</sup> In hearings, Minister Dimopoulos commented on the historical assertion of Crown sovereignty, stating:

I understand that the proclamation of Crown sovereignty in Victoria set in train events that altered the course of First Peoples’ ... lives in profound ways, and that despite the assurances of the law at the time, that it protected First Peoples and colonists alike, the reality for First Peoples was in stark contrast to these assurances.<sup>110</sup>

MINISTER STEVE DIMOPOULOS MP

Other ministers referred to sovereignty in their opening statements or acknowledgments of Country without unprompted further engagement with the topic.<sup>111</sup>

## The foundation of the Victorian State

As recognised in the rejection of terra nullius in *Mabo* and the State’s acknowledgements that sovereignty has never been ceded, a key requirement for the valid acquisition of sovereignty under international law is absent. It was absent when Port Phillip district was claimed for the British Crown by Lieutenant John Murray in 1802, when the Bourke Proclamation was made over the whole territory of Australia in 1835<sup>112</sup> and when the Colony of Victoria was created in 1851 (see Chapter 7: How colonisers stole Country).

Given ‘internal sovereignty’ in Australia is shared between the Commonwealth and the states, this casts uncertainty over the Victorian Government’s assertion of sovereignty. As Senior Counsel Assisting Tony McAvoy SC submitted in Yoorrook hearings on the point of *Mabo* and the rejection of the doctrine of terra nullius, ‘[i]t would seem that the reliance upon that legal fiction to support the lawful acquisition of Victoria at least becomes arguable and possibly unsustainable, yet the various governments in Australia have continued on with the alienation of land, water and resources without seeking to engage properly with the very fundamental issue of their own legitimacy, nor seek the consent of First Peoples’.<sup>113</sup>

The assertion of First Peoples’ sovereignty calls into question the legitimacy of Australian sovereignty.<sup>114</sup> As Michael Mansell (Pakana) has written:

Aboriginal sovereignty challenges the legitimacy of Australia’s claims to being a single ruler for all peoples. Until the sovereign rights of Aboriginals are properly dealt with, Australia will remain a tarnished nation, built on invasion, dispossession, discrimination and oppression.<sup>115</sup>

MICHAEL MANSELL

Rather than dealing with that uncertainty over legitimacy, Traditional Owners in Victoria were subject to devastating treatment to justify and confirm the claim to territory by European arrivals and eventually the State of Victoria. This is discussed further in Chapter 7: How colonisers stole Country.

**‘The foundations on which the settler state [is] built ... are rotten’**

Many of those that gave evidence to Yoorrook described, in different ways, the foundation of the acquisition of sovereignty in Victoria to be ‘rotten’. Dr Erin O’Donnell, an academic at the University of Melbourne, explained:

**[W]ater sovereignty exists at a foundational level. When we say that Country has never been ceded, that is what we are talking about. [T]he foundations on which the settler state has built its water laws are rotten.**<sup>116</sup>

DR ERIN O’DONNELL

Yoorrook heard that the theft of land was unlawful and violent in Victoria and included the failure to recognise First Peoples’ sovereignty. For example, Aunty Denise Lovett (Gunditjmara) and Uncle Johnny Lovett (Gunditjmara, Boandik) reflected on the issue of sovereignty during the land injustice hearing held on Gunditjmara Country (Portland).

**[W]e were never told how we lost our land. You either do it through a conquer, through war. A war was never declared on this Country. And this land was — this land — Country was never settled.**

AUNTY DENISE LOVETT

**And we never ceded sovereignty. And we never ceded sovereignty.**

UNCLE JOHNNY LOVETT

**No. And it was never settled. So that’s the first thing that we need to hear for our future generations ... To change that trauma and that tragic ... They’ve got to know what actually happened.**<sup>117</sup>

AUNTY DENISE LOVETT

In Yoorrook hearings, Counsel Assisting asked Premier Allan a question at the request of Uncle Robbie Thorpe — also known as Djuran Bunjilinee — (Krauatungalung Gunaikurnai). Premier Allan was asked whether her acceptance that sovereignty has never been ceded means that ‘without a treaty currently all land in Victoria belongs to Aboriginal people and the only law that governs any resident in Victoria is Aboriginal law? In other words, your law is no longer in force and you need a treaty to legitimise your occupation?’<sup>118</sup> Premier Allan responded that ‘the authority of the State today is derived from our system of parliamentary democracy’.<sup>119</sup> Yoorrook considers that the present existence of a parliamentary democracy does not overcome any unlawfulness of the initial acquisition of power.<sup>120</sup>

The failure to recognise the existence of First Peoples’ sovereignty continues to undermine the legitimacy of the State of Victoria, particularly in the eyes of Traditional Owners. For example, Uncle Johnny Lovett said:

**There is no piece of paper that exists from 1788 or whenever that says that we ceded our Country, and we sold our land. If there was, then this Treaty that is currently being negotiated by the Victorian government would have existed back then in 1788. We are still the keepers of this land, and we still own this land. There is no bill of sale for this Country. So, we need to be recognised today by the government as the owners, and they need to negotiate the terms and conditions with us. The way it is now, the cart is coming before the horse.**<sup>121</sup>

UNCLE JOHNNY LOVETT

Similarly, roundtable participants from Nimmie-Caira Land Water Aboriginal Corporation said:

**I don’t believe they really know how to deal with the situation that the Crown has sovereignty and so do we. They can’t deal with that we won’t go away. Because they tried to kill us all off. How do you come back and try and keep dealing with us? ... that’s all the fear. All this other stuff goes around because of fear. So people with their land, even in our little town — ... Very scared ... they don’t even own the title and the deed is only on a register. It’s an imagination thing. The Crown still owns all the land. It’s just a figment of their imagination that they own it because there’s a piece of paper. But in reality, it’s just a register. And even our people with native title, there’s no land coming back. It’s not a land title.**<sup>122</sup>

PARTICIPANT, NIMMIE-CAIRA LAND AND WATER ABORIGINAL CORPORATION  
ROUNDTABLE

Wurundjeri Woi-Wurrung Cultural Heritage Aboriginal Corporation Deputy Chair Uncle Andrew Gardiner (Wurundjeri Woi-wurrung) said:

**Since the mid-1800s we had our traditional lands sold from under us without our consent. We have never ceded our sovereign rights ... Four years later, 1839, vast tracks of our traditional Country were sold from us between the Plenty River and the Werribee River. We had not ceded our sovereign rights to our Country, nor did we sell it or give it away. So how did a government, which was not in this place, have the authority to sell our land?**<sup>123</sup>

UNCLE ANDREW GARDINER

The legal fiction of terra nullius was linked directly to the ongoing failure to recognise and acknowledge First Peoples’ sovereignty, as highlighted by First Nations man Ezekiel Ox:

**Until there’s an acknowledgement of the sovereignty and acknowledgement of the crime that was committed here and let’s not mix our words ... they say that it was legal at the time, but it wasn’t. You had internationally emerging jurisprudence, hence terra nullius. They had to lie to get this shit happening and so if you want to be proud of Australia and you want to say that it’s, then — it’s bullshit because it’s based on theft, rape, child removal. It is a disgrace.**<sup>124</sup>

EZEKIEL OX



The legacy of terra nullius and aqua nullius

Despite the rejection of the doctrine of terra nullius in Australia, the State acknowledged the legacy of terra nullius and aqua nullius in the evidence of many representatives, including the Premier. Premier Allan also attempted to grapple with the tension between the legal fiction of terra nullius and the legitimacy of the State’s acquisition of sovereignty in her evidence.

As stated above, Premier Allan confirmed and accepted that sovereignty has never been ceded.<sup>125</sup> In her witness statement, Premier Allan referred to the case of *Cooper v Stuart*<sup>126</sup> and stated:

In 1889 the government’s ownership of Victoria was confirmed by the highest imperial court. The Privy Council determined that the colony of New South Wales ‘consisted of attractive territory practically unoccupied, without settled inhabitants or settled law, when it was peacefully annexed to the British dominions’.<sup>127</sup>

PREMIER JACINTA ALLAN MP

Premier Allan conceded that there were ‘numerous factual errors’ in that decision<sup>128</sup> and that the decision ‘operated to deny recognition of previous Aboriginal custodianship of the lands until the High Court’s 1992 decision in [*Mabo*]’.<sup>129</sup> It should be noted that in Yoorrook hearings, Counsel Assisting acknowledged that Premier Allan is not a historian or constitutional lawyer. Nevertheless, Premier Allan agreed with the statement that ‘[t] he factually incorrect elements of [*Cooper v Stuart*] ... include the holding that there were no settled inhabitants’ and that ‘it wasn’t a matter of peaceful annexation’.<sup>130</sup> Further she agreed that in *Cooper v Stuart* ‘the imposition by the British and government of tests, in this case terra nullius ... [as a] mechanism for acquiring other people’s territory is particularly odious’.<sup>131</sup>

Pressed further on this, Premier Allan agreed that terra nullius ‘was a convenient fiction that the British and colonial governments created to avoid having to recognise the rights of Indigenous peoples in the territories it took by force’.<sup>132</sup> She also agreed that it was ‘never the case that the colonial governments believed that First Peoples had no laws and no territories. It was known from the very outset’.<sup>133</sup>

Premier Allan stated:

[T]he documents that you have taken us through this afternoon clearly do point to the — what in my view is the irrefutable point that sovereignty has never been ceded, and that your presentation has demonstrated that the British government of the time was questioning, very, very much the — what was going on in the colonies at the time, and that they were questioning these issues as well, like we continue today.<sup>134</sup>

[T]hat fact that sovereignty was never ceded. It was clearly acquired and that acquisition was questioned, I think as you pointed out as far back as 1788.<sup>135</sup>

PREMIER JACINTA ALLAN MP

Reflecting on the legacy of terra nullius, then Minister for Aboriginal Affairs the Hon Gabrielle Williams MP,<sup>136</sup> said that:

Although overturned by the High Court, the Government acknowledges that the injustices the application of the doctrine of terra nullius enabled are on such a scale that they cannot be readily disentangled. The reality is that terra nullius and the acquisition of sovereignty enabled the State to effectively and legally take control of land — an injustice that continues to have consequences today.<sup>137</sup>

MINISTER GABRIELLE WILLIAMS MP

On the legacy of aqua nullius, Dr Erin O’Donnell stated:

[A]qua nullius, and this idea that it is an erroneous assumption that water belonged to no one when the British invaded, and that this enabled the British to then assert their own authority over the governance of water. This is a false assumption. We know this from the *Mabo* case. We know this as well because Aboriginal people have never ceded sovereignty, and the idea of aqua nullius was founded in that belief that their sovereignty did not exist.<sup>138</sup>

DR ERIN O’DONNELL

Contested sovereignties

The failure to recognise First Peoples’ sovereignty has led to what Murray Lower Darling Rivers Indigenous Nations (MLDRIN) have described as ‘contested sovereignties’.<sup>139</sup>

The 2007 Echuca Declaration,<sup>140</sup> ‘a groundbreaking statement that asserts the inherent rights of Rivers and the Traditional Owners as custodians’,<sup>141</sup> begins with a discussion of competing sovereignty. As Will Mooney, Executive Officer of MLDRIN, explained:

I guess it really describes the situation that the authors could observe at that time, which was a situation whereby the Commonwealth of Australia and the States had asserted — I think it uses the terminology of a competing sovereignty over water. And it rejects that assertion by the colonial States. And then it goes on to map out a series of mechanisms whereby that illegitimate assertion could be addressed, I suppose, or overcome to some extent.<sup>142</sup>

WILL MOONEY

However, like the situation of the Commonwealth and the states, many have argued that Australian sovereignty and First Peoples’ sovereignty can coexist.<sup>143</sup> Professor Behrendt has described it not as a desire to be ‘separated from the Australia state’ but to be ‘empowered to build that independence within pockets of Australia’.<sup>144</sup>

Michael Mansell has written that ‘Aboriginal sovereignty no longer gives Aboriginal people undisputed ownership of the continent’ but that the recognition of coexisting sovereignties ‘would still be subject to the Constitution’, meaning First Peoples’ sovereignty could be accommodated within the Australian legal framework.<sup>145</sup>

In considering how the recognition of coexisting sovereignties might assist nation-building (see also Chapter 3: Self-determination), Professor Behrendt wrote:

[R]ecognition of Indigenous sovereignty and the exercise of self-determination offer a remedy to continuing tension between Indigenous and non-Indigenous people. They offer an agenda for inclusion, participation and equality and an agenda for deconstruction, redistribution, reconstruction and institutional change.<sup>146</sup>

PROFESSOR LARISSA BEHRENDT

# The way forward

## Treaty is imperative

Given the historical and legal defects associated with the acquisition of British sovereignty that continue to challenge Victorian sovereignty, the nature of First Peoples’ calls for recognition of their sovereignty, and the possibility for those concepts to coexist, the movement towards treaty is imperative.

### Treaty is the only way to bring different perspectives together

The negotiation of a treaty or treaties in Victoria presents an opportunity for a lasting compromise to the vexed question of the ‘shaky’<sup>147</sup> foundations of Victorian sovereignty and the continued advocacy for recognition of First Peoples’ sovereignty. Dealing with the issue of sovereignty in the treaty process allows Victorians to deal with the ‘unfinished business of terra nullius’ and allows ‘Indigenous people to define the terms and conditions of their relationship with the State’, an opportunity that has not been afforded them to date.<sup>148</sup>

The treaty process is essential to deal with that anxiety and to carve a new relationship between the State and Traditional Owners.<sup>149</sup> As outlined by Dr Aunty Vicki Couzens (Keerray Wooroong Gunditjmara) in the introduction to this chapter, a paradigm shift is required to recognise the sovereignty of First Peoples, and a new relationship between First Peoples and the State is needed.<sup>150</sup>

Dr Jacynta Krakouer (Mineng Noongar) gave evidence about the need for resolution to the anxiety in society regarding the contest of sovereignty:

We see this kind of anxiety that sits within the nation whenever Aboriginal and Torres Strait Islander people assert our sovereignty and assert that we are still here, that we are still surviving ... this anxiety that comes out that says, ‘Hey, but we belong in this country too, this is our country too.’ Well, the Mabo decision found that Aboriginal and Torres Strait Islander sovereignty can coexist with Australian sovereignty. Both can sit there. As a nation, Australia is uncomfortable with this history and we haven’t quite come to terms with it. So this anxiety plays out.<sup>151</sup>

DR JACYNTA KRAKOUER

The negotiation of a treaty or treaties arguably commences from the analytical framework of the recognition of First Peoples’ sovereignty as a source of authority.<sup>152</sup>

Many First Peoples gave evidence to Yoorrook about their hopes for the future in relation to First Peoples’ sovereignty. For example, Keicha Day (Gunditjmara, Yorta Yorta) and Uncle Gary Murray, respectively, said:

I want reconciliation that is tangible and where our generational wealth comes without terms and conditions and contracts and handouts and compromises of my sovereignty and my children’s sovereignty and our Elders’ sovereignty and animal and plant sovereignty. Enough is enough. How much more do you want to take from us? I want to be free from the racists. I want to be free from the violence of the colony. And I want my people to be celebrated. I want my Elders to get to live out their days peacefully, where our children live a normal life that is safe from white hands and jail cells and all the statistics that land them there. I want to get to a place where I’m not described as angry or resilient, that I’m just me, Keicha Day, a Gunditjmara and Yorta Yorta woman who comes from Mirring and Woka, land that has never and will never be ceded.<sup>153</sup>

KEICHA DAY

If we are ever going to get practical sovereignty, you have got to have your land back. You have got to have your land back ... we need to change the legislation ... Aboriginal title is no better than a lease for Crown land being transferred from one pocket to the other ... We have to find out what we can do with it properly if we are to get back on Country, have jobs and education, we have got to sort that out into the bargain as well.<sup>154</sup>

UNCLE GARY MURRAY

Many of these aspirations are critical to treaty negotiations.

### The treaty process offers a way to address unresolved sovereignty issues

Treaties are agreements made between sovereign entities.<sup>155</sup> As such, Treaty is a form of recognising and exercising First Peoples’ sovereignty.<sup>156</sup> The First Peoples’ Assembly of Victoria has said:

[T]he best way to assert our sovereignty is through ... [p]ractical actions (like exercising our lore, law and decision-making powers) [which] give sovereignty life. We believe entering into Treaty negotiations is a strong way of asserting and demonstrating our sovereignty.<sup>157</sup>

FIRST PEOPLES’ ASSEMBLY OF VICTORIA

In response to First Peoples’ advocacy, Victoria formally began planning for Treaty in 2018.<sup>158</sup> The *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic) (*Treaty Act*) was the first treaty legislation enacted in Australia. The *Treaty Act* acknowledges that Traditional Owners maintain their sovereignty.<sup>159</sup> Key requirements for the Treaty process include the establishment of an Aboriginal Representative Body (now the First Peoples’ Assembly of Victoria), and an independent Treaty Authority.<sup>160</sup>

The Treaty Negotiation Framework, established in 2022, outlines the principles for Treaty-making to ensure fair processes, including a set of minimum standards.<sup>161</sup> It was agreed that there would be both a statewide Treaty and local Traditional Owner Treaties.<sup>162</sup> The statewide Treaty will provide overarching foundations to improve outcomes for First Peoples across Victoria, including the need for self-determination, while the local Traditional Owner Treaties will be based on local community-led priorities.

The Treaty Negotiation Framework outlines subject matters for negotiation as part of statewide Treaty, including whether a First Peoples’ representative decision-making body should be established and how this would operate, and whether a First Peoples’ Voice to Parliament or similar authority should be established.<sup>163</sup> The Treaty Negotiation Framework outlines subject matters that should be negotiated as part of local Traditional Owner Treaties, including recognition mechanisms under the Victorian *Constitution Act 1975* (Vic) (*‘Victorian Constitution’*) or other legislation, relationships to land and waters, cultural heritage, and language. The Treaty Negotiation Framework outlines that ‘general’ subject matters for negotiation should be negotiated at the start of Treaty negotiations.<sup>164</sup>

The First Peoples’ Assembly of Victoria was established to serve as a democratically elected body that represents First Peoples in the statewide Treaty process and negotiations.<sup>165</sup> The Treaty Authority will serve an independent oversight role over the negotiation process and navigate disputes for both statewide Treaty and local Traditional Owner Treaties.<sup>166</sup>

Negotiations for a Statewide Treaty between the First Peoples’ Assembly of Victoria and the Victorian Government began on 21 November 2024.<sup>167</sup> Key areas that the Victorian Government and the First Peoples’ Assembly of Victoria have outlined that will be discussed as part of statewide Treaty include:



- ‘the principles and objectives for statewide Treaty
- the legal recognition and effect of a statewide Treaty
- the creation of an ongoing First Peoples’ representative body, including:
  - evolving the First Peoples’ Assembly into an ongoing representative body
  - governance and oversight of a representative body
  - the role of a representative body in decision making relating to Victorian Government programs and services for First Peoples
  - interaction between a representative body and the Victorian Parliament and Government
- implementing the accountability mechanism under the National Agreement on Closing the Gap
- work to support ongoing truth-telling, education, healing and reconciliation in Victoria
- dispute resolution under a statewide Treaty
- processes for negotiating future iterations of a statewide Treaty’.<sup>168</sup>

Additional topics will also be added as negotiations progress.<sup>169</sup>

### Treaty offers a way of giving certainty to all Victorians

The Treaty process can be a ‘true and just arrangement’ that provides First Peoples in Victoria with ‘safety and security’.<sup>170</sup> As Associate Professor Nikki Moodie (Gomerioi) explained:

All First Nations around the world are purposeful Peoples. Our purpose is to care for the land, and to teach the next generation about how to care for Country by caring for the stories and languages that come from land. Everything we are and all our pasts and futures come from land. We have an obligation to care for Country so that our languages, law/lore, lives and livelihoods continue to come from land, to heal ourselves and to heal Country. Our right to do so is being denied, and our rights will continue to be denied unless we walk new ways forward together. Our sovereignties can co-exist. It always was and always will be Aboriginal land, but a younger, newer sovereignty is here to stay. There is a way these complex sovereignties can strengthen each other and mature into a more developed, plural, safer and more stable democracy, but it must proceed firstly from the fullest recognition of Indigenous rights.<sup>171</sup>

ASSOCIATE PROFESSOR NIKKI MOODIE

Treaty offers a way for First Peoples to exercise sovereignty and self-determination.<sup>172</sup> While the Treaty process is likely to involve compromise, Professor Lisa Strelein has explained that Treaty allows for the assertion of sovereignty for First Peoples ‘through settlement and agreement making without risking concessions to the State that undermine ... their right to self-determination as peoples’.<sup>173</sup> Modern day treaties are often in the category of ‘recognition and self-government agreements’ that recognise the equality of the parties and have the potential to allow for the assertion rather than concession of sovereignty.<sup>174</sup>

A treaty also represents a ‘compact’ that brings together all of the ‘common threads’ regarding the desire for the recognition of First Peoples’ sovereignty and the progressive realisation of the right to self-determination.<sup>175</sup>

Many other countries, notably Canada, the United States and New Zealand/Aotearoa, have negotiated treaties with First Peoples, including modern treaties, without undermining the sovereignty of the nation-state.<sup>176</sup> Speaking about the North American

context, Professor John Borrows, a member of the Chippewa of the Nawash First Nation in Ontario Canada said:

Within the US context, it’s recognised that tribes have a continuity of legal authority. It was there before the arrival of Europeans, it survived the assertion of sovereignty and it’s being exercised today. And so the Congress passes legislation that enables the exercise of inherent self-determination, and it creates harmonisation mechanisms in some instances with the Federal Government, and sometimes it actually allows for First Nations to experiment with the work.<sup>177</sup>

There’s also been legislation that has been passed, recognising the United Nations Declaration on the Rights of Indigenous Peoples. There is a Federal statute that does that; there is a Provincial statute in British Columbia that recognises that. And those governments have developed an action plan to implement the declaration through consultation with Indigenous peoples, and one of the things that that has led to is, in the Canadian context, the Federal Parliaments referentially incorporating Indigenous laws made by Indigenous governing bodies, and those laws having been referentially incorporated through Indigenous bodies are regarded by Parliament as being an inherent expression of a preexisting sovereignty that exists today.<sup>178</sup>

PROFESSOR JOHN BORROWS

Professor Borrows further explained how sovereignty was acknowledged through Treaty:

[I]n the Haida context ... the Province of British Columbia is recognising the jurisdiction of the Haida Nation in relationship to governance of those territories and also recognise the ownership of those territories as being Haida title ... in that instance, that is done through contract or agreement. In other instances, it’s done through legislation, so the Parliament binds itself then has further negotiations in relationship to the process that’s created by the binding themselves. And then the third avenue is the Treaty process ... with all of those heads of powers where they mutually bind each other to the limitations of their own spheres, then the coordination of action through those spheres to have a more democratic, participatory state of affairs.<sup>179</sup>

PROFESSOR JOHN BORROWS

Enabling the exercise of First Peoples’ sovereignty through treaty also provides for better policy, programs and socioeconomic outcomes for First Nations people and communities (see Chapter 3: Self-determination).<sup>180</sup> Rather than dividing Victorians, Treaty offers an opportunity for healing, the recognition of history, certainty in relation to the contest between sovereignties, and better outcomes for First Peoples in Victoria.

# Recommendation

## RECOMMENDATION 2

The Victorian Government must acknowledge the ongoing reality of legal and political pluralism in Victoria, engage with First Nations as nations, and provide the resources to support the transition to genuine nation-to-nation relationships.



# Endnotes

1. Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 38 [10]–[20].

2. *Coe v Commonwealth* (1979) 53 ALJR 403; Senate Standing Committee on Constitutional and Legal Affairs, *Two Hundred Years Later: Report on the Feasibility of a Compact, or ‘Makarrata’ between the Commonwealth and Aboriginal People* (Parliamentary Paper No 107, 13 September 1983) 10; Galarrwuy Yunupingu, ‘What the Aboriginal People Want’, *The Age* (Melbourne, 26 August 1987); Gary Foley, ‘For Aboriginal Sovereignty’ (1988) 20 *Arena* 4; Kevin Gilbert, *Aboriginal Sovereignty: Justice, the Law and Land* (Burrumbinga Books, 2<sup>nd</sup> ed, 1988) 31, 36; See Kevin Gilbert, ‘Aboriginal Sovereignty: Justice, the Law and Land’ in Bain Attwood and Andrew Markus (eds), *The Struggle for Aboriginal Rights: A Documentary History* (Allen & Unwin, 1999) 324, 327; See generally Crystal McKinnon, ‘Expressing Indigenous Sovereignty: The Production of Embodied Texts in Social Protest and the Arts’ (PhD Thesis, La Trobe University, 2018).

3. *New South Wales v Commonwealth* (1975) 135 CLR 337, 479 (Jacobs J) (‘Seas and Submerged Lands Case’); *Commonwealth v Yarmirr* (2001) 208 CLR 1, 52–3 (Gleeson CJ, Gaudron, Gummow and Hayne JJ).

4. Oxford University Press, *Max Planck Encyclopedias of International Law* (online at 18 November 2024) Sovereignty, ‘B. Historical Evolution’ [10].

5. Oxford University Press, *Max Planck Encyclopedias of International Law* (online at 18 November 2024) Sovereignty, ‘A. Introduction’ [3]–[4].

6. Henry Wheaton, *Elements of International Law* (Stevens & Sons, 1878) 28–9, quoted in *New South Wales v Commonwealth* (1975) 135 CLR 337, 376 (McTiernan J).

7. Henry Wheaton, *Elements of International Law* (Stevens & Sons, 1878) 28–9, quoted in *New South Wales v Commonwealth* (1975) 135 CLR 337, 376 (McTiernan J).

8. Henry Wheaton, *Elements of International Law* (Stevens & Sons, 1878) 28–9, quoted in *New South Wales v Commonwealth* (1975) 135 CLR 337, 376 (McTiernan J).

9. *New South Wales v Commonwealth* (1975) 135 CLR 337, 479 (Jacobs J).

10. See *Island of Palmas Case* (Netherlands v United States of America) (Decision) (1928) 2 RIAA 829.

11. *New South Wales v Commonwealth* (1975) 135 CLR 337, 480 (Jacobs J).

12. Aneta Peretko, ‘The Political Compatibility of Aboriginal Self–Determination and Australian Sovereignty’ (2013) 29(1) *Flinders Journal of History and Politics* 97, 100.

13. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 48 (Brennan J); *Love v Commonwealth* (2020) 270 CLR 152, 276 (Gordon J).

14. *Island of Palmas Case* (Netherlands v United States of America) (Decision) (1928) 2 RIAA 829.

15. Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution* (MacMillan & Co, 8<sup>th</sup> ed, 1915) xvii–xix.

16. *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106, 137–8 (Mason CJ); *McGinty v Western Australia* (1996) 186 CLR 140, 237 (McHugh J).

17. *Clubb v Edwards; Preston v Avery* (2019) 267 CLR 171, 196 (Kiefel CJ, Bell and Keane JJ); *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 557–9 (Brennan CJ, Dawson, Toohey, Gaudron, McHugh, Gummow and Kirby JJ).

18. Robert French, ‘The Constitution and the People’ in Robert French, Geoffrey Lindell and Cheryl Saunders (eds), *Reflections on the Australian Constitution* (Federation Press, 2003), 79.

19. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 32 (Brennan J). See also at 78 (Deane and Gaudron JJ).

20. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 33 (Brennan J).

21. *United Nations Charter*, opened for signature 26 June 1945, 143 UNTS 335 (entered into force 24 October 1945), art 2(4).

22. Sir Robert Jennings and Arthur Watts, *Oppenheim’s International Law* (Oxford University Press, 9<sup>th</sup> ed, 1992) vol 1.

23. *Western Sahara (Advisory Opinion)* [1975] ICJ Rep 12, 39 [79].

24. *Coe v Commonwealth* (1979) 53 ALJR 403, 412 (Murphy J).

25. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 32–3 (Brennan J).

26. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 36 (Brennan J).

27. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 32–3 (Brennan J).

28. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 36 (Brennan J).

29. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 36 (Brennan J).

30. See Transcript of Premier Jacinta Allan MP, 29 April 2024, 30 [5]–[17]; Patrick Walsh, Submission 257, 1; Suzannah Henty, ‘In the Soil that Nurtures Us: A Certain Death to the Colonial Myth’, [2024] (5) *Index Journal* 1, 17.

31. (1992) 175 CLR 1.

32. Witness Statement of Minister Gabrielle Williams MP, 3 May 2022, 8 [60].

33. Witness Statement of Minister Gabrielle Williams MP, 3 May 2022, 8 [60]–[61].

34. Transcript of Dr Erin O’Donnell, 15 April 2024, 75 [38]–[40].

35. Transcript of Dr Katie O’Bryan, 15 April 2024, 84 [1]–[15].

36. Transcript of Dr Erin O’Donnell, 15 April 2024, 75 [33]–[36], referring to use of the term in Lana D Hartwig, Sue Jackson and Natalie Osborne, ‘Trends in Aboriginal Water Ownership in New South Wales, Australia: The Continuities between Colonial and Neoliberal Forms of Dispossession’ (2020) 99(1) *Land Use Policy* 1; see also Lana D Hartwig, Natalie Osborne and Sue Jackson, ‘Australia’s Legacy of Denying Water Rights to Aboriginal People’ [2020] (17) *Open Rivers Journal* 131.

37. Transcript of Dr Erin O’Donnell, 15 April 2024, 75 [40]–[46].

38. Dr Erin O’Donnell, ‘Repairing Our Relationship with Rivers: Water Law and Legal Personhood’ in Vanessa Casado Pérez and Rhett Larson (eds), *A Research Agenda for Water Law* (Edward Elgar Publishing, 2023) 113, 113, citing John Page and Alessandro Pelizzon, ‘Of Rivers, Law and Justice in the Anthropocene’ (2022) 190(2) *The Geographical Journal* 1, 1–11.

39. Aunty Denise Lovett, quoted in Department of Environment, Land, Water and Planning (Vic), *Water is Life: Traditional Owner Access to Water Roadmap* (Report, 2022), 183; Transcript of Uncle Brendan Kennedy, 24 April 2024 (Part 2), 15 [40].

40. Robert J Miller, ‘The Doctrine of Discovery: The International Law of Colonialism’ (2019) 5(1) *The Indigenous Peoples’ Journal of Law, Culture and Resistance* 35, 35.

41. Travis Tomchuk, ‘[The Doctrine of Discovery](#)’, *Canadian Museum for Human Rights* (Webpage, 11 May 2023).

42. John Borrows, ‘The Durability of Terra Nullius: Tsilhqot’in Nation v British Columbia’ (2015) 48(3) *UBC Law Review* 701, 702.

43. John Borrows, ‘The Durability of Terra Nullius: Tsilhqot’in Nation v British Columbia’ (2015) 48(3) *UBC Law Review* 701, 702.

44. Robert J Miller, ‘The Doctrine of Discovery: The International Law of Colonialism’ (2019) 5(1) *The Indigenous Peoples’ Journal of Law, Culture and Resistance* 35, 41.

45. *Johnson v McIntosh*, 21 US 543 (1823); John Borrows, ‘The Durability of Terra Nullius: Tsilhqot’in Nation v British Columbia’ (2015) 48(3) *UBC Law Review* 701, 702.

46. Robert J Miller, ‘The Doctrine of Discovery: The International Law of Colonialism’ (2019) 5(1) *The Indigenous Peoples’ Journal of Law, Culture and Resistance* 35, 38.

Australian cases that have cited Johnson include *Western Australia v Ward* (2000) 99 FCR 316 and *Mabo v Queensland [No 2]* (1992) 175 CLR 1.

47. Holy See Press Office, ‘[Joint Statement of the Dicasteries for Culture and Education and for Promoting Integral Human Development on the “Doctrine of Discovery”](#)’ (Media Release, 30 March 2023).

48. Robert J Miller, ‘The Doctrine of Discovery: The International Law of Colonialism’ (2019) 5(1) *The Indigenous Peoples’ Journal of Law, Culture and Resistance* 35, 35.

49. Tammy Solonec and Les Malezer, ‘The Doctrine of Discovery’ (Conference Paper, University of New South Wales National Indigenous Policy and Dialogue Conference, 19 November 2010).

50. *Western Sahara (Advisory Opinion)* [1975] ICJ Rep 12, 39 [80]–[81], 43 [92].

51. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 34 (Brennan J). See also *Cooper v Stuart* (1889) 14 App Cas 286.

52. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 39–40 (Brennan J).

53. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 40 (Brennan J).

54. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 40 (Brennan J).

55. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 42 (Brennan J, Mason CJ and McHugh JJ agreeing at 15), 109 (Deane and Gaudron J), 182 (Toohey J).

56. See *New South Wales v Commonwealth* (1975) 135 CLR 337, 388 (Gibbs J); *Coe v Commonwealth* (1979) 53 ALJR 403, 408 (Gibbs J), 410 (Jacobs J); *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 32 (Brennan J); *Love v Commonwealth* (2020) 270 CLR 152, 273 (Gordon J).

57. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 78–9 (Deane and Gaudron JJ); *Love v Commonwealth* (2020) 270 CLR 152, 250 (Nettle J).

58. *D’Emden v Pedder* (1904) 1 CLR 91 at 109 (Griffith CJ). See also Jeffrey Goldsworthy, *The Sovereignty of Parliament: History and Philosophy* (1994, reprinted 2004), 1–3.

59. *Statute of the International Court of Justice* art 34.1.

60. Commonwealth, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel* (Report, 2012) 210.

61. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) art 3.

62. Michael Mansell, *Treaty and Statehood: Aboriginal Self–Determination* (Federation Press, 2016), 75.

63. First Nations National Constitutional Convention, [Uluru Statement From The Heart](#) (Statement, 26 May 2017).

64. See Emma Lee, Benjamin J Richardson and Helen Ross, ‘The ‘Uluru Statement From The Heart’: Investigating Indigenous Australian Sovereignty’ (2020) 23(1–2) *Journal of Australian Indigenous Issues* 18, 22–3.

65. Mary Graham, Lyndon Murphy and Morgan Brigg, ‘[The Uluru Statement: We Never Ceded Sovereignty but Can We Join Yours?](#)’, NITV (Webpage, 23 June 2017).

66. Morgan Brigg and Mary Graham, ‘[The Relevance of Aboriginal Political Concepts \(6\): Relationalism, not Sovereignty](#)’, ABC (Webpage, 27 July 2021).

67. Megan Davis, ‘Constitutional recognition does not foreclose on Aboriginal sovereignty’ (2012) 8(1) *Indigenous law Bulletin* 12, 12, referring to Brenda Gunn, George Williams and Sean Brennan, ‘Treaty – What’s Sovereignty Got to Do With It?’ (Issues Paper No 2, UNSW, January 2004), 2.

68. Crystal McKinnon, ‘Expressing Indigenous Sovereignty: The Production of Embodied Texts in Social Protest and the Arts’ (PhD Thesis, La Trobe University, 2018), 38.

69. Kevin Gilbert, *Aboriginal Sovereignty: Justice, the Law and Land* (Burrumbinga Books, 1988), 42–43.

70. Regarding ‘sovereignty’ as self–rule, see Joseph P Kalt and Joseph William Singer, ‘[Myths and Realities of Tribal Sovereignty: the law and economics of Indian self–rule](#)’, *Native Issues Research Symposium* (Harvard University, 2003), 6; See also generally Lisa Strelein, ‘Agreement without compromise: maintaining the integrity of Indigenous sovereignty in negotiations with governments’ (2021) 2 *Australian Aboriginal Studies* 81–101.

71. Aneta Peretko, ‘The political compatibility of Aboriginal self–determination and Australian sovereignty’ (2013) 29 *Flinders Journal of History and Politics* 97, 106–7.

72. Larissa Behrendt, *Achieving Social Justice: Indigenous Rights and Australia’s Future* (Federation Press, 2003), 102 (original emphasis).

73. Sean Brennan, Brenda Gunn, and George Williams, ‘[Treaty – What’s Sovereignty Got To Do With It?](#)’ (Issues Paper No 2, UNSW, January 2004), 2.

74. Larissa Behrendt, ‘Aboriginal Sovereignty: A Practical Roadmap’ in Julie Evans, Ann Genovese, Alexander Reillery and Patrick Wolfe (eds), *Sovereignty: Frontiers of possibility* (University of Hawaii Press, 2013), 163–177, 164.

75. Tony Birch, “‘The invisible fire’: Indigenous sovereignty, history and responsibility’ in Aileen Moreton–Robinson (ed), *Sovereign Subjects; Indigenous Sovereignty Matters* (Routledge, 2020), 105–117, 107.

76. Transcript of roundtable with Nimmie–Caira Land and Water Aboriginal Corporation, 7 December 2023, 4.

77. Transcript of Michael Graham, 27 May 2024, 7 [24]–[32].

78. Transcript of Uncle Gary Murray, 26 April 2024, 41 [3]–[10].

79. Phillip Falk and Gary Martin, ‘Misconstruing Indigenous sovereignty: Maintaining the fabric of Australian law’ in Aileen Moreton–Robinson (ed), *Sovereign Subjects; Indigenous Sovereignty Matters* (Routledge, 2020), 33–46, 39–40.

80. *Coe v Commonwealth* (1993) 68 ALJR 110 at 115 (Mason CJ); *Coe v Commonwealth* (1979) 53 ALJR 403 at 408 (Gibbs J).



81. See *Mabo v Queensland (No 2)* (1992) 175 CLR 1 at 54–58 (Brennan J); Aneta Peretko, ‘The political compatibility of Aboriginal self-determination and Australian sovereignty’ (2013) 29 *Flinders Journal of History and Politics* 97, 102.

82. *Love v Commonwealth of Australia* (2020) 270 CLR 152

83. Crystal McKinnon, ‘Expressing Indigenous Sovereignty: The Production of Embodied Texts in Social Protest and the Arts’ (PhD Thesis, La Trobe University, 2018), 8.

84. See for example, Transcript of Keicha Day, 25 March 2024, 58 [10]–[20]; Keicha Day, Submission 379, 2–3, 10, 11; Keir Dernelley, Submission 529, 16; Transcript of Uncle Graham Atkinson, 15 April 2024, 24–5; Transcript of Aunty Marjorie Thorpe, 15 April 2024, 25 [20]–[25]; Transcript of Karmen Jobling, Will Mooney, Dr Erin O’Donnell, 15 April 2024, 81–2.

85. Larissa Behrendt, *Achieving Social Justice: Indigenous Rights and Australia’s Future* (Federation Press, 2003), 95.

86. Transcript of Uncle Brendan Kennedy, 24 April 2024 (Part 1), 5 [7]–[14].

87. Transcript of Uncle Brendan Kennedy, 24 April 2024 (Part 1), 24, quoting Environmental Justice Australia, *Margooya Lagoon: Establishing a Cultural Flows Model on Tati Tati Country* (Report, June 2021) 5.

88. Transcript of Uncle Gary Murray, 26 April 2024, 25 [4]–[11].

89. Transcript of Uncle Gary Murray, 26 April 2024, 29 [5]–[6].

90. Witness Statement of Marcus Stewart, inaugural Co-Chair of First Peoples’ Assembly of Victoria, 29 April 2022, 13–14 [39]–[40].

91. Transcript of Alan Thorpe, 14 December 2022, 395 [40]–[46].

92. Transcript of Aunty Donna Wright, 1 March 2023, 31 [25].

93. Transcript of roundtable with Bangerang Aboriginal Corporation, 7 December 2023, 14.

94. Transcript of Uncle Professor Mark Rose, 4 June 2024, 39 [39]–[44].

95. *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic), preamble.

96. Witness Statement of Minister Natalie Hutchins MP, 18 April 2024, 1; Transcript of Minister Harriet Shing MP, 24 April 2024 (Part 2), 5 [22]–[23]; Transcript of Minister Harriet Shing MP, 24 June 2024, 3 [35]; Transcript of Minister Ingrid Stitt MP, 17 June 2024, 73 [23]–[24]; Transcript of Minister Mary-Anne Thomas MP, 21 June 2024, 4 [7]–[9]; Witness Statement of Minister Steve Dimopoulos MP, 8 March 2024, 2 [8].

97. Transcript of Minister Harriet Shing MP, 24 April 2024 (Part 1), 41 [10]–[45]; Transcript of Minister Harriet Shing MP, 24 April 2024 (Part 2), 5 [23]–[29]; Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 4 [38]–[42].

98. Transcript of Premier Jacinta Allan MP, 29 April 2024, 9 [1]–[2], 18 [15]–[45].

99. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 1.

100. Transcript of Surveyor General Craig Sandy, 15 April 2024, 40 [15]–[23].

101. Tony McAvoy SC: ‘But the overwhelming effect was that in applying the British surveying system of lines and grids and names, there was the effect of scorching the landscape of the culture and law that already existed?’ Sandy Craig: ‘Yes, so that is the principle of terra nullius, and I’ve acknowledged that Surveyor-Generals past, whether it was a disregard or an ignoring, predominantly did their work based on that principle’: Transcript of Surveyor General Craig Sandy, 15 April 2024, 51 [4]–[10].

102. Yoorrook notes that as of December 2024, Gayle Tierney is Minister for Water. Minister Shing is now Minister for the Suburban Rail Loop; Minister for Housing and Building; Minister for Development Victoria and Precincts. See Premier of Victoria, Hon Jacinta Allan MP, ‘[A Strong And Focused Team To Build Homes And Help Families](#)’ (Webpage, 19 December 2024).

103. Transcript of Minister Harriet Shing MP, 24 April 2024 (Part 2), 5 [22]–[23].

104. Transcript of Minister Harriet Shing MP, 24 April 2024 (Part 1), 41 [33]–[45].

105. Transcript of Minister Harriet Shing MP, 24 April 2024 (Part 2), 5 [23]–[29].

106. Fiona McLeod (Counsel Assisting) asked: ‘Is the sovereignty of First Nations peoples in this State reflected in water laws, policies and practices at the moment?’ To which Minister Shing replied: ‘No’: Transcript of Minister Harriet Shing MP, 24 April 2024 (Part 1), 42 [26]–[30].

107. Transcript of Minister Ben Carroll MP, 14 June 2024, 3 [37]–[42].

108. Transcript of Minister Lily D’Ambrosio MP, 22 April 2024, 6 [23]–[25].

109. Witness Statement of Minister Steve Dimopoulos MP, 8 March 2024, 2 [8].

110. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 4 [38]–[42].

111. Transcript of Minister Ingrid Stitt MP, 17 June 2024, 73 [23]–[24]; Transcript of Minister Mary-Anne Thomas MP, 21 June 2024, 4 [7]–[9].

112. See also *Attorney-General v Brown* (1847) 1 Legge 312.

113. Transcript of Tony McAvoy, 15 April 2024, 6 [32]–[39].

114. Larissa Behrendt, *Achieving Social Justice: Indigenous Rights and Australia’s Future* (Federation Press, 2003), 103.

115. Michael Mansell, *Treaty and Statehood: Aboriginal Self-Determination* (Federation Press, 2016), 84.

116. Transcript of Dr Erin O’Donnell, 15 April 2024, 82 [24]–[27].

117. Transcript of Aunty Denise Lovett and Uncle Johnny Lovett, 25 March 2024, 50 [20]–[30].

118. Transcript of Premier Jacinta Allan MP, 29 April 2024, 60 [2]–[5], where Tony McAvoy SC asked this question of the Premier on behalf of Uncle Robbie Thorpe (Djuran Bunjilinee).

119. Transcript of Premier Jacinta Allan MP, 29 April 2024, 54 [25]–[26], 60 [8]–[11].

120. See *Western Sahara (Advisory Opinion)* [1975] ICJ Rep 12, 39–40.

121. Outline of Evidence of Uncle Johnny Lovett, 28 April 2022, 28 [177].

122. Transcript of roundtable with Nimmie-Caira Land and Water Aboriginal Corporation, 7 December 2023, 12.

123. Transcript of Uncle Andrew Gardiner, 29 April 2024, 2–3.

124. Ezekiel Ox, Submission 469 ([Video Submission](#)), 2.

125. Tony McAvoy SC: ‘... you accept that there has never been a transfer of sovereignty from First Peoples — what is now referred to as Victoria, to the State of Victoria, or its predecessors?’ Premier Jacinta Allan MP: ‘Yes, I do’. Tony McAvoy SC: ‘... you acknowledge Traditional Owners’ spiritual and ancestral ties to their lands and waters can never be extinguished. Are you making a distinction as to — as between spiritual ancestral ties and legal ties by the use of that wording?’ Premier Jacinta Allan MP: ‘The wording of that paragraph was intended to acknowledge that alongside the impact of dispossession from land and I would include water in that, in terms of the connection of land and water and how it relates to wealth and the transfer of wealth. It was also to acknowledge the spiritual and ancestral ties alongside that as well were not extinguished’: at Transcript of Premier Jacinta Allan MP, 29 April 2024, 18 [30]–[45].

126. (1889) 14 App Cas 286.

127. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 12 [94].

128. Transcript of Premier Jacinta Allan MP, 29 April 2024, 45 [26]–[40]; Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 12 [95].

129. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 12 [95].

130. Tony McAvoy SC: ‘... The factually incorrect elements of that decision I would suggest to you include the holding that there were no settled inhabitants? You are nodding your head, yes’. Premier Jacinta Allan MP: ‘I am agreeing with that, yes’. Tony McAvoy SC: ‘No settled law and that the lands were peacefully annexed by the British to the British dominions, and we know full well it wasn’t a matter of peaceful annexation. You accept that?’ Premier Jacinta Allan MP: ‘I do’: at Transcript of Premier Jacinta Allan MP, 29 April 2024, 46 [1]–[10].

131. Tony McAvoy: ‘... I am talking about the decision in *Cooper v Stewart*, do you agree that the imposition, the imposition by the British and government of tests, in this case terra nullius, which they have developed under their own legal system to determine who was sufficiently like them to warrant being recognised as capable of having rights, that — that mechanism for acquiring other people’s territory is particularly odious. Would you agree with that? Premier Jacinta Allan MP: ‘Yes’: Transcript of Premier Jacinta Allan MP, 29 April 2024, 46 [12]–[20].

132. Tony McAvoy SC: ‘And I suggest to you that it was a convenient fiction that the British and colonial governments created to avoid having to recognise the rights of Indigenous peoples in the territories it took by force. Would you agree with that?’ Premier Jacinta Allan MP: ‘I would agree with that’. Transcript of Premier Jacinta Allan MP, 29 April 2024, 46 [25]–[31].

133. Tony McAvoy SC: ‘I also suggest that it was never the case, never the case that the colonial governments believed that First Peoples had no laws and no territories. It was known from the very outset. Are you sufficiently familiar with the early history to accept that proposition?’ Premier Jacinta Allan : ‘Yes’: Transcript of Premier Jacinta Allan MP, 29 April 2024, 46 [33]–[38].

134. Transcript of Premier Jacinta Allan MP, 29 April 2024, 53 [15]–[21].

135. Transcript of Premier Jacinta Allan MP, 29 April 2024, 53 [38]–[40].

136. The Hon. Gabrielle Williams was Minister for Aboriginal Affairs from March 2020 until June 2022, when this became known as Minister for Treaty and First Peoples (she held this Ministership from June 2022 to October 2023). The Hon. Natalie Hutchins has been Minister for Treaty and First Peoples since October 2023. Natalie Hutchins was also the Minister for Aboriginal Affairs from December 2014 to December 2018. See Parliament of Victoria, ‘[The Hon. Gabrielle Williams](#)’ (Webpage); See Parliament of Victoria, ‘[The Hon. Natalie Hutchins](#)’ (Webpage); *Department of Premier and Cabinet Annual Report 2018–19*.

137. Witness Statement of Minister Gabrielle Williams MP, 3 May 2022, 8 [60], citing State Government of Victoria, ‘[What Is Government Land?](#)’ (Webpage).

138. Transcript of Dr Erin O’Donnell, 15 April 2024, 84 [5]–[15].

139. Transcript of Dr Erin O’Donnell, 15 April 2024, 90 [5]–[20].

140. Murray Lower Darling Rivers Indigenous Nations, *MLDRIN Echuca Declaration 2007* (Declaration, 2007) 2.

141. Murray Lower Darling Rivers Indigenous Nations, ‘[MLDRIN’s History](#)’ (Webpage).

142. Transcript of Will Mooney, 15 April 2024, 73 [14]–[20], in reference to 2007 MLDRIN Echuca Declaration.

143. Phillip Falk and Gary Martin, ‘Misconstruing Indigenous sovereignty: Maintaining the fabric of Australian law’ in Aileen Moreton-Robinson (ed), *Sovereign Subjects; Indigenous Sovereignty Matters* (Routledge, 2020), 33–46, 39–40; Aneta Peretko, ‘The political compatibility of Aboriginal self-determination and Australian sovereignty’ (2013) 29 *Flinders Journal of History and Politics* 97, 110–111; Larissa Behrendt, ‘Aboriginal Sovereignty: A Practical Roadmap’ in Julie Evans, Ann Genovese, Alexander Reillery and Patrick Wolfe (eds), *Sovereignty: Frontiers of possibility* (University of Hawaii Press, 2013), 163–177, 175.

144. Larissa Behrendt, *Achieving Social Justice: Indigenous Rights and Australia’s Future* (Federation Press, 2003), 103.

145. Michael Mansell, *Treaty and Statehood: Aboriginal Self-Determination* (Federation Press, 2016), 84–85.

146. Larissa Behrendt, *Achieving Social Justice: Indigenous Rights and Australia’s Future* (Federation Press, 2003), 117.

147. Aneta Peretko, ‘The political compatibility of Aboriginal self-determination and Australian sovereignty’ (2013) 29 *Flinders Journal of History and Politics* 97, 97.

148. Angela Pratt, ‘Treaties vs. *Terra Nullius*: “Reconciliation,” Treaty-Making and Indigenous Sovereignty in Australia and Canada’ (2004) 3 *Indigenous Law Journal*, 43–60, 59–60.

149. Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 38 [10]–[20].

150. Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 38 [10]–[20].

151. Transcript of Dr Jacynta Krakouer, 8 December 2022, 242 [5]–[20].

152. See Angela Pratt, ‘Treaties vs. *Terra Nullius*: “Reconciliation,” Treaty-Making and Indigenous Sovereignty in Australia and Canada’ (2004) 3 *Indigenous Law Journal* 43–60, 45–46; Crystal McKinnon, ‘Expressing Indigenous Sovereignty: The Production of Embodied Texts in Social Protest and the Arts’ (PhD Thesis, La Trobe University, 2018), 50. See also Lisa Strelein, ‘Agreement without compromise: maintaining the integrity of Indigenous sovereignty in negotiations with governments’ (2021) 2 *Australian Aboriginal Studies* 81–101, 96.

153. Transcript of Keicha Day, 25 March 2024, 61 [30]–[50].



154. Transcript of Uncle Gary Murray, 26 April 2024, 40 [25]–[46].

155. Daryle Rigney, Simone Bignall, Alison Vivian, Steve Hemming, Shaun Berg and Damein Bell, ‘Treating Treaty as a Technology for Indigenous Nation Building’ in Diane Smith, Alice Wighton, Stephen Cornell and Adam Vai Delaney (eds) *Developing Governance and Governing Development International Case Studies of Indigenous Futures* (Rowman and Littlefield International, 2021) 119–122.

156. See also Chapter 3: Self-determination and Chapter 37: Political life.

See also Daryle Rigney, Simone Bignall, Alison Vivian, Steve Hemming, Shaun Berg and Damein Bell, ‘Treating Treaty as a Technology for Indigenous Nation Building’ in Diane Smith, Alice Wighton, Stephen Cornell and Adam Vai Delaney (eds) *Developing Governance and Governing Development International Case Studies of Indigenous Futures* (Rowman and Littlefield International, 2021) 119–121; Witness Statement of Marcus Stewart, inaugural Co-Chair of First Peoples’ Assembly of Victoria, 29 April 2022, 13–14 [39]–[40].

157. First Peoples’ Assembly of Victoria, [Community Q&A: What is sovereignty?](#) (Fact Sheet).

158. Aboriginal Treaty Interim Working Group, [Aboriginal community consultations on the design of a representative body – Summary report](#) (Report, June 2017), 2.

159. *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic), preamble; See also [Treaty Authority and Other Treaty Elements Act 2022](#) (Vic); Victorian Government, *Advancing the Victorian Treaty Process. Annual Report and Plan 2018–19* (Report), 13; Victorian Government, *Pathway to Treaty* (Webpage, 2024).

160. [Advancing the Treaty Process with Aboriginal Victorians Act 2018](#) (Vic). See also Victorian Government, *Pathway to Treaty* (Webpage, 2024).

161. First Peoples’ Assembly of Victoria and the State Of Victoria, [Treaty Negotiation Framework](#) (2022). See also Victorian Government, [‘Treaty for Victoria’](#) (Webpage, 2024).

The framework also recognises that First Peoples’ sovereignty and inherent rights continues to be enacted during the Treaty negotiation process.

162. First Peoples’ Assembly of Victoria, [‘Treaty Explainer For Our Friends and Allies’](#) (Webpage).

163. First Peoples’ Assembly of Victoria and the State Of Victoria, [Treaty Negotiation Framework](#) (2022), 41.

164. The Treaty Negotiation Framework does outline examples of topics that might be discussed. These include: (A) civil law issues; (B) criminal justice system issues; (C) cultural heritage; (D) economic and community development; (E) education; (F) employment; (G) environmental management; (H) funding and revenue raising; (I) health and wellbeing; (J) housing; (K) Indigenous Data Sovereignty; (L) land and water justice; (M) language; (N) political participation; (O) truth telling and healing; and (P) welfare, including child and family services.

165. First Peoples’ Assembly of Victoria, [‘Journey to Treaty’](#) (Webpage, 2024).

166. Treaty Authority, [‘Treaty Authority oversees Treaty-making in Victoria’](#) (Webpage); Treaty Authority, [‘How the Authority performs its role’](#) (Webpage, 2024); First Peoples’ Assembly of Victoria, [‘Treaty Explainer For Our Friends and Allies’](#) (Webpage).

167. Victorian Government, [‘Treaty for Victoria’](#) (Webpage, 2024); First Peoples’ Assembly of Victoria, [‘Treaty negotiations begin in Victoria!’](#) (Webpage, 21 November 2024).

168. First Peoples’ Assembly of Victoria, [‘Negotiations for first Statewide Treaty underway’](#) (Webpage).

169. First Peoples’ Assembly of Victoria, [‘Negotiations for first Statewide Treaty underway’](#) (Webpage).

170. Lisa Strelein, ‘Agreement without Compromise: Maintaining the Integrity of Indigenous Sovereignty in Negotiations with Governments’ [2021] (2) *Australian Aboriginal Studies* 81–101, 82, quoting Tony McAvoy SC forthcoming, ‘Treaty’, Keynote presentation to the AIATSIS Summit, 2 June 2021, 6.

171. Associate Professor Nikki Moodie, Submission 526, 3.

172. See also Chapter 3: Self-determination – *Introduction; Treaty provides a pathway to self-determination*.

173. Lisa Strelein, ‘Agreement without Compromise: Maintaining the Integrity of Indigenous Sovereignty in Negotiations with Governments’ [2021] (2) *Australian Aboriginal Studies* 81–101, 82, relying on the Yorta Yorta Peoples experience of negotiating agreements with the Victorian Government.

174. Lisa Strelein, ‘Agreement without Compromise: Maintaining the Integrity of Indigenous Sovereignty in Negotiations with Governments’ [2021] (2) *Australian Aboriginal Studies* 81–101, 91,93.

175. Phillip Falk and Gary Martin, ‘Misconstruing Indigenous sovereignty: Maintaining the fabric of Australian law’ in Aileen Moreton-Robinson (ed), *Sovereign Subjects; Indigenous Sovereignty Matters* (Routledge, 2020), 33–46, 40, 45.

176. Aneta Peretko, ‘The political compatibility of Aboriginal self-determination and Australian sovereignty’ (2013) 29 *Flinders Journal of History and Politics* 97,112.

177. Transcript of Professor John Borrows, 26 April 2024, 14 [35]–[41].

178. Transcript of Professor John Borrows, 26 April 2024, 15 [14]–[22].

179. Transcript of Professor John Borrows, 26 April 2024, 16 [20]–[30].

180. Larissa Behrendt, ‘Aboriginal Sovereignty: A Practical Roadmap’ in Julie Evans, Ann Genovese, Alexander Reillery and Patrick Wolfe (eds), *Sovereignty: Frontiers of possibility* (University of Hawaii Press, 2013), 163–177, 176.



# Chapter 3: Self-determination

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Self-determination ... means that we have the power and authority to make decisions for our own communities ... in each and every sector, to create strong and healthy communities that survive for generations to come.<sup>1</sup>

NERITA WAIGHT

## Introduction

Self-determination sits at the heart of Victorian First Peoples’ aspirations for the future. It is critical to addressing systemic injustice across the land recognition, health, education, housing and records systems and in First Peoples’ economic and political life. As outlined in *Yoorrook for Justice*, only fully self-determined systems can dismantle the colonial structures that perpetuate injustice.<sup>2</sup> Treaty provides unprecedented opportunities for the continuous realisation of self-determination. Self-determination must also be progressed through interim agreements and the urgent reforms set out in this report. In practice, First Peoples are already engaging in self-determination, including through nation rebuilding initiatives, but this requires more support.

The Victorian Government must enable self-determination. As Yoorrook recommended in its previous report *Yoorrook for Justice*, realisation of this right requires transfer of genuine ‘decision-making power, authority, control and resources to First Peoples’.<sup>3</sup>

Yoorrook’s Letters Patent require the Yoorrook Justice Commission to

**identify Systemic Injustice which currently impedes First Peoples achieving self-determination and equality and make recommendations to address them, improve State accountability and prevent continuation or recurrence of Systemic Injustice.**<sup>4</sup>

The State of Victoria has recognised the right of self-determination as a guiding principle of the treaty process.<sup>5</sup> Section 22 of the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic) (*‘Treaty Act’*) states that First Peoples ‘have the right to self-determination’ and empowerment as part of treaty.<sup>6</sup> Further, the Preamble to the *Treaty Act* states:

**Victorian traditional owners maintain that their sovereignty has never been ceded, and Aboriginal Victorians have long called for treaty. These calls have long gone unanswered. The time has now come to take the next step towards reconciliation and to advance Aboriginal self-determination.**<sup>7</sup>

The *Treaty Negotiation Framework* provides at clause 2.5:

**Self-determination and empowerment is the central principle for Treaty-making and informs every element of the Framework. Self-determination and empowerment means different things for different groups and will be practised in a variety of ways, but typically includes that First Peoples decide First Peoples’ issues. Treaty-making provides an opportunity for First Peoples to practise self-determination in the manner they choose.**<sup>8</sup>

Self-determination informs all parts of this report and Yoorrook’s broader work.

This chapter explores First Peoples’ fundamental collective right to self-determination. It outlines what Yoorrook has previously found and what Yoorrook has since heard about what self-determination is, what it is not, and self-determination in action.

What is self-determination?

Explanations of self-determination

As outlined in its Interim Report<sup>9</sup> and in *Yoorrook for Justice*,<sup>10</sup> Yoorrook takes its definition of self-determination from the *United Nations Declaration on the Rights of Indigenous Peoples* (‘*UNDRIP*’), articles 3 to 5<sup>11</sup> (see Chapter 4: Rights).

Article 3 of *UNDRIP* states:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4 states:

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5 states:

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

The Federation of Victorian Traditional Owner Corporations (FVTOC) submitted: ‘The right to self-determination underpins all other inherent rights held by First Peoples’.<sup>12</sup>

THE FOUR DIMENSIONS OF SELF-DETERMINATION

The First Peoples’ Assembly of Victoria explained<sup>13</sup> that the articulation of self-determination in *UNDRIP* includes four dimensions of self-determination:

- **economic self-determination** enables First Peoples to control their financial resources and make decisions regarding their economic development. This includes the right to establish and strengthen their own economic institutions and to fully participate in the wider state’s economy.
- **political self-determination** grants the right to self-government, allowing First Peoples to organise and govern their lives according to their own values and systems within the framework of the State.
- **social self-determination** ensures First Peoples have the right to shape their development, particularly in areas such as health, housing and other social programs. As stated in Article 23 of *UNDRIP*,<sup>14</sup> Indigenous peoples have the right to actively engage in creating and managing programs that affect them, ideally through their own institutions.
- **cultural self-determination** covers the rights to preserve and practise language, customs, ceremonies, cultural heritage and spirituality. This right is supported by various articles in *UNDRIP* (11–16, 31, 34), with culture defined as a broad concept encompassing all aspects of human life, including ways of living.

These four dimensions provide the framework for Yoorrook’s analysis and recommendations.

*UNDRIP* makes clear that self-determination for Indigenous peoples is not about secession or the right to form an independent nation-state. Article 46 of *UNDRIP* states:

Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.<sup>15</sup>

In *Yoorrook for Justice*<sup>16</sup>, Yoorrook discussed some of the ways of explaining self-determination:

- under international law, the right to self-determination is codified in various United Nations instruments.<sup>17</sup> Self-determination is recognised as belonging to groups of people rather than individuals, leading Indigenous peoples to assert their own claims based on their status as sovereign nations.<sup>18</sup> For First Peoples communities, self-determination is closely linked to their ability to manage their own affairs and maintain connection to their traditional lands and waters.<sup>19</sup>
- for many First Peoples, the right to self-determination is often viewed as internal self-determination, which focuses on the ability to govern internal affairs and negotiate with various levels of government as distinct entities.<sup>20</sup> Alternatively, relational self-determination emphasises a relationship of non-domination with the state, ensuring that First Peoples are not subjected to unilateral control and are actively represented in political life.<sup>21</sup>
- for First Peoples in Australia, self-determination has been described as the right of First Peoples to have control over their own affairs and determine their own futures,<sup>22</sup> as well as ‘increased Indigenous autonomy within the structures of the Australian state’.<sup>23</sup>
- as noted in *Yoorrook for Justice*<sup>24</sup>, Professor Larissa Behrendt has set out a list of five recurring threads that underlie the notion of the exercise of self-determination:
  - the recognition of past injustices
  - autonomy and decision-making powers
  - property rights and compensation
  - the protection of cultural practices and customary laws
  - equal protection of rights.<sup>25</sup>

In *Yoorrook for Justice*, Yoorrook concluded that ‘the call for realisation of the right to self-determination reflects the aspiration to exercise the inherent power and decision-making that is based on the recognition of First Peoples as a collection of nations tied to, bound by, and responsible for country and each other’.<sup>26</sup>

Since the publication of *Yoorrook for Justice*, Yoorrook continued to hear more from First Peoples in Victoria about how First Peoples are asserting and realising self-determination. For example, Minda Murray (Yorta Yorta) from the Australian National University said:



**[F]rom the moment of British settlement in Victoria, Aboriginal people have been fighting for self-determination. ... [A]cross the State, Traditional Owners ... are asserting self-determination in everyday ways. We see it written down in many healthy Country plans, we see it — we hear it spoken often ... in recognising that there is different colonial recognition of the First Nations in Victoria, you know, the revitalisation of language, working on Country, cultural fire programs, water rights, cultural water ... whether it be education, teaching Indigenous ways in schools, in preschool programs ... there’s so many myriad of ways that people are enacting self-determination every day.<sup>27</sup>**

MINDA MURRAY

Self-determination is key determinant of health and wellbeing for First Peoples.<sup>28</sup> In the *Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement*, it is stated that: ‘self-determination is the only strategy that has generated the sustainable wellbeing — cultural, physical, spiritual, economic and social — that Aboriginal and Torres Strait Islander communities and the broader community desire.’<sup>29</sup>

The Victorian Government has recognised that self-determination is the most effective way to repair past injustices and achieve positive outcomes. The Minister for Treaty and First Peoples the Hon Natalie Hutchins MP told Yoorrook:

**The Victorian Government is committed to preventing the reoccurrence of past wrongs and addressing ongoing injustices through self-determination. This includes reform of existing legislation and policy, as well as negotiated change through Treaty. ... This path to self-determination offers the State a chance to build a more equitable and inclusive Victoria in which all Victorians can take pride.<sup>30</sup>**

MINISTER NATALIE HUTCHINS MP

The Premier of Victoria the Hon Jacinta Allan MP told Yoorrook that self-determination is needed:

**I acknowledge that structural racism exists and that the State must work to address this through self-determination. I recognise in this government’s commitment to self-determination and Treaty that better outcomes are achieved when First Peoples are empowered to take control of their own affairs.<sup>31</sup>**

PREMIER JACINTA ALLAN MP

Many government ministers told Yoorrook about how self-determination is a fundamental right that should be at the centre of reform.<sup>32</sup> Accordingly, as emphasised in *Yoorrook for Justice*, ‘it is critical that the Victorian Government understands and applies the full meaning of self-determination if the commitments it has made are to be realised’.<sup>33</sup>

### What self-determination is not

First Peoples have been clear about what self-determination is, and is *not*.<sup>34</sup> Self-determination is not consultation. It is not engagement.<sup>35</sup> It is not ‘a seat at the table’.<sup>36</sup> It is more than partnership or co-design.<sup>37</sup> It is not service delivery or funding for individual programs. It is not subject only to government interpretation.<sup>38</sup> It is not the State expecting First Peoples to realise self-determination without power and resources<sup>39</sup> or to pick up the pieces when government has failed.<sup>40</sup> It is not the transfer of inadequate resources, limited authority, broken Country, inferior title and failing systems to First Peoples, leaving it to First Peoples to fix these problems.<sup>41</sup>

Uncle Brendan Kennedy (Tati Tati) told Yoorrook about self-determination in the context of water:

**We want to be instrumental in the management and ownership of water for our people. We don’t want to be tacked on to the back of your trailer. We don’t want to just be consulted, written up into your plans, and then have you misconstrue things and say that you have met your obligations. We don’t want to be here just so you can tick boxes. We want to be heard and be part of the solution.<sup>42</sup>**

UNCLE BRENDAN KENNEDY

Yoorrook heard from Professor John Borrows (a member of the Chippewa of the Nawash First Nation in Ontario, Canada), the Loveland Chair in Indigenous Law at the University of Toronto Law School, who told Yoorrook:

**[T]o understand the living and dynamic nature of Indigenous self-determination and law and governance ... you unpack what is meant by self-determination, and you don’t just regard it as a handout or a redistribution of resources; you regard it as a radically democratic participatory, engaged respect for one another across our different nations, within our nations.<sup>43</sup>**

PROFESSOR JOHN BORROWS

Professor Borrows noted that self-determination is also a responsibility:

**[P]art of the effective exercise of sovereignty is to understand that there are limits on the exercise of that power, and that same thing goes for Indigenous peoples as well, as we exercise self-determination. That is not a free for all; that is to recognise that we are also disciplined by our laws and by our respect for lands and peoples.<sup>44</sup>**

PROFESSOR JOHN BORROWS

Minister Hutchins acknowledged:

**[T]here was a view for many years before I came to the portfolio [that] self-determination was about consulting. And we’ve done a lot of work to try and disband that myth and break that down across government and our entities, to say that self-determination is not just about consulting First Peoples; it’s about ... embedding change and handing over power and handing over resources. And I would go to saying that many of our frameworks and our strategies that we have across Government do go to a part of that, but maybe not far enough, and maybe don’t have allocated, upfront resources against those commitments. And that might be where part of the struggle has been to continuously ... deliver on those.<sup>45</sup>**

MINISTER NATALIE HUTCHINS MP

Paul Paton (Gunnai, Monaro, Gunditjmara) explained that self-determination is ‘the handing over of rights, our own authority to our mob’.<sup>46</sup> Self-determination requires sufficient, substantial and ongoing resourcing, redress and enforcement mechanisms to enable First Peoples to create systems that support communities to thrive. Self-determination means the restoration of hope, healing and spirit.<sup>47</sup>

Nation rebuilding as self-determination in action

We have nations. We had nations all along since time immemorial, and we have our own governance systems, and we have our own law. We have, even on top of that, a relationship to other worlds, other beings, other — you know, we have a different world view. That adds value to, you know, the ways we govern ourselves now.<sup>48</sup>

MINDA MURRAY

Before the arrival of Europeans, Victoria had at least 38 First Peoples nation groups,<sup>49</sup> with distinct languages and cultural and social practices,<sup>50</sup> and around 300 to 500 clan groups.<sup>51</sup> Colonisation has significantly impacted First Peoples’ nations and communities in Victoria.<sup>52</sup> However, First Peoples across Victoria are rebuilding and reasserting their self-determination and sovereignty in practice through the process of nation rebuilding.<sup>53</sup>

What is nation rebuilding?

‘Nation building’ or ‘nation rebuilding’ refers to First Peoples increasing their capacity to achieve substantive self-government and decision-making control over their own Country, resources, governance mechanisms and development.<sup>54</sup> The terms form the basis of an advancing field of academic and practical discourse on nation rebuilding, both in Australia<sup>55</sup> and overseas.<sup>56</sup>

The Lowitja Institute defines ‘a thriving Indigenous nation’ as ‘a politically identified collective that organises itself in accordance with its own values and Laws/Lore to meet contemporary challenges and realise the goals its citizen members have set for themselves as a community’.<sup>57</sup> The Lowitja Institute developed a nation-building model following an inter-nation summit of the Gunditjmara and Ngarrindjeri peoples in 2012 and through research with Indigenous peoples in the United States, Canada and Aotearoa (New Zealand).<sup>58</sup> The Lowitja Institute have identified four phases of nation building:

- ‘identifying politically as a cultural collective’
- ‘strategising to achieve the nation’s purpose’
- ‘organising for self-governance’
- ‘acting sovereignly to realise collective goals’.<sup>59</sup>

The Indigenous Nation Building and Governance research hub at the Jumbunna Institute for Indigenous Education and Research at the University of Technology Sydney (Jumbunna Institute) described three iterative elements of nation building<sup>60</sup>:

Identify as a nation → Organise as a nation → Act as a nation.<sup>61</sup>

JUMBUNNA INSTITUTE

Nation rebuilding is inherently related to First Peoples’ sovereign status and rights to self-determination. It is one process through which First Peoples can renegotiate their relationship with the State on equal, sovereign-to-sovereign terms, including through treaty. Nation rebuilding has been described as sovereign decision making and self-determination in action.<sup>62</sup>

As part of self-determination, rebuilding initiatives may take place on a nation-based, collective, regional or statewide level. First Peoples should decide for themselves what their objectives are and how they will achieve these in the process of rebuilding their own communities according to their own designs. The Victorian Government can and should do more to support this.

EXAMPLES OF SELF-DETERMINATION THROUGH NATION REBUILDING

Nation rebuilding can take many forms. Across Victoria, there are examples of First Peoples actively implementing the principles of identifying, organising and acting as nations and exercising sovereignty and self-determination. This includes creating institutions and processes for self-governance, strategic planning, entering into mutually beneficial partnerships with government,<sup>63</sup> managing land claims, running cultural programs and negotiating with the State on land and water management.<sup>64</sup> These are all aspects of self-determination.

For example:

- the Gunditjmara people have written books to re-frame the narrative and to tell their sovereign history.<sup>65</sup> *The Gunditjmara Land Justice Story (2009)*<sup>66</sup> and *The People of Budj Bim (2010)*<sup>67</sup> tell the story of the Gunditjmara people from their own perspective.<sup>68</sup>
- through the Taungurung Land and Waters Council Aboriginal Corporation (Taungurung Land and Waters Council), the Taungurung people, are emphasising their ‘re-emergence as a people with competent leadership, great cultural pride, a fierce attachment to our Country, a bold vision for the future, and a strong corporate identity’<sup>69</sup>, and propose the Taungurung Land and Waters Council should be the ‘the Voice for Country’.<sup>70</sup> Taungurung Land and Waters Council argues that by being the Voice for Country this would empower them to ‘exercise responsibility for regulating and governing all decision-making ... so as to ensure the health and long-term interests of Country are always prioritised’ and that Taungurung Country is ‘managed in accordance with Taungurung biocultural values and knowledge’.<sup>71</sup> Taungurung Land and Waters Council describe this as an exercise of ‘genuine sovereignty, shared with the State in a post-colonial world’.<sup>72</sup>
- several First Nations in Victoria have established cultural centres. This includes the Nangenala Cultural Centre on Wurundjeri Woi-wurrung Country,<sup>73</sup> and DUMAWUL, owned and operated by Dja Dja Wurrung Clans Aboriginal Corporation as an enterprise focusing on cultural tourism, cultural education and creative arts.<sup>74</sup> The Munarra Centre for Regional Excellence, an initiative of the Kaiela Institute is also an example of an establishment guided by Yorta Yorta people and their vision for self-determination.<sup>75</sup>
- Paul Paton (Gunnai, Monaro, Gunditjmara), CEO of the Federation of Victorian Traditional Owner Corporations (FVTOC), gave evidence about the influence of nation rebuilding principles in the *Victorian Traditional Owner Cultural Landscapes Strategy* released in August 2021.<sup>76</sup> The *Cultural Landscapes Strategy* is the product of a partnership between Traditional Owners and government.

Nation building also takes place through language and cultural revitalisation.<sup>77</sup> Language revitalisation is central to nation rebuilding. Dr Aunty Vicki Couzens (Keerray Wooroong, Gunditjmara) of the Victorian Aboriginal Corporation for Languages explained:<sup>78</sup>



[L]anguage revitalisation is crucial to land justice, health, wellbeing, everything. Because it holds that knowledge and we can learn more and apply that. We can reclaim and revitalise and reinvigorate ... our practices back into our communities so that we can become fully whole sovereign citizens in our own nations with our own governance.<sup>79</sup>

DR AUNTY VICKI COUZENS

Dr Aunty Vicki Couzens told Yoorrook about the revitalisation of cultural practices including the practice of making possum skin cloaks in Victoria (see also Chapter 15: Earth, sea and living things). The revitalisation of possum skin cloak making demonstrates the way cultural practices support nation rebuilding.<sup>80</sup> Through this initiative, First Peoples established their own governance protocols, developed community-led decision-making processes and created pathways for knowledge transmission between generations, including through Elder approvals.<sup>81</sup> This approach reinforced sovereign decision-making processes and the maintenance of cultural knowledge through First Peoples’ own governance systems.

Healing is also central to nation rebuilding. Healing is about addressing the impacts of colonisation, strengthening community and restoring relationships with Country.<sup>82</sup> The Ebony Aboriginal and Torres Strait Islander Institute’s *Black Framework for Truth, Justice and Healing* recognises that healing might be ‘done differently depending on the Nation, community or context’.<sup>83</sup> This includes truth-telling, intergenerational healing, holistic health initiatives, reviving ecosystems and ecological practices, and asserting political, cultural and economic autonomy.

# What Yoorrook heard

## The Victorian Government states that it is committed to self-determination

In the *Victorian Aboriginal Affairs Framework (2018–23, extended to June 2025) (VAAF)*, the Victorian Government stated that it committed to self-determination as the primary driver of policy for First Peoples.<sup>84</sup> Yoorrook saw a multitude of government policies, reports, strategies and frameworks that highlight the need for self-determination as the basis for meaningful long-term improvement in many areas of life for First Peoples<sup>85</sup> (see further Chapter 5: Accountability).

Self-determination is the underpinning principle of the VAAF<sup>86</sup> and the *Victorian Government Self-Determination Reform Framework (2019)*<sup>87</sup> (Self-Determination Reform Framework). The VAAF is the overarching framework for Aboriginal affairs in Victoria. It contains goals, objectives, measures and guiding principles and actions for advancing self-determination. The Self-Determination Reform Framework is intended to guide public service action to enable self-determination in line with government commitments in VAAF. It also provides an architecture for reporting on this action. There are also policies that sit underneath the VAAF and the Self-Determination Reform Framework at a departmental and agency level, and further policies and frameworks at an issue level (see further explanation in Chapter 5: Accountability).

## Government understandings of self-determination

Premier Jacinta Allan MP accepted that ‘a shared understanding of self-determination for First Peoples in Victoria is a matter of survival’.<sup>88</sup> However, Yoorrook heard that the State has not sufficiently invested in its own capability to understand self-determination.<sup>89</sup> Yoorrook heard that governmental misunderstandings of self-determination date back to policies from at least as far back as the 1960s.<sup>90</sup> For example, Nerita Waight (Yorta Yorta, Narrandjeri), CEO of the Victorian Aboriginal Legal Service and Co-Chair of Ngaweeyan Maar-oo, commented:

[T]he term ‘self-determination’ has been bastardised to such an extent that nobody agrees on what it means any more, and everybody doesn’t understand its pathway into self-governance and what that actually means for Aboriginal communities.<sup>91</sup>

NERITA WRIGHT

Co-Chair of the First Peoples’ Assembly of Victoria Rueben Berg (Gunditjmara) contended that the government should not assume that passing references to self-determination in government plans, actually further self-determination in practice:

I think there can sadly sometimes be a tendency to rest on your laurels, that, you know, oh yeah, we’ve put in this great plan that talks about self-determination, which, as we have seen from some of the work of Yoorrook, that doesn’t always mean self-determination.<sup>92</sup>

RUEBEN BERG, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Paul Paton noted that in order to develop a true understanding of self-determination, the Victorian Government must do significant work to meaningfully build the capacity and capability of public servants:

**I have been saying it for years to government that government and the public service doesn't understand self-determination, and they need to invest considerably in shifting the psyche of the public service and developing a deep understanding ... of our rights and self-determination, so that the public service can do their job and deliver on the commitment of government to enable self-determination for Traditional Owners here in Victoria.<sup>93</sup>**

PAUL PATON

Yoorrook heard that the failure of the Victorian Government to grasp the meaning of self-determination means that transformative change does not occur, and this leads to poor policy, and has a detrimental impact on First Peoples' outcomes.<sup>94</sup> Aunty Marjorie Thorpe (Gunaikurnai, Tjapwurrung) said:

**[A]s far as the term 'self-determination', which I have forgotten what that means ... I am sick of hearing that word, 'self-determination', when the reality is it's self-determination according to the whim of government and it's what we are allowed to have, what we are allowed to do and I don't see any difference to that concept right now, to what it is always been.<sup>95</sup>**

AUNTY MARJORIE THORPE

Premier Allan acknowledged that some parts of government do not fully understand self-determination:

I do want to acknowledge that we have quite some way to go. That there are many parts of government that are showing a good understanding and good practice of self-determination and there are others that are making good endeavours but perhaps are not fully — fully acquitting the requirements in terms of understanding to achieve self-determination it is not just consulting. It is making sure it is that transfer of and sharing of power and resources, and making sure that that is embedded in the work we do.<sup>96</sup>

PREMIER JACINTA ALLAN MP

## Self-determination requires transfer of power, authority, control and resources

**Self-determination is fundamental to the rights of Aboriginal and Torres Strait Islander peoples. We should be leading on all matters that affect us — we have the solutions. Yet Australian governments still fail to properly include Aboriginal organisations when designing relevant laws.<sup>97</sup>**

DJIRRA

Yoorrook heard repeatedly that self-determination is critical to addressing systemic injustice and this requires transformative change. Self-determination requires the transfer of genuine power, authority and resources to First Peoples.<sup>98</sup> This includes decisions about systems design, revenue raising, resource allocation and powers of and appointments to bodies and institutions, including accountability and oversight bodies, so that these are led by First Peoples.<sup>99</sup>

In her witness statement, Premier Jacinta Allan MP accepted that a transfer of power and resources is needed for self-determination. She stated:

**To me, self-determination is about the transfer of resources and decision-making power from the State to First Peoples. Critically, there must be a shared understanding of self-determination, in which my government demonstrates that it grasps First Peoples' aspirations and the transformation required to achieve them.<sup>100</sup>**

PREMIER JACINTA ALLAN MP

## SELF-DETERMINATION DURING COVID

Michael Graham (Dja Dja Wurrung, Wiradjuri) is the CEO of Victorian Aboriginal Health Service (VAHS), Chair of the Victorian Aboriginal Community Controlled Health Organisation (VACCHO), Co-Chair of Ngaweeyan Maar-oo, and Co-Chair of the Aboriginal Health and Wellbeing Partnership Forum. He described how Aboriginal Community Controlled Organisations (ACCOs) worked through the COVID-19 pandemic as an example of self-determination:

**I have an example of where it has worked ... and I would say through the COVID pandemic. Through the COVID pandemic we went to the Departments and we said this is what we need to look after our people through this issue. And we were given those resources ...**

**[O]ur people are very dignified in the sense that they don't ask for more than they need. That's just our culture. That's just our way. If we need plants, we just take what we need. If we need food, we just take what we need. We don't ask for anything more. So during that process, we just asked for what we needed.**

**And here in Victoria we were the most successful cohort of people across the world, and it was — I've seen some international papers that identified that the Aboriginal people of Victoria were the most successful in protecting their people from COVID than anywhere else across the world. There's an occasion where government said, here, here is what you've asked for, and we were able to look after our people.<sup>101</sup>**



## The Victorian Government has failed to enable self-determination

Yoorrook heard that in practice, the Victorian Government has so far failed to properly deliver on its stated commitment to enable self-determination. In relation to the VAAF and the Self-Determination Reform Framework, FVTOC told Yoorrook:

**[W]hile there are solid attempts by some government departments to shift authority out of government, others are yet to embrace the importance of these policies. There is still no real accountability, and it is difficult holding leaders to account to meet the commitments made by government through these policies.**<sup>102</sup>

### FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

Despite many issue-specific policies, plans, strategies and frameworks purporting to support self-determination, Yoorrook saw consistent failures in implementing self-determination and in accountability for it. The Department of Energy, Environment and Climate Action provided a document listing the barriers that currently exist for the full implementation of self-determination policies, strategies and commitments.<sup>103</sup> The Minister for Environment the Hon Steve Dimopoulos MP agreed that there are multiple barriers preventing implementation of self-determination policies and strategies, including inadequate funding, the need for reform and lack of cultural capability.<sup>104</sup>

Minister Dimopoulos acknowledged that ‘government systems and processes create barriers’ to the realisation of self-determination policies.<sup>105</sup> In relation to the Victorian Government Aboriginal Affairs Report, which considers how the Victorian Government tracks against its commitments to First Peoples in Victoria, Minister Hutchins admitted that while it is important in delivering on self-determination, ‘it is currently heavily reliant on departmental self-reporting and therefore lacks independence’.<sup>106</sup>

As explored in Chapter 5: Accountability, Yoorrook notes that progress towards self-determination has been slow, in part due to the ingrained mentality in some elements of the bureaucracy that reporting of failure is sufficient without taking further action.<sup>107</sup> In the words of Ngaweeyan Maar-oo: ‘Performance reporting focuses heavily on activities and outputs, rather than on outcomes and change’.<sup>108</sup> There is a failure to interrogate the reason for failure and the steps necessary to remedy it, and a failure to complete the handover of power, with no clear plan or action in place to make it happen.

Yoorrook continually asked the Victorian Government for examples of where the State had successfully transferred resources and decision-making powers to First Peoples in the areas of land, health, education and housing injustice. Government ministers told Yoorrook about future plans,<sup>109</sup> proposed reforms and policies,<sup>110</sup> and promised investment.<sup>111</sup> They told Yoorrook about how self-determination would be achieved in the future through treaty.<sup>112</sup> When several ministers were asked, they could not give concrete existing examples of where and how self-determination has been realised.<sup>113</sup> In *Yoorrook for Justice*, Yoorrook similarly outlined the lack of self-determination for First Peoples in Victoria’s child protection and criminal justice systems.<sup>114</sup>

Given that self-determination is the foundation of the State’s policy framework as it relates to First Peoples, it is profoundly disappointing that the Victorian Government has failed to enable self-determination in line with its own commitments.

## Support for nation rebuilding

**Properly resourcing Traditional Owner groups to build technical capacity and stronger governance structures, whilst also creating pathways for them to exercise real decision-making powers, will ultimately position these groups to self-determine their pathways forward.**<sup>115</sup>

### FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

The Victorian Government has taken some steps to support Traditional Owners to engage in nation rebuilding, achieve formal recognition and prepare for treaty negotiations. These include the Nation Building Resource Pool which provided for formally recognised Traditional Owner groups from 2019 to 2024 (up to \$5.8 million, now concluded)<sup>116</sup>. Another State step was funding for Traditional Owner Formal Recognition Support Services for non-formally recognised groups, including funding for First Nations Legal and Research Services to support Traditional Owners to achieve formal recognition and prepare for treaty negotiations (\$4 million allocated over four years from 2024 to 2028).<sup>117</sup>

FVTOC administered the Nation-building Resource Pool, granting \$530,000 to 10 of the 11 formally recognised Traditional Owner corporations. FVTOC reports that First Peoples used these funds for kinship programs, language preservation and revival programs, agreements with local governments, intergenerational knowledge sharing, commercial programs and training in corporate governance to prepare for treaty negotiations.<sup>118</sup> There is little publicly available information about the projects to which the \$4 million for non-formally recognised groups has been allocated.

The Self-Determination Fund is overseen by the First Peoples’ Assembly of Victoria and administered by the Self-Determination Fund Limited in its capacity as Trustee for the Self-Determination Fund.<sup>119</sup> The Self-Determination Fund now provides independent funding to support Traditional Owner groups and First Peoples’ Treaty Delegations in treaty negotiations and build capacity within First Peoples’ communities. However, this is not specific to nation rebuilding. The FVTOC<sup>120</sup> and the Victorian Aboriginal Legal Service<sup>121</sup> both recommended that sustainable ongoing funding should be provided to support nation building initiatives. The Victorian Aboriginal Legal Service recommended that the State could provide funding to the Self-Determination Fund.<sup>122</sup>

Treaty provides a pathway to self-determination

In response to First Peoples’ advocacy for treaty, the Victorian Government worked alongside First Peoples to establish the treaty process, which provides unprecedented opportunities for the realisation of self-determination.<sup>123</sup>

That power and authority and the ability and tools we need, that’s what we will be looking at to negotiate in the state-wide Treaty to shift that power and decision-making powers where it applies to our people across those thematic areas.<sup>124</sup>

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

When we think about self-determination, what it actually means, empowering First Peoples to make decisions about things, the way government is currently structured ... it’s really limiting in how much it can enable that, because government has obligations at a higher level to be responsible for the decisions that it makes ... So it really struggles with transferring that decision-making power whilst keeping its obligations, whilst it’s managing risk. So the government is often concerned, I think, or in saying, if we transfer those decision-making powers but the government is still holding on to that risk, it does need to keep its tentacles hooked in there. We see Treaty to create a new space where the government can confidently transfer decision-making powers and the risk so it can step back.<sup>125</sup>

RUEBEN BERG, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Through treaty, First Peoples will negotiate system redesign, structural reform, transfer of power, accountability and oversight on an equal footing with the Victorian Government. The Treaty process is the key mechanism to enable self-determination for First Peoples in Victoria. I realise that we have a long way to go before self-determination is realised, and the road to get there will not always be smooth.<sup>126</sup>

PREMIER JACINTA ALLAN MP

We are on the cusp of fuller expressions of self-determination through Treaty, and what I hope will be the meaningful realisation of First Peoples’ self-determination, taking into account the recommendations from the Yoorrook Justice Commission.<sup>127</sup>

MINISTER NATALIE HUTCHINS MP

Important steps have been taken to progress treaty in Victoria. The First Peoples’ Assembly of Victoria and the Victorian Government have agreed on the architecture for the treaty negotiation process, including the Self-Determination Fund. This is a First Peoples-controlled fund to support First Peoples to negotiate ‘on a level playing field with the State and build capacity, wealth and prosperity for future generations’.<sup>128</sup>

Yoorrook notes that negotiation processes for the first Statewide Treaty commenced on 21 November 2024.

The treaty process is vitally important, but it is not the only means to deliver self-determination for First Peoples. Yoorrook heard concerns that the State has delayed some important reforms, giving treaty as the reason.

While the progress towards Treaty in Victoria is to be commended, the Federation [FVTOC] also notes that ‘waiting for treaty’ is a reason frequently being provided by government departments for delay in progress towards anticipated reforms.<sup>129</sup>

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

While treaty represents a formal pathway to self-determination, practical expressions of sovereignty through nation rebuilding initiatives demonstrate how self-determination can be realised both within, and alongside, the treaty process. As submitted by FVTOC, treaty ‘should be looked at as an opportunity to support nation-building for Traditional Owner groups across Victoria’.<sup>130</sup>

This report sets out how urgent reforms should be achieved prior to, and alongside, treaty and the treaty process. It is not acceptable for the State to use treaty as an excuse to delay the realisation of self-determination for First Peoples. This impedes self-determination.



# The way forward

As set out in this report, aspects of the land recognition, education, health, housing, political, economic and records systems are failing First Peoples in Victoria and transformative reform is needed. Self-determination is critical to ending systemic injustice. Systems cannot work properly for First Peoples until they are fully self-determining. Self-determination can be achieved only by transferring decision-making power, authority, control and resources to First Peoples on nation-based, collective, regional and statewide levels. Mere transfer of functions, consultative roles or resources is insufficient.

Treaty represents an unprecedented opportunity to achieve self-determination. Each part of this report sets out the reforms needed now to further self-determination and explains what embedding self-determination would look like in the land recognition, health, education, housing, economic, political and records systems.

# Recommendations

## RECOMMENDATION 3

The Victorian Government must transfer decision-making power, authority, control and resources to First Peoples, giving full effect to self-determination in relation to their identity, information, data, traditional ecological knowledge, connection to Country, their rights to their lands, waters and resources, in the Victorian health, education and housing systems and across economic and political life. Transferring or creating decision-making power includes but is not limited to:

- a. System design and administration;
- b. Obtaining and allocating rights and interests in land, waters and natural resources;
- c. Powers of, and appointments to bodies and institutions; and
- d. Accountability and oversight functions including new First Peoples-led oversight processes or complaints pathways.

## RECOMMENDATION 4

Through negotiation with the First Peoples’ Assembly of Victoria, the Victorian Government must establish independent funding streams, including through hypothecation of a portion of land, water and natural resource-related revenues, to support the Self-Determination Fund and other First Peoples-led initiatives.

## RECOMMENDATION 5

The Victorian Government must provide guaranteed ongoing funding and support the establishment of independent funding streams at both Statewide and local levels to support healing Country, relationships and connection from the legacy of colonisation, including by funding:

- a. First Peoples-led organisations to deliver programs that support healing and rebuilding relationships between clans/groups to address the ongoing impacts of dispossession including where harms have occurred from participation in recognition regimes; and
- b. healing processes, led by local First Peoples groups, to assist non-First Peoples to tell their truths and walk together with First Peoples.

## RECOMMENDATION 6

To build respect, participation and representation of First Peoples in public life, the Victorian Government must include the First Peoples’ Assembly of Victoria and/or its Co-Chairs in high-level functions and ceremonial events of the State.

# Endnotes

1. Transcript of Nerita Waight, 27 May 2024, 21 [40]–[46].

2. Yoorrook Justice Commission, [Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems](#) (Report, 31 August 2023), 63. See also First Peoples' Assembly of Victoria, 'Tyerri Yoo-rrook' (Seed of Truth): Report to the Yoo-rrook Justice Commission from the First Peoples' Assembly of Victoria (Report, June 2021), 10.

3. Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems (2003)* ('Yoorrook for Justice') 17–8, 74–86: Recommendations 1–2.

4. Victoria, *Yoorrook Justice Commission*, Letters Patent, 2(g).

5. *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic), s 20–22.

6. *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic), s 22.

7. *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic), Preamble.

8. First Peoples' Assembly of Victoria and the State of Victoria, *Treaty Negotiation Framework* (2022), cl 2.5.

9. Yoorrook Justice Commission, *Yoorrook with Purpose: Interim Report* (2022) 8.

10. Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems (2023)* 75.

11. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) arts 3–5 ('UNDRIP').

12. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 6.

13. First Peoples' Assembly of Victoria, Submission 593 (Economic Prosperity), 5.

14. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) art 23.

15. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) art 46.

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18. Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems* (Report, 31 August 2023), 75.

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20. Larissa Behrendt, Amanda Porter and Alison Vivian, *Indigenous Self-determination Within the Justice Context: Literature Review* (University Technology Sydney: Jumbunna Indigenous House of Learning, 2017) 14.

21. Larissa Behrendt, Amanda Porter and Alison Vivian, *Indigenous Self-determination Within the Justice Context: Literature Review* (University Technology Sydney: Jumbunna Indigenous House of Learning, 2017) 15, citing Dylan Lino, 'The Politics of Inclusion: The Right of Self-Determination, Statutory Bills of Rights and Indigenous Peoples' (2010) 34(3) *Melbourne University Law Review* 839, 854.

22. Stephen James Anaya, *Indigenous Peoples in International Law* (Oxford University Press, 2004) 98; Larissa Behrendt, Amanda Porter and Alison Vivian, *Indigenous Self-determination Within the Justice Context: Literature Review* (University Technology Sydney: Jumbunna Indigenous House of Learning, 2017) 17, 22.

23. Larissa Behrendt, 'Unfinished Journey — Indigenous Self-Determination' (2002) 58 *Arena Magazine* 24, 26.

24. See Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems* (Report, 31 August 2023), 77, citing Larissa Behrendt, *Achieving Social Justice: Indigenous Rights and Australia's Future* (Federation Press, 2003) 106–115.

25. Larissa Behrendt, *Achieving Social Justice: Indigenous Rights and Australia's Future* (Federation Press, 2003) 106–115.

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27. Transcript of Minda Murray, 26 April 2024, 4 [38]–[39], 10 [5]–[13].

28. Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky, Waters), 4. Daryle Rigney, Simone Bignall, Alison Vivian and Steve Hemming, [Indigenous Nation Building and the Political Determinants of Health and Wellbeing](#) (Lowitja Institute, Discussion Paper, 2022), 6, 9, 14–16, 27; Michael Chandler and Christopher Lalonde, '[Cultural Continuity as a Hedge against Suicide in Canada's First Nations: Culture and Suicide](#)' (1998) 35(2) *Transcultural psychiatry*, 212–213; Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 13–14.

29. Victorian Government and Victorian Aboriginal Community, *Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement Phase 4* (Partnership Agreement, 2018) 11, citing Larissa Behrendt, Amanda Porter and Alison Vivian, *Indigenous Self-determination Within the Justice Context* (University Technology Sydney: Jumbunna Indigenous House of Learning, 2017), 5. See also Larissa Behrendt, Amanda Porter and Alison Vivian, *Self-Determination: Background Concepts – Scoping paper 1* (University of Technology Sydney: Jumbunna Indigenous House of Learning, 2017) 3. See also Stephen Cornell and Joseph Kalt, '[American Indian Self-Determination Through Self-Government: the only policy that has ever worked](#)' (Harvard Kennedy School, 2010).

30. Witness statement of Minister Natalie Hutchins MP, 18 March 2024, 58 [291], [296].

31. Transcript of Premier Jacinta Allan MP, 29 April 2024, 44 [23]–[26].

32. Transcript of Minister Harriet Shing MP, 24 April 2024, 44 [5]–[15]; Transcript of Minister Ben Carroll MP, 14 June 2024, 6 [36]–[46], 9 [46], 16 [20]–[22]; Transcript of Minister Harriet Shing MP, 24 June 2024, 4 [15]–[19], 21 [39]–[43], 45 [1]–[9]; Transcript of Minister Mary-Anne Thomas MP, 21 June 2024, 4 [15]–[19]; Transcript of Treasurer Tim Pallas MP, 26 June 2024, 7 [23]–[29]. See also Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems* (Report, 31 August 2023), 74.

33. See Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems* (Report, 31 August 2023), 74.

34. See Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems* (Report, 31 August 2023), 79–80.

35. Transcript of Paul Paton, 17 April 2024, 75 [5]–[10].

36. Victorian Aboriginal Legal Service, Submission 34 (Criminal Justice), 24–5.

37. Transcript of Aunty Geraldine Atkinson, inaugural Co-Chair of First Peoples' Assembly of Victoria, 13 December 2022, 324 [1]–[9].

38. Transcript of Paul Paton, 17 April 2024, 75 [5]–[10].

39. See Department of Premier and Cabinet, Response to NTP-003-030 — '*Yoorrook Justice Commission – Community Relations and Heritage, FPSR Responses To RFI*', 9, produced by the State of Victoria in response to the Commission's Request for Information dated 19 February 2024: 'how the right to self-determination is realised in practice is a matter for First Peoples to determine'.

40. Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems* (Report, 31 August 2023), 80.

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42. Witness Outline of Uncle Brendan Kennedy, 23 April 2024, 13 [125].

43. Transcript of Professor John Borrows, 26 April 2024, 13 [28]–[34].

44. Transcript of Professor John Borrows, 26 April 2024, 13 [14]–[18].

45. Transcript of Minister Natalie Hutchins MP, 18 April 2024, 18 [30]–[40].

46. Transcript of Paul Paton, 17 April 2024, 75 [5]–[10].

47. See Transcript of Aunty Dr Jill Gallagher, 27 May 2024, 68 [10]–[19].

48. Transcript of Minda Murray, 26 April 2024, 18 [40]–[43].

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50. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land, Sky, Waters), 2; Hamish McPherson, Submission 290, 9, citing Diane Barwick, 'Mapping the past: An atlas of Victorian clans 1835–1904: Part 1', (1984) 8 *Aboriginal History*, 105–106. See also Gary Presland, *First People: The Eastern Kulin of Melbourne, Port Phillip and Central Victoria* (Museum Victoria Publishing, 2010), 15, 33–37.

51. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 9 [76]; Sarah Maddison, Julia Hurst and Dale Wandin, 'The mess of colonialism, the complexity of Treaty' in Harry Hobbs, Alison Whittaker and Lindon Coombes (eds), *Treaty-making: 250 Years Later* (The Federation Press, 2021), 179–202, 189; Hamish McPherson, Submission 290, 4, citing Diane Barwick, 'Mapping the past: An atlas of Victorian clans 1835–1904: Part 1' (1984) 8 *Aboriginal History*, 105–131, 107.

52. For example, Uncle Johnny Lovett said there were originally 59 Gunditjmara clans each with their own language dialects, but now only 10–15 remain: Witness Statement of Uncle Johnny Lovett, 27 April 2022, 4 [12]; Transcript of Uncle Johnny Lovett, 28 April 2022, 79.

53. See Transcript of Minda Murray, 26 April 2024, 18 [40]–[43].

54. Jumbunna Institute, Submission 900, 26, citing Miriam Jorgensen, 'Editor's Introduction' in Miriam Jorgensen (ed), *Rebuilding Native Nations: Strategies for Governance and Development* (The University of Arizona Press, 2007), xii, xii.

55. Jumbunna Institute, Submission 900, 26; Australian Indigenous Governance Institute (AIGI), '[Nation building in practice](#)' (Webpage).

56. See in particular the work of the Harvard Project and the Native Nations Institute at the University of Arizona, for example: Native Nations Institute: '[What is Native Nation Building?](#)' (Webpage).

57. Daryle Rigney, Simone Bignall, Alison Vivian and Steve Hemming, [Indigenous Nation Building and the Political Determinants of Health and Wellbeing](#) (Lowitja Institute, Discussion Paper, 2022), 21.

58. Daryle Rigney, Simone Bignall, Alison Vivian and Steve Hemming, [Indigenous Nation Building and the Political Determinants of Health and Wellbeing](#) (Lowitja Institute, Discussion Paper, 2022), 21.

59. Daryle Rigney, Simone Bignall, Alison Vivian and Steve Hemming, [Indigenous Nation Building and the Political Determinants of Health and Wellbeing](#) (Lowitja Institute, Discussion Paper, 2022), 21–2.

60. Jumbunna Institute, Submission 900, 27–32.

61. Jumbunna Institute, Submission 900, 27, citing Stephen Cornell, 'Processes of Native Nationhood: The Indigenous Politics of Self-Government' (2015) 6(4) *International Indigenous Policy Journal*.

62. Diane Smith, 'Thematic Introduction: Concepts, Issues and Trends' in Diane Smith et al (eds), *Developing Governance and Governing Development: International Case Studies of Indigenous Futures* (Rowman & Littlefield Publishers, 2021) 109, 117.

63. Jumbunna Institute, Submission 900, 27.

64. Australian Indigenous Governance Institute (AIGI), '[Nation building, treaty and development](#)' (Webpage).

65. Jumbunna Institute, Submission 900, 27.

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69. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land Sky Waters 1), 11.

70. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land Sky Waters 1), 11.

71. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land Sky Waters 1), 11.

72. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land Sky Waters 1), 11.

73. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 661 (Economic Prosperity), 4.

74. Dja Dja Wurrung Clans Aboriginal Corporation, Submission 594 (Economic Prosperity), 2.

75. Kaiela Institute, Submission 668 (Economic Prosperity), 3; TVN On-Country, Submission 1255 (Case Study, Munarra Centre).

76. Transcript of Paul Paton, 17 April 2024, 60 [10].

77. Daryle Rigney, Simone Bignall, Alison Vivian and Steve Hemming, [Indigenous Nation Building and the Political Determinants of Health and Wellbeing](#) (Lowitja Institute, Discussion Paper, 2022), 43.



78. Daryle Rigney, Simone Bignall, Alison Vivian and Steve Hemming, [Indigenous Nation Building and the Political Determinants of Health and Wellbeing](#) (Lowitja Institute, Discussion Paper, 2022), 44.

79. Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 35 [5]–[9].

80. Witness Outline of Dr Aunty Vicki Couzens, 28 March 2024, 12–13 [93]–[99].

81. Witness Outline of Dr Aunty Vicki Couzens, 28 March 2024, 12–13 [93]–[99].

82. Transcript of Uncle Robbie Thorpe (Djuran Bunjilinee), 27 March 2024, 73 [10]–[20].

83. Ebony Aboriginal and Torres Strait Islander Institute, ‘Truth, Justice & Healing Project; “Hear my Heart”’; What are the strengths and weaknesses of truth-telling initiatives in Australia and globally?’ (Discussion Paper, 2020), 7. See also Professor Gregory Phillips, Submission 580.

84. Victorian Government, *Victorian Aboriginal Affairs Framework 2018–2023* (Policy, 2018), 22.

85. See, eg, Victorian Government, *Victorian Aboriginal Affairs Framework 2018–2023* (Policy, 2018); Victorian Government, *Victorian Aboriginal Economic Strategy 2013–2020* (Policy, 2013); Victorian Government, *Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement Phase 4* (Policy, 2018); Victoria Police, *Aboriginal Inclusion Strategy and Action Plan 2018–2021* (Policy, 2018); Victorian Government, *Korin Korin Balit–Djak: Aboriginal Health, Wellbeing and Safety Strategic Plan 2017–2027* (Policy, 2017); Victorian Government, *Dhulk Dja: Safe Our Way – Strong Culture, Strong Peoples, Strong Families 2018–2028* (Policy, 2018); Victorian Government, *Balit Murrup: Aboriginal Social Emotional Wellbeing Framework 2017–2027* (Policy, 2017); Victorian Government, *Marrung: Aboriginal Education Plan 2016–2026* (Policy, 2016); Victorian Government, *Wungurilwil Gapgapduir: Aboriginal Children and Families Agreement* (Policy, 2018). See also Merryn Stevenson, Submission 84, Attachment 2, 20–22.

86. Victorian Government, *Victorian Aboriginal Affairs Framework 2018–2023* (Policy, 2018), 22.

87. Victorian Government, *Self-Determination Reform Framework* (Policy, 2019).

88. Transcript of Premier Jacinta Allan MP, 29 April 2024, 23 [42]–[47].

89. Transcript of Paul Paton, 17 April 2024, 74 [1]–[13].

90. Transcript of Minda Murray, 26 April 2024, 5 [2]–[12].

91. Transcript of Nerita Waight, 27 May 2024, 21 [40]–[43].

92. Transcript of Rueben Berg, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 23 [24]–[27].

93. Transcript of Paul Paton, 17 April 2024, 74 [36]–[41].

94. Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky, Waters), 4; Daryle Rigney, Simone Bignall, Alison Vivian and Steve Hemming, [Indigenous Nation Building and the Political Determinants of Health and Wellbeing](#) (Lowitja Institute, Discussion Paper, 2022), 6, 9, 14–16, 27; Michael Chandler and Christopher Lalonde, ‘[Cultural Continuity as a Hedge against Suicide in Canada’s First Nations: Culture and Suicide](#)’ (1998) 35(2) *Transcultural psychiatry*, 212–213; Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 13–14.

95. Transcript of Aunty Marjorie Thorpe, 15 April 2024, 17 [7]–[12].

96. Transcript of Premier Jacinta Allan MP, 29 April 2024, 20 [42]–21 [2].

97. Djirra, Submission 348 (Land, Sky, Waters), 7.

98. Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems* (Report, 31 August 2023), 84–85; Recommendations 1 and 2.

99. Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems* (Report, 31 August 2023), 85.

100. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 5 [37].

101. Transcript of Michael Graham, 27 May 2024, 24 [17]–[34].

102. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 7.

103. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — ‘*Annexure B – Self Determination Frameworks*’, 1–13, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 20 February 2024.

104. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 5 [40]–10 [6].

105. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 6 [42]–7 [4].

106. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 32 [158].

107. In correspondence with Yoorrook, the State said that DEECA has an ongoing commitment to accountability and continuous improvement, as evidenced by examples where ‘independent reviews and feedback from First Peoples have been considered and incorporated into DEECA frameworks’ and examples ‘where DEECA is proposing updates to, or has updated, existing policies and frameworks as part of continuous improvement’, and ‘[f]urther examples of DEECA accountability demonstrated through DEECA’s annual Pupangarli Marnmarnepu implementation action plans, and the commitment towards the State-wide Caring for Country Partnership Forum, in partnership with Parks Victoria and Victorian Traditional Owners’: Department of Energy, Environment and Climate Action, Response to NTP-003-031 — ‘*Annexure B – Self Determination Frameworks*’, 7–13, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 20 February 2024.

108. Ngaweeyan Maar-oo, Submission 662 (Education, Health, Housing), 17.

109. See, eg, Transcript of Minister Harriet Shing MP, 24 April 2024 (Part 1), 42 [35]–[47].

110. See, eg, Transcript of Minister Ben Carroll MP, 14 June 2024, 21 [1]–[10].

111. See, eg, Transcript of Minister Ben Carroll MP, 14 June 2024, 16 [17]–[27].

112. See, eg, Transcript of Minister Natalie Hutchins MP, 18 April 2024, 19 [17]–[19]; Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 5 [38].

113. Transcript of Minister Natalie Hutchins MP, 18 April 2024, 19 [17]–[19]; Transcript of Minister Ben Carroll MP, 14 June 2024, 21 [40]–[47]; Transcript of Minister Harriet Shing MP, 24 April 2024 (Part 1), 19 [5]–[26].

114. For example, the Victorian Government decided to proceed with punitive changes to Victoria’s bail laws despite repeated advice from the Aboriginal Justice Caucus against this course. These changes led to staggering growth in the imprisonment of First Peoples on remand: Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems* (Report, 31 August 2023), 94–95.

115. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 33.

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117. First Peoples – State Relations, ‘[Traditional Owner Nation-building and Treaty Readiness Support](#)’ (Webpage). See also Victorian State Government, *Victorian Budget 2023/24 – Service Delivery: Budget Paper No. 3* (May 2023) 5.

118. Federation of Victorian Traditional Owner Corporations, ‘[Nation Building](#)’ (Webpage).

119. Self-Determination Fund, Submission 595, 3; First Peoples’ Assembly of Victoria, ‘[Self-Determination Fund](#)’ (Webpage).

120. Federation of Victorian Traditional Owner Corporations, Submission 566 (Economic Prosperity), 5–7; Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 17, 33.

121. Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 15, 26.

122. Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 15, 26.

123. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 4.

124. Transcript of Ngarra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 28 May 2024, 67 [11]–[14].

125. Transcript of Rueben Berg, Co-Chair of First Peoples’ Assembly of Victoria, 28 May 2024, 47 [14]–[27].

126. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 5 [38].

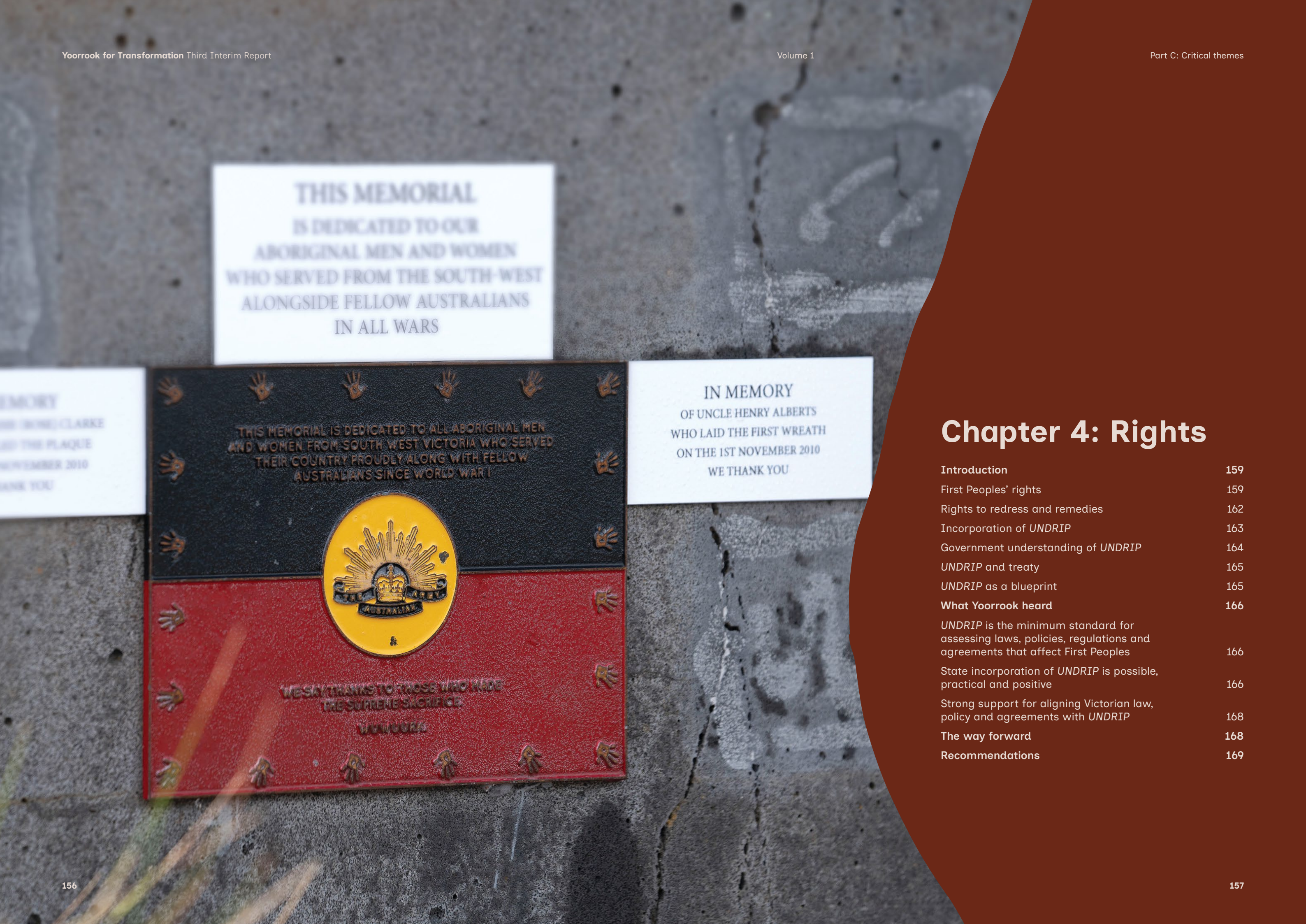
127. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 59 [301].

128. First Peoples’ Assembly of Victoria, Submission 43 (Child Protection, Criminal Justice), 4.

129. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 8.

130. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 33.





THIS MEMORIAL  
IS DEDICATED TO OUR  
ABORIGINAL MEN AND WOMEN  
WHO SERVED FROM THE SOUTH-WEST  
ALONGSIDE FELLOW AUSTRALIANS  
IN ALL WARS

IN MEMORY  
OF UNCLE HENRY CLARKE  
WHO LAID THE PLAQUE  
ON THE 1ST NOVEMBER 2010  
WE THANK YOU



IN MEMORY  
OF UNCLE HENRY ALBERTS  
WHO LAID THE FIRST WREATH  
ON THE 1ST NOVEMBER 2010  
WE THANK YOU

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**[The United Nations Declaration on the Rights of Indigenous Peoples] offers a bigger vision ... It recognises not only the importance of First Nations peoples' self-determination and participation in decision-making, but also rights to housing, health, work, and freedom from discrimination and other human rights contraventions.<sup>1</sup>**

UNCLE DR WAYNE ATKINSON

## Introduction

First Peoples' rights encompass a wide range of legal, political, cultural, social, economic, land and resource rights that recognise the unique status of First Peoples and address the historical and ongoing injustices First Peoples' face. These rights are inherent and grounded in First Peoples' ongoing sovereignty (see Chapter 2: Sovereignty). They are set out in international instruments and national and state laws and policies, including the treaty process.

The *United Nations Declaration on the Rights of Indigenous Peoples* ('*UNDRIP*') is central to the international framework.<sup>2</sup> *UNDRIP* recognises First Peoples' 'inherent rights',<sup>3</sup> including self-determination, and provides the universal minimum standard for assessing state laws, policies, regulation and agreements that affect First Peoples. This chapter considers the rights framework underpinning Yoorrook's mandate, and models for how the State should incorporate and implement *UNDRIP*.

### First Peoples' rights

#### The United Nations Declaration on the Rights of Indigenous Peoples (*UNDRIP*)

*UNDRIP* is a United Nations (UN) declaration that is central to Yoorrook's inquiry.<sup>4</sup> Yoorrook's Letters Patent specifically cite *UNDRIP* as the first of several human rights instruments that shape the inquiry's approach.<sup>5</sup> This underscores the significance of *UNDRIP* as the internationally and nationally accepted benchmark for judging the effectiveness of law, policy and practice by governments in their dealings with First Peoples. It is the minimum baseline for ensuring the rights, dignity and wellbeing of First Peoples. While *UNDRIP* has not been incorporated into Australian or Victorian law, Yoorrook considers that *UNDRIP* represents the minimum international standard against which the Victorian Government's actions, commitments and accountability to First Peoples should be assessed.

Indigenous communities from around the world,<sup>6</sup> including First Peoples' from Australia, devised, drove and negotiated *UNDRIP*.<sup>7</sup> Leading Australian First Peoples organisations<sup>8</sup> and advocates took part, including Professor Mick Dodson (Yawuru) and Chair of the International Indigenous Peoples' Caucus Les Malezer (Gubbi Gubbi, Butchulla).<sup>9</sup> In 2009, then Federal Minister for Indigenous Affairs Jenny Macklin MP paid tribute to 'Indigenous Australians whose leadership and efforts were central to the development of the Declaration', including Professor Mick Dodson, Les Malezer, the late Professor Lowitja O'Donoghue (Yankunytjatjara), Professor Megan Davis (Cobble Cobble Barunggam), Aboriginal and Torres Strait Islander Social Justice Commissioners Professor Tom Calma (Kungarakana, Iwaidja, Woolwonga) and the late Dr William Jonas (Worimi), as well as First Peoples non-government organisations.<sup>10</sup>

Professor Sheryl Lightfoot (Anishinaabe), the Vice Chair and North American Member of the UN Expert Mechanism on the Rights of Indigenous Peoples, explained:

**The reason [*UNDRIP*] went to the human rights system was because the Indigenous peoples at the time in the seventies saw all of these treaties and conventions coming out, anti-racial-discrimination, decolonisation, national independence movements, and nowhere were there Indigenous peoples. So they needed to insert themselves and get recognition for the Indigenous context in all of this activity.<sup>11</sup>**

PROFESSOR SHERYL LIGHTFOOT

The Founding Chairperson and former Special Rapporteur of the United Nations Working Group on Indigenous Populations, the late Madame Erica-Irene Daes, observed:

**[UNDRIP’s] text reflects an extraordinary liberal, transparent and democratic procedure ... that encouraged broad and unified Indigenous input. ... [N]o other UN human rights instrument has ever been elaborated with so much direct involvement and active participation on the part of its intended beneficiaries.**<sup>12</sup>

MADAME ERICA-IRENE DAES

The UN General Assembly adopted *UNDRIP* in 2007 by a significant majority of 143 states.<sup>13</sup>

The 46 articles in *UNDRIP* establish a universal framework of ‘minimum standards for the survival, dignity and wellbeing of Indigenous Peoples’ worldwide.<sup>14</sup> *UNDRIP* does not create new rights, but brings together existing human rights as they apply to First Peoples.<sup>15</sup> Importantly, *UNDRIP* recognises collective human and cultural rights, as well as rights belonging to individuals.<sup>16</sup> It reflects the indivisibility and interconnectedness of First Peoples’ rights, underpinned by the fundamental right to self-determination (see Chapter 3: Self-determination). This makes *UNDRIP* a distinctive and powerful force for achieving justice for First Peoples as individuals, communities and nations.

Other international instruments

Yoorrook’s Letters Patent recognise other international instruments, including:<sup>17</sup>

- the *International Covenant on Civil and Political Rights*<sup>18</sup> and the *International Covenant on Economic, Social and Cultural Rights*<sup>19</sup>
- the *International Convention on the Elimination of All Forms of Racial Discrimination*,<sup>20</sup> the *Convention on the Prevention and Punishment of the Crime of Genocide*<sup>21</sup> and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*<sup>22</sup>
- international conventions upholding the rights of women, children and people with disabilities<sup>23</sup>
- the *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (UN Basic Principles on the Right to a Remedy).<sup>24</sup>

In supporting or agreeing to be bound by these international instruments, Australia has committed to respect, protect and fulfil the human rights protected by them. Many of the rights contained in these instruments — including the rights to self-determination, culture, land, water and resources, health, education, consent, participation in public life and freedom from discrimination — are particularly important for First Peoples.

Rights including self-determination

*UNDRIP* affirms the rights of First Peoples to self-determination, non-discrimination, culture, land, water and resources, health, education, consent, participation, remedies and redress (see box on *UNDRIP* rights below). The First Peoples’ Assembly of Victoria explained:

**All rights in *UNDRIP* are indivisible, interdependent and grounded in the overarching right to self-determination.**<sup>25</sup>

FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Under *UNDRIP*, First Peoples have rights to:

- **self-determination (articles 3, 4, 5, 18, 19, 20, 33):** freely determine their political status and pursue economic, social and cultural development and exercise autonomy in matters relating to their affairs;
- **culture (articles 8(1), 11, 12):** maintain, control, protect and develop their cultural heritage, traditional knowledge and expressions;
- **land, water and resources (articles 25, 26, 29, 30, 32):** own, use, develop and control their traditional lands, waters, territories and resources, and have these lands legally recognised and protected by the State;
- **free, prior and informed consent (article 19):** give or withhold consent to projects or activities affecting their lands, resources or territories;
- **education and information (article 14):** access education that preserves and develops their cultural identity, history, language and traditions, and to access information;
- **equality and non-discrimination (article 2):** be free from discrimination of any kind;
- **health and wellbeing (articles 23 and 24):** enjoy the highest attainable standard of physical and mental health, including culturally appropriate healthcare services;
- **participate in decision making (article 13):** participate in decision making that affects their rights, interests and wellbeing at national and international levels;
- **remedies and redress (articles 8, 27, 28, 40):** access effective mechanisms for the prevention of and redress for actions violating their rights, including redress for lands, territories and resources that they have traditionally owned or otherwise occupied or used, and that have been confiscated, taken, occupied, used or damaged;
- **maintain and strengthen institutions (article 5; see also 20, 23, 33 and 34):** maintain and strengthen their own institutions, cultures and traditions.



## Rights to redress and remedies

The rights of First Peoples in Victoria to redress for cultural and human rights violations is set out in four articles of *UNDRIP*:

- article 8(2) affirms the right of First Nations to redress for actions depriving them of their integrity as distinct people, or of their cultural values or ethnic identities, and actions dispossessing them of their lands, territories or resources.
- article 11(2) affirms the right of First Nations to redress for the taking of their cultural, intellectual, religious and spiritual property without their free, prior and informed consent or in violation of their laws, traditions and customs.
- article 20(2) affirms the right of First Nations to redress for the deprivation of their means of subsistence and development.
- article 28 affirms the right of First Nations to redress for the confiscation, taking, occupation, use or damage of their lands, territories and resources, which they have traditionally owned, occupied or used, without their free, prior and informed consent.

Several of the international agreements referred to in Yoorrook’s Letters Patent also contain the right to a remedy. This includes binding international conventions:

- article 6 of the *International Convention on the Elimination of All Forms of Racial Discrimination*<sup>26</sup> provides that state parties shall ensure effective remedies against acts of racial discrimination violating human rights, and reparation or satisfaction for any damage.
- article 2(3) of the *International Covenant on Civil and Political Rights* provides that any person whose rights or freedoms under the Covenant are violated ‘shall have an effective remedy’ and enforcement by the competent authorities.

Yoorrook’s Letters Patent also refer to the UN Basic Principles on the Right to a Remedy. These provide that effective remedies including reparations, should be available to those who have suffered violations of human rights law. The specific violations that require redress and the principles that should be applied to determine it are discussed in Chapter 39: Redress.

### Anti-discrimination and human rights legislation

In Australia, anti-discrimination and human rights legislation is designed to safeguard individuals from unfair treatment and promote equality in various aspects of life, including employment, education and public services. At the federal level, key legislation includes the *Racial Discrimination Act 1975* (Cth), which prohibits discrimination based on race, colour, descent and national or ethnic origin.<sup>27</sup> The *Racial Discrimination Act* provides a general safeguard against racial discrimination, but it does not specifically recognise or address the unique status of First Peoples, or the historical, cultural and social challenges faced by First Peoples.

Also at the federal level, the *Australian Human Rights Commission Act 1986* (Cth) empowers the Australian Human Rights Commission to investigate complaints and promote human rights across Australia. The Aboriginal and Torres Strait Islander Social Justice Commissioner within the Australian Human Rights Commission works to monitor and report on human rights issues affecting First Peoples in Australia.<sup>28</sup>

In Victoria, the *Equal Opportunity Act 2010* (Vic) provides protections against discrimination based on characteristics such as race, sex, age, disability, sexual orientation and religious belief. It also addresses issues like harassment and vilification. It does not include any specific recognition of or protections for First Peoples.<sup>29</sup> Additionally, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (‘*Charter*’) (see following page) guarantees fundamental human rights for all individuals in Victoria.

While general anti-discrimination laws apply to First Peoples, there is a clear need for stronger, more explicit rights frameworks that are led by First Peoples. This is essential to fully acknowledge and address the historical and ongoing challenges First Peoples face in Australia. The treaty process in Victoria and the State’s implementation of the recommendations in this chapter will help advance this goal.

### The *Charter of Human Rights and Responsibilities Act 2006* (Vic)

Victoria was the first Australian state to establish human rights legislation, which protects a range of civil, political and cultural rights. The *Charter of Human Rights and Responsibilities Act 2006* (Vic) (‘*Charter*’). The *Charter* protects 20 individual human rights drawn from international human rights treaties. These human rights protect all Victorians, but some have special significance for First Peoples.

The *Charter*’s Preamble acknowledges that

**human rights have a special importance for the Aboriginal people of Victoria, as descendants of Australia’s first people, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and waters.**<sup>30</sup>

Section 19(2) of the *Charter* states that Aboriginal people hold distinct cultural rights to:

- enjoy their identity and culture
- maintain and use their language
- maintain their kinship ties
- maintain their distinctive spiritual, material and economic relationship with land, waters and other resources with which they have a connection under traditional laws and customs.

In Yoorrook’s Letters Patent, the State ‘acknowledges its responsibility to advance and uphold the human rights of Victorian citizens, including First Peoples, under [the *Charter*]’.<sup>31</sup>

The *Charter* protects aspects of the rights set out in *UNDRIP* but does not fully incorporate *UNDRIP* into Victorian law. The *Charter* does not protect the right to Aboriginal self-determination.<sup>32</sup>

The *Charter* requires Victorian public authorities, such as government departments, public servants and agencies, to act compatibly with *Charter* rights and properly consider them when making decisions.<sup>33</sup> However, the *Charter* has weaknesses that limit protection for First Peoples and all Victorians. Because it does not incorporate all the rights outlined in *UNDRIP*, the *Charter* has gaps in protecting First Peoples’ rights.

Additionally, getting justice under the *Charter* can be difficult. The *Charter* does not provide a way for a person to take direct legal action if a public authority breaches their rights. Instead, a person must raise a *Charter* breach as part of another legal action, if one is available.<sup>34</sup> This can be done via a judicial review application, but these applications must be made in the Victorian Supreme Court, which is time-consuming, expensive and complex. Further, the *Charter* provides that people cannot obtain compensation if their human rights are breached.<sup>35</sup>

Yoorrook made important recommendations to improve the *Charter* in its *Yoorrook for Justice* report.<sup>36</sup> The Victorian Government chose not to support some of those recommendations and has not implemented others.<sup>37</sup>

## Incorporation of *UNDRIP*

Australia voted against *UNDRIP* at the UN General Assembly in 2007 but endorsed it in 2009.<sup>38</sup> As a resolution of the UN General Assembly, *UNDRIP* is not enforceable under

Australian domestic law. To make it enforceable, Australian parliaments must make laws that incorporate the rights protected in *UNDRIP* into Australian domestic law. The Parliament of Victoria has power to make laws that incorporate the rights protected by *UNDRIP* into Victorian law.<sup>39</sup>

So far, no Australian government — federal, state or territory — has passed laws that fully incorporate the rights in *UNDRIP*.<sup>40</sup> This contrasts with other countries, such as Canada, where both the national government and provinces have taken this step to achieve justice and reconciliation with First Nations (see below).

*UNDRIP* is nonetheless an authoritative instrument. It derives from binding human and cultural rights obligations of government with respect to Indigenous peoples, reflects a participatory process building global agreement and is regularly referred to by domestic and international courts. The UN Human Rights Council stated on *UNDRIP*’s 10-year review:

**The Declaration is the most far-reaching comprehensive instrument concerning [I]ndigenous peoples, elaborated and approved as a result of a process of nearly three decades of active engagement of [I]ndigenous leaders within the United Nations system. Since its adoption by the General Assembly ... it has been overwhelmingly recognized as reflecting a global consensus on the rights of [I]ndigenous peoples, individually and collectively.**<sup>41</sup>

## Government understanding of *UNDRIP*

The Victorian Government has determined that *UNDRIP* should be a key policy driver in its relations with First Peoples. This is recognised in the Victorian Aboriginal Affairs Framework, the Self-Determination Reform Framework and elsewhere.<sup>42</sup> According to the Department of Premier and Cabinet:

**as of December 2023, the Australian Government ... has not implemented *UNDRIP* into law and has not audited existing laws, policies, and practices for compliance with *UNDRIP*. This is a challenge in terms of operationalising *UNDRIP*. There is no express statutory requirement in Australia, including Victoria, for decision makers to have specific regard to the provisions of *UNDRIP* when making decisions.**<sup>43</sup>

DEPARTMENT OF PREMIER AND CABINET

The Victorian Government has not sought to incorporate *UNDRIP* into standalone state legislation. However, the Department of Premier and Cabinet told Yoorrook:

**Victoria has taken the opportunity to reflect *UNDRIP*’s recognition of Indigenous Peoples’ distinct rights in Victorian legislation such as the [*Traditional Owner Settlement Act 2010* (Vic) (‘TOSA)], the [Aboriginal Heritage Act 2006 (Vic) (AHA)] and the Advancing the Treaty Process with Aboriginal Victorians Act 2018 (Vic) (Treaty Act), as well as agreements concluded between the State and the First Peoples’ Assembly of Victoria under the Treaty Act.**

Further, *UNDRIP* is beginning to serve as a benchmark for decision-making under these agreements and Acts. For example, the Victorian Government has resolved that offers to Traditional Owner groups under [TOSA] will be just and fair, as measured with regard to specific criteria, including *UNDRIP*. Further, the Treaty Negotiation Framework is to be interpreted by reference to *UNDRIP*, except to the extent of any inconsistency with the Treaty Act and applicable laws of the State and the Commonwealth.<sup>44</sup>

DEPARTMENT OF PREMIER AND CABINET

## *UNDRIP* and treaty

The treaty process in Victoria provides a critical opportunity to use *UNDRIP* as a foundational framework to entrench First Peoples’ rights in Victorian law.<sup>45</sup> The treaty process also provides the opportunity for the State to recognise the inherent rights expressed in *UNDRIP* (such as self-determination), including by facilitating their implementation through Statewide and Traditional Owner treaties. The preamble to the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic) includes a commitment to *UNDRIP* principles:

**[T]he State recognises the importance of the treaty process proceeding in a manner that is consistent with the principles articulated in [*UNDRIP*].**<sup>46</sup>

The Treaty Negotiation Framework says:

**Treaty-making aims to build a new relationship between the State and First Peoples based upon realising rights defined by the *UNDRIP*.**<sup>47</sup>

The Treaty Authority Agreement states:

**The Treaty process provides the opportunity for new relations between First Peoples in Victoria and the other people of the state that are built on truth, justice and respect for First Peoples’ self-determination and empowerment, consistent with the principles articulated in the [*UNDRIP*].**<sup>48</sup>

## *UNDRIP* as a blueprint

In November 2023, the Commonwealth Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs (Joint Standing Committee) reported on its *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*.<sup>49</sup> Chair Senator Patrick Dodson stated on behalf of the Joint Standing Committee that *UNDRIP* offers ‘a potential blueprint for a renewed relationship between Aboriginal and Torres Strait Islander peoples and the broader Australian nation’.<sup>50</sup>

At the federal level, the Joint Standing Committee Report recommended:

- that legislation and policy on matters relating to Aboriginal and Torres Strait Islander people be consistent with the articles outlined in *UNDRIP*
- the development of a National Action Plan, in consultation with Aboriginal and Torres Strait Islander peoples, that outlines the approach to implementing *UNDRIP* in Australia and considers the legislative, policy and other approaches to implement, and assess compliance with, *UNDRIP* across all jurisdictions.<sup>51</sup>

In December 2023, over 80 First Nations people in Australia, human rights experts, non-government organisations and others signed an open letter calling for the implementation of *UNDRIP* as a crucial step to strengthen the rights and improve the lives of First Peoples.<sup>52</sup>



# What Yoorrook heard

## UNDRIP is the minimum standard for assessing laws, policies, regulations and agreements that affect First Peoples

UNDRIP provides a universal standard for assessing legislation, policy, regulation and agreements in Victoria that concern First Peoples. The Federation of Victorian Traditional Owner Corporations told Yoorrook:

The **UNDRIP** provides a clear and instructive reference point of the accepted basis of Indigenous rights as recognised by the international community.<sup>53</sup>

### FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

The rights in *UNDRIP* are specifically described as ‘*minimum standards*’.<sup>54</sup> Accordingly, the State should regard *UNDRIP* as the minimum foundation, not a ceiling, for the recognition and realisation of First Peoples’ cultural and human rights.

As explained in Chapter 10: Native title, Chapter 11: Traditional Owner settlements and Chapter 12: Cultural heritage, Yoorrook considers that the current legislative framework for land recognition in Victoria — the *Native Title Act 1993* (Cth), *Traditional Owner Settlement Act 2010* (Vic) and *Aboriginal Heritage Act 2006* (Vic) — is not consistent with the minimum international standards set out in *UNDRIP*, including in relation to self-determination. As discussed in Part E: Education, Part G: Housing, Part F: Health and Part H: Economic and political life of this report, across the education, health, and housing systems and in economic and political life, the State has similarly not realised *UNDRIP* rights.

The Victorian Government claims to reflect *UNDRIP* standards and use *UNDRIP* as a benchmark, but it has not incorporated *UNDRIP* in state laws, audited its systems for compliance or negotiated an action plan with First Peoples for implementation. The Federation of Victorian Traditional Owner Corporations told Yoorrook that while *UNDRIP* is ‘increasingly accepted by the Victorian State government as a benchmark to drive key policy’, there is still ‘no real accountability’.<sup>55</sup>

## State incorporation of UNDRIP is possible, practical and positive

### Incorporation and implementation of UNDRIP in other jurisdictions

State and federal governments in other countries have taken substantive steps to incorporate and implement *UNDRIP* in domestic law. First Nations Legal and Research Services told Yoorrook that incorporation and implementation of *UNDRIP* elsewhere demonstrates that Australia is lagging behind comparable international jurisdictions in implementing and aligning State law with *UNDRIP*.<sup>56</sup> It also demonstrates that implementation is economically and politically viable.<sup>57</sup>

#### Canada: legislative incorporation (federal level)

In June 2021, Canada passed *The United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c. 14 (‘*Canadian UNDRIP Act*’). The *Canadian UNDRIP Act* affirms that *UNDRIP* is ‘a universal international human rights instrument with application in Canadian law’.<sup>58</sup>

The *Canadian UNDRIP Act* provides a framework for Canada’s implementation of *UNDRIP*. The *Canadian UNDRIP Act* requires the Government of Canada, in consultation and cooperation with Indigenous peoples, to take all measures necessary to ensure that its laws are consistent with *UNDRIP*. Under the *Canadian UNDRIP Act*, in 2023, the government formalised the United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan, detailing legislative, regulatory, policy and program changes to bring Canada into alignment with the requirements of *UNDRIP*.

#### British Columbia: legislative incorporation (provincial level)

Prior to the passage of the federal *UNDRIP Act*, in November 2019, the Canadian Province of British Columbia passed the *Declaration on the Rights of Indigenous Peoples Act* 2019 (BC). The Act establishes *UNDRIP* as the province’s framework for reconciliation. It requires that the provincial government brings provincial laws into alignment with *UNDRIP*, develops and implements an action plan to meet the objectives of *UNDRIP* and reports regularly to monitor progress.<sup>59</sup>

The Australian Commonwealth Joint Standing Committee, in its *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*, heard that British Columbia’s adoption of *UNDRIP* ‘has had an unparalleled positive influence on the speed of reconciliation and change within the jurisdiction’.<sup>60</sup> Professor John Borrows (Chippewa, Nawash Nation), of the University of Victoria in Canada also told Yoorrook about the compatibilities between the Canadian and Australian experience.<sup>61</sup>

#### Aotearoa / New Zealand: implementation through policy

Aotearoa / New Zealand has not incorporated *UNDRIP* into law. However, the government has incorporated it in other ways, including through policy and by raising it and applying it in the courts and the Waitangi Tribunal.

In March 2019, the New Zealand Government commenced a process to develop a National Action Plan and engagement strategy to implement *UNDRIP* in partnership with Māori leaders and representatives. In June 2021, the New Zealand Government agreed to targeted engagement and public consultations on an approach to implement a Declaration Action Plan.

However, in 2023, New Zealand’s new coalition government paused consultation and withdrew support for *UNDRIP*.<sup>62</sup> The government has also committed to stopping the work of He Puapua, a report providing a legislative roadmap for the realisation of the rights of Māori in *UNDRIP*.<sup>63</sup> The Aotearoa / New Zealand experience highlights the importance of strengthening the protection of *UNDRIP* rights through legislation as well as policy.

## Strong support for aligning Victorian law, policy and agreements with *UNDRIP*

Participants in Yoorrook’s inquiry revealed a strong consensus that there is a significant gap in State consistency and compliance with *UNDRIP* principles. Many participants told Yoorrook that as a starting point for rectifying systemic injustice against First Peoples, the Victorian Government should do one or more of the following:

- incorporate *UNDRIP* into Victorian law
- align state legislation, policy, regulation and agreements with the minimum standards in *UNDRIP* by embedding *UNDRIP* rights, especially self-determination, into state law and policy
- include *UNDRIP* rights in future treaties with First Nations as enforceable and justiciable rights and minimum obligations.

Several stakeholders, including the First Peoples’ Assembly of Victoria, the Federation of Victorian Traditional Owner Corporations, Djirra and Uncle Dr Wayne Atkinson (Yorta Yorta, Dja Dja Wurrung) stressed the importance of reflecting *UNDRIP* principles in Victorian and Australian law.<sup>64</sup> The Federation of Victorian Traditional Owner Corporations said:

**It is the exercise of rights, and not their simple recognition that is the ultimate goal, and this will be achieved by the practical measures contained in treaties that transfer decision making and control. In this way, the *UNDRIP*’s rightful role in this process is, in our view, to underpin and to protect those measures freely negotiated by Traditional Owners.**<sup>65</sup>

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

The First Peoples’ Assembly of Victoria told Yoorrook:

**As part of preparing for Treaty negotiations and getting Treaty ready, the State should seek to align all existing legislation, policy, regulation and agreements with *UNDRIP*. At a minimum, all future legislation, policies, regulation and agreements should meet the standards in *UNDRIP*.**<sup>66</sup>

FIRST PEOPLES’ ASSEMBLY OF VICTORIA

## The way forward

Based on the evidence heard by Yoorrook and the broader consensus outlined in this chapter, it is time for Victoria to align state law and policy with *UNDRIP* as a foundation for meaningful change, accountability and self-determined systems.

## Recommendations

### RECOMMENDATION 7

Amend the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and other relevant legislation to recognise and protect the rights to health and education as recognised under international human rights law.

### RECOMMENDATION 8

Building on the principles recognised in the Treaty Negotiation Framework and the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic) and led by and in consultation with the First Peoples’ Assembly of Victoria, the Victorian Government must:

- a. Incorporate *UNDRIP* principles into Victorian legislation, including:
  - i. as part of Statewide treaty legislation;
  - ii. by establishing a process of audit of existing legislation to identify incompatibility to ensure that *UNDRIP* principles prevail; and
  - iii. by ensuring that any future legislative change is compatible with *UNDRIP* principles.
- b. Support and facilitate the adoption and implementation of *UNDRIP* principles by non-state entities; and
- c. To implement these steps, work with First Peoples to develop a State Action Plan on implementation of *UNDRIP*, ensuring that First Peoples are involved in the design, monitoring and evaluation of the implementation plan.



# Endnotes

1. Uncle Dr Wayne Atkinson, Submission 406, 18.
2. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295 (2 October 2007, adopted 13 September 2007) (‘UNDRIP’).
3. UNDRIP, Preamble.
4. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 18.
5. Victoria, *Yoorrook Justice Commission*, Letters Patent, 1.
6. Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (Commonwealth of Australia, 2023), [1.27]–[1.42].
7. Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (Commonwealth of Australia, 2023), [1.35].
8. Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (Commonwealth of Australia, 2023), [1.35].
9. Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (Commonwealth of Australia, 2023), [1.46], [1.47].
10. Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, [Statement on the United Nations Declaration on the Rights of Indigenous Peoples](#) (3 April 2009), 1–2.
11. Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (Commonwealth of Australia, 2023), [1.31], citing Dr Sheryl Lightfoot, *Committee Hansard*, Canberra, 8 June 2023, 12.
12. Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (Commonwealth of Australia, 2023), [1.38], citing Erica-Irene A Daes, ‘The Contribution of the Working Group on Indigenous Populations to the Genesis and Evolution of the UN Declaration on the Rights of Indigenous Peoples’ in Claire Charters and Rodolfo Stavenhagen (eds), *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (2009), 48–76, 74.
13. Australia, Canada, Aotearoa (New Zealand) and the United States voted against the resolution. Eleven countries abstained. One country subsequently advised the secretariat that it had intended to support the resolution. See UN GAOR, 61st sess, 107th plen mtg, UN Doc A/61/PV.107, 13 September 2007, 19.
14. UNDRIP, art 43; First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 18; Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 4.
15. University of Melbourne, Submission 334, 6; First Nations Legal & Research Services, Submission 345, 11. See also UNDRIP, Preamble.
16. Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (Commonwealth of Australia, 2023), [1.52].

17. Victoria, *Yoorrook Justice Commission*, Letters Patent, 1.
18. *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, [1976] ATS 6 (entered into force 23 March 1976).
19. *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, [1976] ATS 5 (entered into force 3 January 1976).
20. *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, [1975] ATS 40 (entered into force 4 January 1969).
21. *Convention on the Prevention and Punishment of the Crime of Genocide*, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951).
22. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).
23. *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981); *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990); *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008).
24. UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN Doc A/RES/60/147 (2006).
25. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 18. See also UN Human Rights Council, *Report of the Expert Mechanism on the Rights of Indigenous Peoples* (EMRIP): *Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples*, UN Doc A/HRC/48/75 (4 August 2021), 5.
26. *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, [1975] ATS 40 (entered into force 4 January 1969).
27. In addition, the *Sex Discrimination Act 1984* (Cth) protects individuals from discrimination on the grounds of sex, gender identity, sexual orientation, marital status and pregnancy; and the *Disability Discrimination Act 1992* (Cth) requires fair treatment for people with disabilities.
28. See Australian Human Rights Commission, [‘Aboriginal and Torres Strait Islander Social Justice’](#) (Webpage).
29. First Peoples are not mentioned in the *Equal Opportunity Act 2010* (Vic) except for one example of a special measure under s 12(1). This is not a specific legislative protection.
30. *Charter of Human Rights and Responsibilities Act 2006* (Vic), Preamble.
31. Victoria, *Yoorrook Justice Commission*, Letters Patent, 1.
32. The Victorian Aboriginal Legal Service and others have called for inclusion of the right to self-determination in the *Charter*: Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 12.

- Section 22 of the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic) recognises that ‘Traditional owners and Aboriginal Victorians have the right to self-determination’ and section 20 and 21 provide that the right to self-determination is one of the guiding principles for the treaty process and the parties to the treaty process must at all times act in accordance with the guiding principles.
33. *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 38(1).
34. *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 39(1).
35. *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 39(3).
36. Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems* (2023), 98–99, 101, Recommendations 5 and 6.
37. Victorian Government Response to the *Yoorrook for Justice* Report (2024).
38. Jenny Macklin, ‘Federal Government Formally Endorses the Declaration on the Rights of Indigenous Peoples’ (2009) 7(11) *Indigenous Law Bulletin* 6.
- Similarly, the other three nations that initially voted against UNDRIP have subsequently endorsed it.
39. *Victorian Constitution Act 1975* (Vic), s 16.
40. Resolutions of the United Nations General Assembly do not have legal force in domestic legal systems unless incorporated through domestic legislation.
41. United Nations, Human Rights Council, Report of the Human Rights Council on its Thirty-Sixth Session, *Ten years of the implementation of the United Nations Declaration on the Rights of Indigenous Peoples: good practices and lessons learned — 2007–2017*, UN Doc A/HRC/36/56, [3].
42. The Declaration is incorporated into key policy documents, including the Victorian Aboriginal Affairs Framework 2018–2023, Victorian Aboriginal Economic Strategy, Yuma Yirramboi Victorian Aboriginal Employment and Economic Strategy, Victorian Aboriginal Justice Agreement Phase 4, Victoria Police Aboriginal and Torres Strait Islander Inclusion Action Plan 2023–2025, Korin Korin Balit-Djak, Dhelk Dja, Balit Murrup, Marrung and Wungurilwil Gaggapduir. See also First Nations Legal and Research Services, Submission 345, 12.
43. Department of Premier and Cabinet, Response to NTP-003-030 — ‘Yoorrook Justice Commission – Community Relations And Heritage, FPSR Responses To RFI’, 9, produced by the State of Victoria in response to the Commission’s Request for Information dated 19 February 2024.
44. Department of Premier and Cabinet, Response to NTP-003-030 — ‘Yoorrook Justice Commission – Community Relations And Heritage, FPSR Responses To RFI’, 9–10, produced by the State of Victoria in response to the Commission’s Request for Information dated 19 February 2024. See Chapter 6: Country.
45. Federation of Victorian Traditional Owner Corporations, *UNDRIP and Enshrining Aboriginal Rights* (Discussion Paper 3, 2021), 3.
46. *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic), Preamble.
47. First Peoples’ Assembly of Victoria and the State of Victoria, *Treaty Negotiation Framework* (2022).
48. First Peoples’ Assembly of Victoria and the State of Victoria, *Treaty Authority Agreement* (June 2022), 4.
49. Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (Commonwealth of Australia, 2023).

50. Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (Commonwealth of Australia, 2023), ix.
51. Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (Commonwealth of Australia, 2023), xix–xx.
52. Open Letter to the Australian Parliament on UNDRIP, [Implementation of the UN Declaration on the Rights of Indigenous Peoples in Australia](#) (2023).
53. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 3.
54. UNDRIP, art 43 (emphasis added).
55. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 7.
56. First Nations Legal and Research Services, Submission 345, 13.
57. First Nations Legal and Research Services, Submission 345, 13.
58. *The United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c. 14, s 4.
59. *Declaration on the Rights of Indigenous Peoples Act 2019* (BC), ss 4–7.
60. Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (Commonwealth of Australia, 2023), [3.63]–[3.64].
61. Transcript of Professor John Borrows, 26 April 2024, 8–9.
62. New Zealand National Party and New Zealand First, [Coalition Agreement](#) (2023), 10 .
63. Claire Charters, Kayla Kingdon-Bebb, Tāmati Olsen, Waimirirangi Ormsby, Emily Owen, Judith Pryor, Jacinta Ruru, Naomi Solomon and Gary Williams, *He Puapua, Report of the Working Group on a plan to realise the UN Declaration on the Rights of Indignoeus Peoples in Aotearoa/New Zealand* (2019).
64. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 36–37; Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 2; Djirra, Submission 348 (Land, Sky, Waters); Uncle Dr Wayne Atkinson, Submission 406.
65. Federation of Victorian Traditional Owner Corporations, *UNDRIP and Enshrining Aboriginal Rights* (Discussion Paper 3, 2021), 27.
66. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 36–37.



# Chapter 5: Accountability

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# Introduction

Since the earliest days of colonisation, the perpetuation of systemic injustices against First Peoples in Victoria has wrought devastation on their lives, families and communities. Yoorrook has witnessed and recorded this devastation and its societal outcomes across all stages and areas of inquiry.

The impacts of systemic injustice have not always gone unrecognised by the State, now or in the past. Yoorrook heard about the State’s attempts to understand and ameliorate some of the worst impacts of First Peoples’ experiences through the establishment of inquiries, policies and strategies. The 1858–59 *Select Committee of the Legislative Council on the Aborigines*<sup>1</sup> and the 1877 Victorian *Royal Commission on the Aborigines* were the first such inquiries in Victoria.<sup>2</sup>

Since that time, there have been numerous and regular inquiries (both at a Victorian and national level) into the conditions of First Peoples.<sup>3</sup> As documented throughout this report, these inquiries have all confirmed that First Peoples in Victoria have experienced, and continue to experience, systemic injustices across all areas of society, including health, housing, education, land and resources, criminal justice, child protection, and politics. The State response to inquiry findings is well established: it develops policies and strategic frameworks that attempt to deliver a series of actions and outcomes to address the consequences of systemic injustice. The Victorian Government provided Yoorrook with a list of over 70 First Peoples-related policies, strategies, frameworks and programs currently in effect.

As shown in this chapter and others, across every area of Yoorrook’s inquiry there is a consistent pattern of these policies and frameworks failing to deliver on their commitments. This failure to deliver was attested to by numerous witnesses, both First Peoples and State. The reasons proposed for this longstanding pattern were varied, but commonly included:

- failure to implement
- failure to adequately fund
- lack of transparency on activity
- failure to monitor or evaluate outcomes, delivery or commitments.

Regardless of the reasons, this ongoing failure has resulted in First Peoples’ profound lack of trust that the State will deliver on its promises and a conviction that failure to deliver perpetuates rather than ameliorates injustice.

Yoorrook does not question the intent of the State’s policies and strategic frameworks. Instead, Yoorrook draws attention to the embedded pattern of the State’s response to injustice, linked with the failure of the State to deliver on promised outcomes. Yoorrook intends to highlight the State’s ongoing lack of accountability inherent in this pattern of failure. Lack of State accountability in relation to First Peoples’ affairs cuts across every area of Yoorrook’s inquiry.<sup>4</sup>

Yoorrook does not contend that the pattern of embedded policy failure is deliberate or that the State designs and implements these policies and frameworks with failure as the intention. Rather, the evidence leads Yoorrook to consider that the State does not design or implement these policies with success as the expected outcome.

This lack of expectation of success is almost equivalent to State and First Peoples accepting the inevitable failure of policies and strategic frameworks.<sup>5</sup> The evidence provided to Yoorrook also indicates a lack of urgency; if this policy fails, then there is always another opportunity to do better with the next one.<sup>6</sup> Yet the evidence also indicates that the reasons for policy failure are replicated, strategy after strategy. First

Peoples do not have time for further policy failure. The need is urgent now. The lack of accountability for failure normalises the status quo.

This chapter considers and details these failures of accountability and further evidences the findings already identified in *Yoorrook for Justice*. These findings underpinned Yoorrook’s recommendations 3 and 4 on monitoring and evaluation and the establishment of an independent and authoritative oversight and accountability body.<sup>7</sup>

## What is accountability?

The State holds significant powers that shape the lives of its citizens, from creating laws to enforcing them and maintaining order. With this authority comes the responsibility to exercise these powers transparently and fairly. ‘Accountability’ refers to the requirement that government officials, institutions and agencies are answerable for their actions, decisions and policies, as well as for taking corrective action when outcomes fall short of standards or expectations. These officials, institutions and agencies must act transparently and responsibly while also providing mechanisms to ensure they acknowledge, address and rectify failures. Effective accountability processes enable governments to identify errors, learn from them and do better.

First Peoples organisations and communities have long called for a First Peoples-led accountability body,<sup>8</sup> which Yoorrook has already recommended.<sup>9</sup> An appropriate accountability mechanism, as discussed later in this chapter, should be:

- First Peoples-led
- independent
- autonomous
- properly funded
- legislated consistent with self-determination policy.

Accountability is a core value of the *Public Administration Act 2004* (Vic).<sup>10</sup> The purpose of the *Public Administration Act 2004* (Vic) is to ‘provide a framework for good governance in the Victorian public sector and in public administration generally’.<sup>11</sup> The Act lists seven core values designed to guide conduct and performance in the Victorian Public Sector. This includes specifying that ‘public officials should demonstrate accountability by’:

- working to clear objectives in a transparent manner
- accepting responsibility for their decisions and actions
- seeking to achieve best use of resources
- submitting themselves to appropriate scrutiny.<sup>12</sup>

The Victorian Government recognises that these core values ‘underpin the behaviours the government and community rightly expect of all public sector employees’.<sup>13</sup> As the Victorian Public Sector Commission has articulated:

**When public sector employees consistently act in accordance with the public sector values, it strengthens the capacity of public sector organisations to operate effectively and achieve their objectives. Conversely, a failure to adhere to these values lessens the confidence of the Government, the Parliament, and the Victorian community in the public sector.**<sup>14</sup>

VICTORIAN PUBLIC SECTOR COMMISSION

The meaning of accountability was discussed during Yoorrook’s hearings. Minister for Water and Minister for Housing the Hon Harriet Shing MP told Yoorrook:

**My accountability is borne out, I think, in a number of ways: firstly, in the opportunity for me to receive advice and to listen; secondly, in my accessibility and the importance of not being somebody who sits locked in an office in a way that means that conversation and direct dialogue, proposals and ideas about solutions to problems cannot be heard or conveyed directly. Thirdly, accountability can and should be measured by action. It should be measured in a way that is transparent. It should be measured in a way that is consistent and able to be uniformly understood, so that over time, measures of progress can be seen and analysed and can form the basis for changes to the way in which things are done so that they can be improved.**<sup>15</sup>

MINISTER HARRIET SHING MP

Minister for Environment the Hon Steve Dimopoulos MP expressed a similar sentiment, noting that government accountability to First Peoples is critical:

**In the end, the accountability rests with us. So that would probably be the missing piece, Commissioners.**<sup>16</sup>

MINISTER STEVE DIMOPOULOS MP

**The only evaluation that — I mean, within the constraints of the legal structures we have inherited from colonial times, the only evaluation that matters in this is the evaluation and the views of Traditional Owners.**<sup>17</sup>

MINISTER STEVE DIMOPOULOS MP

Regarding the accountability of department secretaries, Premier of Victoria the Hon Jacinta Allan MP told Yoorrook there are ‘regular performance reviews of secretaries that assess how they are acquitting their responsibilities across a whole range of indicators, but particularly around implementing the government policies and directions of the day’.<sup>18</sup>

Victorian Public Sector Commissioner (VPSC) Brigid Monagle also explained Victorian Public Service accountability to Yoorrook:

**In terms of accountability ... at the leadership level the secretaries, just talking about the Victorian Public Service here, the secretaries are employed by the Department of Premier and Cabinet, the Secretary of Department of Premier and Cabinet or technically they are employed by the Premier. And so the Secretary of the Department of Premier and Cabinet has the relationship with those secretaries and does the performance plans and has those discussions with them. And then within each agency, the accountability is meant to flow down in that sort of linear structure, so similar, so a secretary is responsible for the deputy secretary. So that’s — they’re the arrangements in terms of performance managements.**<sup>19</sup>

VICTORIAN PUBLIC SECTOR COMMISSIONER BRIGID MONAGLE

Accountability goes beyond compliance with policies and procedures. It requires transparency, mechanisms for scrutiny, and redress. Yoorrook heard from First Peoples witnesses, organisations and community groups that ensuring there are appropriate mechanisms to hold government to account for its actions and inaction is essential to creating trust and confidence in political and administrative systems and processes.



# Key accountability mechanisms

There are four overarching mechanisms that the Victorian Government uses to measure and monitor the outcomes of its First Peoples-related policy infrastructure.

The *Victorian Government Aboriginal Affairs Report* (VGAAR) is the key mechanism the Victorian Government uses to track progress against its commitments to First Peoples. The key policies reported in the VGAAR are the *Victorian Closing the Gap Implementation Plan 2021–2023*, the *Victorian Aboriginal Affairs Framework 2018–2023* (VAAF)<sup>20</sup> and the *Self-Determination Reform Framework* (SDRF).<sup>21</sup>

The *Victorian Closing the Gap Implementation Plan* responds to the National Agreement on Closing the Gap (the National Agreement), which commits all parties to implementing four ‘Priority Reforms’. According to the Department of Premier and Cabinet (DPC), these priority reforms are ‘drivers for sustainable, structural change’ to improve First Peoples’ lives.<sup>22</sup>

Yoorrook heard evidence from the Victorian Government and First Nations people that the State’s comprehensive architecture is not working to hold government to account. The above-mentioned policies and reporting mechanisms are outlined in the following section.

## Victorian Closing the Gap Implementation Plan 2021–2023 (extended to June 2025)

The *Victorian Closing the Gap Implementation Plan 2021–2023*<sup>23</sup> (the Implementation Plan) outlines actions to achieve the objectives of the National Agreement.<sup>24</sup> The National Agreement contains 17 socioeconomic targets. It provides for the development of State Implementation Plans and reporting by the Australian Productivity Commission every three years.<sup>25</sup>

The Implementation Plan was due to expire in 2023 but the State has extended it until June 2025. Overall, implementation progress is mixed. Some targets are progressing, others are delayed and others still lack data.

The Productivity Commission published its first review of progress under the National Agreement in January 2024. On a national level, the Productivity Commission found that ‘governments are not adequately delivering’ on the National Agreement and that ‘progress in implementing the Agreement’s Priority Reforms has, for the most part, been weak’.<sup>26</sup> In particular, ‘disparate actions and ad hoc changes have not led to improvements that are noticeable and meaningful’<sup>27</sup> and there are ‘questions about whether governments have fully grasped the scale of change required ... to deliver the unprecedented shift they have committed to’.<sup>28</sup> This included the failure of states to implement independent accountability mechanisms.<sup>29</sup> The Productivity Commission found that ‘it is important that an independent mechanism is established in each jurisdiction without further delay’.<sup>30</sup>

In relation to Victoria, the Productivity Commission found that the treaty process is leading to some rebalancing of power, but the State is rarely achieving shared decision making with First Peoples and more is needed to change the ‘business as usual’ approach.<sup>31</sup>

The Commission’s overarching finding is that there has been no systematic approach to determining what strategies need to be implemented to disrupt business as usual of government. What is needed is a paradigm shift. Fundamental change is required, with actions based on clear logic about how they will achieve that change. It is too easy to find examples of government decisions that contradict commitments in the agreement that do not reflect Aboriginal and Torres Strait Islander Peoples’ priorities and perspectives and that exacerbate rather than remedy disadvantage and discrimination.<sup>32</sup>

### PRODUCTIVITY COMMISSION

The Closing the Gap Partnership Forum (the Forum) is a group that oversees Victoria’s action on the National Agreement. The heads of all departments and key agencies in the Victorian Public Sector are part of the Forum.<sup>33</sup> The Forum’s Koorie Caucus is Ngaweeyan Maar-oo, which is the shared decision-making partner with the Victorian Government on Closing the Gap implementation in Victoria. It comprises 14 Aboriginal Community Controlled Organisation (ACCO) representatives and eight Aboriginal governance forum delegates. Ngaweeyan Maar-oo’s purpose is to inform the design, implementation, oversight and monitoring of the National Agreement and Victorian Closing the Gap Implementation Plan, in partnership with the Victorian Government.<sup>34</sup>

Ngaweeyan Maar-oo Co-Chair and CEO of the Victorian Aboriginal Legal Service (VALS) Nerita Waight (Yorta Yorta, Narrandjeri) critiqued the State’s approach to Closing the Gap, including delaying solutions to treaty, issues with data collection and the expiry of the Implementation Plan without developing a new plan.<sup>35</sup>

I would describe the picture as a lovely depiction of government inaction and inertia. If you can imagine just a person standing still, that is where we are at.<sup>36</sup>

### NERITA WAIGHT

In relation to the Closing the Gap Implementation Plan, Nerita Waight said:

It should be of concern [that the implementation plan has been extended] because, for me, it certainly indicates that the government really took their foot off the pedal in relation to Closing the Gap and instead has focused all of their energy and drive in relation to treaty, which is why they’ve extended this and said, well, now work with First Peoples’ Assembly of Victoria on what a new one would look like.<sup>37</sup>

[T]here’s never been a thorough assessment of the implementation’s effectiveness, the program of activity of opportunity to make adjustments to reflect changing policies, and which goes back to ... we need an Aboriginal-led review of the implementation review.<sup>38</sup>

### NERITA WAIGHT

## Victorian Aboriginal Affairs Framework 2018–2023 (extended to June 2025)

The VAAF, which was extended to June 2025, is the overarching framework set by the State for Aboriginal affairs. The stated vision of the VAAF is: ‘that all Aboriginal Victorian people, families and communities are safe, resilient, thriving and living culturally rich lives’.<sup>39</sup> The VAAF contains goals, objectives, measures and guiding principles and action for advancing self-determination. Its four key priorities are to:

- prioritise culture
- address trauma and support healing
- address racism and promote cultural safety
- transfer power and resources to communities.

The VAAF includes 20 goals across six domains:

- children, family and home
- learning and skills
- opportunity and prosperity
- health and wellbeing
- justice and safety
- culture and Country.<sup>40</sup>

It outlines 32 objectives and 111 data measures to achieve these across areas, including:

- maternal and infant health
- immunisation rates
- children in care
- family violence
- income and housing security
- school attendance
- learning and cultural safety
- further education and training
- wealth equality
- workforce participation
- health and wellbeing
- over-representation in the justice system
- land, water, language and cultural rights.<sup>41</sup>

Progress against each of the objectives set out in the VAAF has been varied.<sup>42</sup> Monitoring progress is difficult due to broadly defined objectives that do not have definitive timeframes. Assessment against these objectives often relies on case studies rather than data. Specific examples and case studies are spread throughout the VGAAR<sup>43</sup> but the State has not provided consistent comparative data.<sup>44</sup> Failure to set specific, measurable targets in government strategies and frameworks prevents transparent evaluation of government actions and outcomes.

First Peoples told Yoorrook that the VAAF is not fit for purpose, and although First Peoples have also told the Victorian Government about these issues, the State has not resolved them. Nerita Waight said:

We have consistently, as Ngaweeyan Maar-oo provided feedback to the government that the VAAF is not fit for purpose to measure [National Agreement] targets and shouldn’t be utilised. And I think part of the frustration is if you know it doesn’t work and you keep being told that, why aren’t you changing that and that goes to lack of government appetite.<sup>45</sup>

### NERITA WAIGHT

The Victorian Government recognised the importance of First Peoples-led accountability when establishing the VAAF. When the State published it in 2018, the VAAF committed to establishing an independent ‘Aboriginal-led evaluation and review mechanism’ to monitor the government’s progress against the VAAF.<sup>46</sup> However, the government has not fulfilled that commitment.

In 2019, the State undertook community engagement with First Peoples in Victoria regarding the development of a mechanism. The DPC published a ‘discussion guide’ and a ‘community engagement report’ under the title ‘Establishing an Aboriginal-led evaluation and review mechanism in Victoria’.<sup>47</sup> According to the DPC, ‘[t]he project was put on hold in 2020–2021 due to COVID-19, and the current approach is to align the accountability mechanism with Victoria’s Treaty process’.<sup>48</sup>

## Self-Determination Reform Framework

The stated purpose of the SDRF (2019) is to guide public service action to enable self-determination in line with the State’s commitments to the VAAF. The SDRF plays a role in ensuring government departments are accountable for progress towards self-determination.<sup>49</sup> The framework requires departments to report annually on actions taken towards transforming government systems and structures to enable self-determination.<sup>50</sup> Departments may also choose to create a Departmental Action Plan to articulate their efforts to enable self-determination.

The State designed the SDRF reporting system to be internal to government. The SDRF states:

DPC will coordinate [departmental] reporting against whole of government actions based on information provided by departments and further requests for information as necessary ... SLG [The Secretaries’ Leadership Group on Aboriginal Affairs] will act as the governance body for monitoring progress and approving strategic direction under this Framework. Annual departmental reports, as well as reporting on whole of government actions coordinated by DPC, will be provided to SLG and will inform reporting under the VGAAR.<sup>51</sup>

Under the SDRF, departments were required to provide their first report by 30 June 2020.<sup>52</sup> It is not possible to evaluate the success of these reports, as neither Departmental Action Plans nor reports are publicly available. The only departmental report under the SDRF that the State has published is DPC’s report from 2021.<sup>53</sup>

The 2023 VGAAR claimed that ‘Departments demonstrated good progress towards supporting self-determination in 2023’.<sup>54</sup> This progress, the VGAAR stated, included ‘identifying and removing barriers that keep First Peoples from exercising their right to self-determination’.<sup>55</sup> Specific examples and case studies are dotted throughout the VGAAR,<sup>56</sup> but consistent comparative data is not provided.

Yoorrook notes the lack of capacity for First Peoples and organisations to verify these claims. The design of the SDRF includes a significant lack of transparency. This undermines First Peoples’ trust in the Victorian Government’s key framework on self-determination.



Victorian Government Aboriginal Affairs Report

As outlined earlier, the VGAAR is the key mechanism the Victorian Government uses to track progress against its own commitments to First Peoples. Since 2013, annual VGAAR reports have been tabled in parliament each year in June. The VGAAR tracks progress and reports against outcomes under the VAAF, SDRF and Implementation Plan.<sup>57</sup> This includes a ‘data dashboard’ for the measures under VAAF.<sup>58</sup>

The State has said that the VGAAR’s purpose is:

for the Victorian Government to annually report on progress against the [VAAF], [SDRF], [the National Agreement] and [the Implementation Plan]. The [VGAAR] is an outcomes measurement and accountability tool that provides valuable information about progress and challenges that still need to be addressed.<sup>59</sup>

VICTORIAN GOVERNMENT

Yoorrook heard that the VGAAR does not align with the reporting mechanisms under the National Agreement.<sup>60</sup> This means that accurate and timely monitoring of Victoria’s progress against the National Agreement is not part of the State’s key accountability reporting mechanism. The Victorian Government has been aware of this for some time.<sup>61</sup> Nerita Waight told Yoorrook this is unsatisfactory.<sup>62</sup> Yoorrook heard that the department agencies that report on their actions are very ‘self-congratulatory’<sup>63</sup> despite not tackling the ‘substantive hard work’.<sup>64</sup>

Ngaweeyan Maar-oo submitted that performance reporting is lacking:

In Victoria, the Victorian Aboriginal Affairs Framework (VAAF) and the Victorian Government Aboriginal Affairs Report (VGAAR) are used to report on the outcomes under the National Agreement. However, the VAAF and the VGAAR fail to align with the National Agreement, resulting in misaligned reporting to give the illusion of progress. Without purpose-designed reporting Victoria cannot accurately demonstrate progress under the National Agreement, identify barriers to progress or levers to success.

Additionally, existing accountability frameworks have little in the way of ‘bite’ to compel government action and invoke consequences for failure. Although some individuals are effectively driving change within their areas of influence, there is no overarching force to ensure comprehensive and sustained systemic change.<sup>65</sup>

NGAWEEYAN MAAR-OO

The VGAAR relies on departmental self-reporting, which Minister for Treaty and First Peoples the Hon Natalie Hutchins MP accepted is problematic:

I acknowledge [that the VGAAR] is currently heavily reliant on departmental self-reporting and therefore lacks independence.<sup>66</sup>

MINISTER NATALIE HUTCHINS MP

Policies, frameworks, strategies and plans

The Victorian Government has failed to implement and ensure accountability for many of its own commitments to First Peoples. During Yoorrook’s hearings, Minister Hutchins was asked ‘how many strategies and frameworks there are current[ly] in the Victorian Government dealing with issues of First Peoples’.<sup>67</sup> Minister Hutchins was initially not aware of how many current government policies relate to First Peoples.<sup>68</sup> Responding to a question on notice, the Victorian Government later provided to Yoorrook a list of over 70 government policies, frameworks, strategies and plans relating to First Peoples across all areas of government.<sup>69</sup>

Many of these policies, frameworks, strategies and plans do not have clear, achievable or measurable outcomes, or have been flawed through a lack of resourcing. As demonstrated in the tables that appear at the end of this chapter, Yoorrook’s analysis reveals that the majority of the policies, strategies and frameworks fall into the following categories:

- 4 have not commenced (see Table 5.1)
- 15 are behind target (see Table 5.2)
- 24 lack implementation plans or proper reporting, evaluation and accountability mechanisms (see Table 5.3)
- 4 cannot be located or no public information is available about them (see Table 5.4).<sup>70</sup>

Where the State did not provide details on funding or status of these policies, Yoorrook conducted further searches to identify publicly available information, including in the State Budget Papers dating back to 2014–15. The tables indicate where Yoorrook has not identified any specific funding for projects.

The tables at the end of this chapter summarise examples of government policies, frameworks, strategies and plans relating to First Peoples, and detail the funding amount, implementation status and projected timeline for completion for each:

- Table 5.1 outlines examples of policies, strategies and frameworks that have not commenced. This means that there is evidence that the State has delayed implementation, or there is no evidence that the State has commenced implementation.
- Table 5.2 outlines examples of policies, strategies and frameworks that have commenced but are behind target. This means that there is evidence that these policies, strategies and frameworks have not met key implementation targets within the timeframes set, or that there is insufficient evidence to determine whether targets are on track.
- Table 5.3 outlines policies, programs, strategies and frameworks with no public accountability mechanisms. This means that they do not have mechanisms in place to report on implementation progress that are available to the public.
- Table 5.4 outlines instances where information about implementation status or reporting for some policies, strategies and frameworks could not be located either publicly or in information provided to Yoorrook.

This analysis clearly demonstrates the significance and breadth of the government’s failure to be accountable for its own commitments. A litany of broken promises emerges, including underfunding, under-delivery and a lack of transparency, data, reporting and implementation. For First Peoples, this ongoing failure of accountability is part of a continuing pattern of dispossession and exclusion, and of promises made but not kept.

Paul Paton (Gunnai, Monaro, Gunditjmara), CEO of the Federation of Victorian Traditional Owner Corporations, reflected on the impact on First Peoples of government delay and broken promises:

[It] shows a lack of respect, and, you know, Traditional Owners just feel that they're just getting the same service from government that they've always got, and you can never, you know, hold your breath around government coming to the table genuinely to work together and ... make commitments that it will follow through.<sup>71</sup>

PAUL PATON

## Barriers to accountability

Yoorrook received evidence about some of the reasons for failure and barriers to accountability. These reasons are detailed below and include:

- budget processes that exclude First Peoples
- insufficient funding
- government non-compliance or non-implementation
- a failure to set precise and measurable targets
- the ‘business as usual’ attitude in departments and government inertia stemming from inherent racism in the accountability architecture.

## Budget processes

I acknowledge that today’s system of government still carries its legacy from its colonial foundations and that structural racism which is evident through the data, but also disguised in its operation includes Victoria’s financial management principles, State revenue policies, and the decision-making processes.<sup>72</sup>

TREASURER TIM PALLAS MP

Yoorrook heard that one reason the State is failing to meet its own commitments is budget processes. State budgetary decision-making processes do not include First Peoples’ voices or, for the most part, consider impacts on First Peoples. Then Treasurer of Victoria Tim Pallas<sup>73</sup> told Yoorrook that the Budget and Finance Committee of Cabinet is responsible for determining budget priorities, including consideration and approval of funding requests brought by portfolio ministers.<sup>74</sup> The Budget and Finance Committee is chaired by the Premier<sup>75</sup> and its operations are subject to Cabinet confidentiality requirements. Being a committee of Cabinet, it does not include any First Nations members, as there are currently no First Nations members of the Victorian Cabinet.

This structure enables Ministers to make budget bids for programs or projects in their portfolios. Treasurer Pallas told Yoorrook that, although he did not have direct knowledge of it, he assumed engagement with First Peoples on budget matters and bids concerning them may happen at ministerial and departmental level.<sup>76</sup> Ministers may promote and publicise that they have made a budget bid and claim that they have taken action on a certain issue, but final decisions on how funding is allocated and spent are largely beyond their control.

Paul Paton also pointed to government budget cycles and insecure funding as key issues, and the need for secure funding arrangements:

It is a common theme amongst government strategies and policies. I think there’s several elements at play, the cycles of government, budget processes that don’t allow government to commit beyond three years. There needs to be agreements that could be established through Treaty, perhaps, that commit secure funding regardless of — of government.<sup>77</sup>

PAUL PATON

A further area of concern is the absence of First Peoples-responsive budgeting. Budget processes do not include First Peoples’ input, which means First Peoples are excluded from the process of determining State budget priorities and allocation of budget funds, even in matters that directly affect their communities. The only exception is that First Peoples can express their views at a departmental or ministerial level.

There is precedent for the State considering directly impacted groups in the budget process. The Victorian Government has increasingly adopted gender-responsive budgeting initiatives that aim to integrate gender equality considerations into budgetary allocations. There is now a statutory requirement for the Treasurer to prepare a gender impact statement for each budget with regards to gender equity.<sup>78</sup> The same has not been done for budget impacts on First Peoples.

The then Treasurer Tim Pallas MP told Yoorrook that over the last four or five budgets ‘[the State does] an assessment of exactly what [it has] done for First Peoples, and generally in the budget there will be a reference to what that is’.<sup>79</sup>

Such processes, however, are voluntary: reviewing spending impacts on First Peoples is not legislated. Nor does the Victorian Government publish a First Peoples budget statement, as it has done in relation to gender equality each year since 2017–18.<sup>80</sup> This lack of First Peoples-responsive budgeting means that funding decisions may not adequately address the specific needs and challenges First Peoples face. Treasurer Pallas accepted that First Peoples-responsive budgeting as a legislative requirement would have value for First Peoples in Victoria.<sup>81</sup>

## Underfunding

Inadequate, piecemeal funding is a source of significant government accountability failure. Not funding, or funding inadequately or in a piecemeal fashion, undermines or makes it impossible for the State to deliver on its responsibility to address systemic inequities and honour commitments to First Peoples. Insufficient funding undermines government policy commitments by rendering them ineffective or unachievable. Policies and frameworks designed to address critical issues, such as improving health, education and housing outcomes, rely on adequate financial investment for implementation. When funding falls short, the objectives outlined in these strategies become empty tokens.

An example of this is *Mana-na woorn-tyeen maar-takoort — Every Aboriginal Person Has A Home: The Victorian Aboriginal Housing and Homelessness Framework*<sup>82</sup> (discussed in Chapter 35: Housing and First Peoples in Victoria). The First Peoples’ Assembly of Victoria told Yoorrook that this framework provides a comprehensive and elaborate roadmap to First Peoples-led solutions, but it remains ‘severely underfunded’<sup>83</sup> and the State has failed to meet annual targets, including for dwellings built.<sup>84</sup> Aboriginal Housing and Homelessness Forum also told Yoorrook that the current state investment in the framework is insufficient to address the current housing crisis and has not kept up with projected population growth and demand for housing.<sup>85</sup>

Yet, First Peoples have identified workable solutions. These are not being realised because the State is not properly resourcing them. For example, the State has failed to adequately fund many successful programs in the long term, including the Aboriginal Private Rental Assistance Program (APRAP) and many other First Peoples-led housing models and programs.<sup>86</sup>



APRAP started in 2020 and was initially funded as a two-year pilot, delivered in five departmental areas.<sup>87</sup> A review of First Peoples’ barriers to accessing private rentals, *Aboriginal Private Rental Access Project: Excluded from the Start*, highlighted the success of APRAP and recommended its expansion.<sup>88</sup> APRAP funding has since been extended to ACCOs in 10 of 17 departmental regions. Despite this expansion and increases in funding,<sup>89</sup> the program is still not available state-wide for First Peoples.<sup>90</sup> Further, State representatives acknowledged that the funding is ‘still not enough’ to meet demand.<sup>91</sup>

A further example is a principal health strategy, the *Balit Murrup: Aboriginal Social and Emotional Wellbeing Framework 2017–2027* (Balit Murrup).<sup>92</sup> As outlined in Chapter 31: Racism, workforce and accountability, workforce and accountability, this framework is now eight years into its 10-year timeframe. The State introduced Balit Murrup, without allocating specific funding for its implementation or evaluation. The result is that now, as Balit Murrup is coming to an end, some actions will not be carried out.<sup>93</sup> It is not possible to determine whether Balit Murrup has achieved its objectives or will do so by its conclusion.<sup>94</sup>

Similarly, the State has not allocated funding to implement the *Victorian Aboriginal Health and Wellbeing Partnership Forum Action Plan 2023–2025*, despite government endorsement.<sup>95</sup> The Victorian Aboriginal Community Controlled Health Organisation (VACCHO) explained that as a result, ‘[G]overnment departments and VACCHO now have to make submissions through the annual Victorian Government budget process before beginning implementation. This in itself is a[n] extremely costly and time-consuming process and holds no guarantee of success’.<sup>96</sup>

Paul Paton, and Rueben Berg (Gunditjmara), Co-Chair of the First Peoples’ Assembly of Victoria, also mentioned that adequate support for staffing, resources and capacity of Traditional Owner groups and First Peoples organisations are barriers to participation.<sup>97</sup>

## Government non-compliance and non-implementation

Another reason some policies, strategies and frameworks have not been successful is that the government has breached or failed to implement its own agreements.

For example, as outlined in Chapter 11: Traditional Owner settlements, Yoorrook heard that the State has failed to comply with their obligations with regards to Land Use Activity Agreements (LUAAs) under the *Traditional Owner Settlement Act 2010* (Vic) but has faced no real consequences. Yoorrook heard that the State is routinely breaching its obligations to notify Traditional Owners of land use activities covered by an agreement.<sup>98</sup>

Traditional Owners also face barriers to enforcing State compliance. They can take these issues to the Victorian Civil and Administrative Tribunal (VCAT) but this is costly and time-consuming.<sup>99</sup> Yoorrook was told there is a general lack of awareness in State departments and local governments of their obligations under LUAAs and how to meet them.<sup>100</sup> Dja Dja Wurrung Clans Aboriginal Corporation (DJAARA) requested an independent review of compliance by the Public Land Consultancy of one such LUAA, which was commissioned by the State. The review identified at least 47 possible breaches by eight State and local government agencies and noted that DJAARA had identified 55 breaches prior to the audit.<sup>101</sup> The auditors noted that non-compliance was most likely to occur where there was a lack of awareness and adequate operational systems within State departments, a lack of agencies to enforce the LUAA, and an absence of penalties for non-compliance.<sup>102</sup>

In evidence to Yoorrook, the Department of Government Services explained that one of the issues impacting local government compliance with LUAAs is the limited resources that local councils have to enable implementation of Recognition and Settlement Agreements under the *Traditional Owner Settlement Act 2010* (Vic).<sup>103</sup> DPC also acknowledged that there is insufficient resourcing and support to fulfill this obligation,

and a need for ‘greater resources and training ... to improve government awareness of their obligations’ and that ‘further compliance audits may be necessary’.<sup>104</sup> This is an example of government acknowledging shortcomings while failing to take meaningful action to address them.

## Failure to set precise targets

Yoorrook frequently observed failures to set specific, measurable targets in the various government strategies and frameworks it examined. This lack of measurable targets prevents transparent evaluation of government actions and outcomes. Measurable targets serve as benchmarks against which the State and First Peoples can assess progress, ensuring that commitments translate into tangible results.

Without clear, quantifiable benchmarks, it is difficult to ascertain whether initiatives are effective or if the State is allocating resources efficiently. Lack of specificity weakens accountability and undermines trust, as government decision makers cannot be held to account for undefined or ambiguous outcomes. Even where progress is being made, it cannot be systematically identified and replicated.<sup>105</sup>

An example of this is the *Marrung Aboriginal Education Plan 2016–2026* (Marrung), which is discussed in Chapter 22: Accountability and self-determination. Marrung has been criticised for its many high-level targets for success. The State has drawn the targets in Marrung from other policies (for example, the VAAF, the National Agreement and the Education State and Budget Paper 3). The actions in Marrung are intended to ‘contribute to’ these targets.<sup>106</sup> However, these targets are not grounded in baseline data from 2016, making it impossible to measure and monitor progress over time and to target resources where they are needed.<sup>107</sup> Without baseline data from the start of the plan, it is not possible to accurately determine whether the State is meeting targets.

Further, some targets are not framed in a measurable way. A clear example is the Marrung target: ‘[M]ore students will reach the highest levels of achievement in the arts’.<sup>108</sup> The meaning of this target is unclear. It is unclear whether one additional Aboriginal student equals ‘more’. And it is unclear what is meant by ‘reach the highest levels of achievement in the arts’.<sup>109</sup>

Yoorrook also heard that actions and outcomes under Marrung do not readily align with the VGAAR or the National Agreement,<sup>110</sup> making it difficult to determine how the State is progressing these various education-related objectives.

## ‘Business as usual’ and government inertia

Governments taking a ‘business as usual’ approach when strategies fail to meet their targets disregards the urgent need for systemic change to address longstanding inequities impacting First Peoples. This approach perpetuates the status quo of inadequate policies, insufficient funding and unmet commitments, failing to prioritise the transformative action required to achieve meaningful change. The State and other government bodies appear to have normalised failure to meet commitments. Reports of failure are accepted as the end of the process and the reasons for failure and the need for corrective action are not examined.

CEO of Victorian Aboriginal Health Service (VAHS) and Co-Chair of Ngaweeyan Maar-oo Michael Graham (Dja Dja Wurrung, Wiradjuri) told Yoorrook that current implementation and monitoring mechanisms are not sufficient:

I would say no, straight up. What I’m seeing that it’s just business as usual for them and there’s no investment into the right areas. So I think at the moment — and this is probably why the Productivity Commission is so damning — is that things aren’t changing as quick as they should be, because this was supposed to finish in 2030 ... and we’re not doing anything different as yet. And no matter how many times we go back to them and say we need more investment in the front-end, in the early intervention prevention, that kind of works, they’re still just doing business as usual.<sup>111</sup>

MICHAEL GRAHAM

The Premier Jacinta Allan MP acknowledged that ‘business as usual’ is not working:

[T]he government has recognised that past practice has not worked, that we need to do better, we need to do differently and that has also been acknowledged through the recent report of the Productivity Commission into the Closing the Gap ... where it says very clearly that business as usual has not worked, it is not working. It speaks to the need to do things differently and it points to the work that we are doing here in Victoria.<sup>112</sup>

PREMIER JACINTA ALLAN MP

First Peoples reported to Yoorrook that ‘broken promises’ are the status quo of governments.<sup>113</sup> Yoorrook heard there are many frameworks and policies that governments fail to implement. More critically, Yoorrook was told that there are no consequences for failed implementation.<sup>114</sup> This lack of consequence is built into current accountability mechanisms. The government typically constructs accountability mechanisms so that once the target has been articulated and a report has been made on progress towards the target, no further action is taken. When the result of the report is that there has been a failure to meet the target, nothing is done. This process lacks an embedded response that requests the reason for the failure and requires that steps are taken to redress it.

The ‘broken promises’ status quo is cyclical, fostering a ‘do better next time’ attitude for successive governments.<sup>115</sup> There is no sense of urgency in addressing First Peoples’ needs.

The toll of endless consultations and unactioned recommendations further reduces First Peoples’ trust in mainstream institutions and processes. As Dr Eddie Cubillo (Larrakia, Wadjigan, Central Arrente) of the University of Melbourne Law School told Yoorrook:

It is our family’s and our kids’ lives that are at stake. Our mob keep hearing promises, but those promises have not led to real implementation to make change.<sup>116</sup>

DR EDDIE CUBILLO

Yoorrook heard that a lack of government accountability allows the cycle of broken promises to continue. As Paul Paton told Yoorrook:

[W]hen [agreements] are not being met ... there was no accountability to government. There is no one ... government will bat it away and say, ‘We’ll do better next time, and you can write out your media statements and you may or may not get it picked up’.<sup>117</sup>

PAUL PATON

Rueben Berg described government inaction and non-fulfilment of commitments as a ‘kind of inertia’:

I think oftentimes there is this kind of inertia that can set in within government. Things are moving and done a certain way and business is undertaken in a certain way, and it can be challenging within ... government to kind of shift that mindset, that approach. So often we will see that at the minister level, the secretary level, there is a strong willingness and a commitment when it gets down to the actual public servants on the day to day, that is where you can come up with some of the difficulties in changing that mindset and breaking away from, ‘This is how we always do stuff so surely we keep doing it the way we have always done it’.<sup>118</sup>

RUEBEN BERG, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Yoorrook heard evidence that government failures and inertia to implement policy commitments and improve outcomes for First Peoples are difficult to address when ACCOs and Traditional Owner groups are not resourced to engage with the State’s frameworks; in turn requiring commitment and leadership to bring about change.<sup>119</sup> For example, Co-Chair of the First Peoples’ Assembly of Victoria Ngarra Murray (Wamba Wamba, Yorta Yorta, Dhudhuroa, Jupagulk, Baraparapa, Wiradjuri, Dja Dja Wurrung) said:

[T]he system is designed against us and stacked up against us. And that’s all part of the conversations we are having now around the power imbalance and how we shift that and the dynamic and the behaviours.<sup>120</sup>

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Similarly, Nerita Waight outlined:

For me, I think that there is a fear of transferring decision making and power to Aboriginal communities and have them create their own systems, their own responses, because there’s two systems, two responses and what they see as two societies. They don’t see it as allowing Aboriginal people to self-determine, and that can still mean that we have a community that works into other parts of the Victorian community. ... Then there’s also a fear of handing over control.<sup>121</sup>

NERITA WAIGHT

In Yoorrook hearings, Premier Allan was asked to reflect on the meaning of the phrase ‘another day in the colony’, given the weight of evidence received by Yoorrook from First Peoples that ‘what they see occurring or not occurring today ... is just a continuation of that which had happened in the past’,<sup>122</sup> to which she replied:

It goes to, I believe, what the Commissioners ... said earlier ... about crumbs from the table ... it is another way of describing business as usual, another day in the colony is business as usual. The government goes about its business and the ongoing dispossession and injustice for First Peoples continues.<sup>123</sup>

PREMIER JACINTA ALLAN MP



# The Victorian Government’s response to Yoorrook’s recommendations

## Victorian Government Response to Yoorrook for Justice

In April 2024, the Victorian Government released its response to the recommendations in Yoorrook’s Second Interim Report, *Yoorrook for Justice*, on the child protection and criminal justice systems.<sup>124</sup> Of Yoorrook’s 46 recommendations, the Victorian Government:

- supported four recommendations in full (recommendations 9, 14, 30 and 45, which ‘align ... with work already underway’<sup>125</sup>)
- supported 24 recommendations in principle (the Victorian Government supports the policy intent or merit but further scoping is required<sup>126</sup>)
- will further consider 15 recommendations (further analysis is required because the recommendations have considerable implications for policy and legislation and/or may be better negotiated through treaty<sup>127</sup>)
- did not support three recommendations (recommendations 6, 32 and 35).<sup>128</sup>

This response was profoundly disappointing given the Victorian Government had supported Yoorrook as the first formal truth-telling commission in Australia. Yoorrook also notes the stark contrast in the Victorian Government’s response to Yoorrook and its response to other recent Royal Commissions, including the Royal Commission into Family Violence and the Royal Commission into Victoria’s Mental Health System. In each of those inquiries, the Victorian Government committed in advance to implementing all recommendations and then did so.<sup>129</sup>

Premier Allan commented on the Victorian Government’s response to *Yoorrook for Justice* in hearings:

I do acknowledge too the Commissioners’ concern at the government’s response to its previous report, and I say that we understand that concern. We understand — I understand that frustration. I do point to a number of the recommendations require a lot more policy work and thinking of government, because this is — some of the recommendations too do challenge some of the policy positions we already have as a government. It does require us to take time to consider those positions that have been put to us, but ultimately the Treaty process is going to be the one that holds the government to account on recommendations and reports that come through this process.<sup>130</sup>

PREMIER JACINTA ALLAN MP

## Victorian Government Implementation Progress Report

The Victorian Government’s Implementation Progress Report on *Yoorrook for Justice* was published on 18 October 2024.<sup>131</sup> In this report, the State revised its position on two recommendations from support-in-principle to ‘support’.<sup>132</sup> The State also indicated that implementation is progressing but ‘some recommendations will require additional time’.<sup>133</sup>

First Peoples expressed frustration with the State’s lack of progress in addressing injustices in the criminal justice and child protection systems and its direct impact on children. The Co-Chairs of Ngaweeyan Maar-oo told Yoorrook:

These children that you hear about are children who come from trauma backgrounds. They’re children who don’t have what my children have. They don’t have a mum and dad. They don’t have a home or a roof over their head. They don’t know where they are going to be next week. And yet all you do by making these decisions is tell them continually, you are the problem, you are the failure. And, for me, my frustration lies in the fact that will coming here telling their truths, hearing our truths, in spite of what I saw in their response to Yoorrook’s interim report, actually change for the next generation?<sup>134</sup>

NERITA WAIGHT

We’re kind of stuck in limbo mode of, well, are we going to make a difference now or are we just going to let people keep dying until the Assembly is ready to pick up on where they need to pick up?<sup>135</sup>

MICHAEL GRAHAM

It’s frustrating when you see Ministers attend this Commission and shed tears and those tears don’t do community any favours. If those tears were genuine, then perhaps you wouldn’t be doing the thing that you have done and will continue to do.<sup>136</sup>

NERITA WAIGHT

# The way forward

The time for excuses and delay is over. The long history of the State’s failure to deliver the commitments it makes to First Peoples negates any further discussion of ‘doing better’. First Peoples need an accountability mechanism that holds the State formally to account. Actions and consequences must flow from any continued failure to deliver.

The State must establish an independent First Peoples’ monitoring body and mechanism with guaranteed ongoing funding. This has long been called for by First Peoples organisations and in the recommendations of Yoorrook and the Productivity Commission. The State has accepted the need for an accountability body but has continued to delay implementation. It is now well overdue. In January 2025, the Victorian Government and the First Peoples’ Assembly of Victoria agreed that the first round of treaty negotiations will include discussing ‘[i]mplementing the accountability mechanism under the National Agreement on Closing the Gap’.<sup>137</sup> While the nature of the body is a proper topic for treaty negotiations, the need is urgent and the delivery of such a body should only be left to negotiation if there can be an outcome within a reasonably short period.

To be effective, the accountability mechanism should be:

- legislated, to provide continuity and to specify enforceability powers, including to compel witnesses and the provision of documents
- independent
- transparent
- autonomous
- First Peoples-led and run
- empowered to call government to account
- entitled to create public reporting functions determined by First Peoples
- supported by ongoing funding.

Any accountability measure that does not include all the features listed above will be another strategy designed to fail.

In relation to Yoorrook’s findings, similar to other Royal Commissions, the independent accountability body should include an implementation monitor for Yoorrook’s recommendations and the recommendations of other reports and inquiries related to First Peoples.

To further address the current lack of accountability, Yoorrook heard calls for the establishment of a First Peoples’ Public Accounts and Estimates Committee (PAEC) or sub-committee to ensure ‘Ministers and Victorian Government departments and agencies are held to account on the implementation and adherence to all current agreements’.<sup>138</sup> PAEC is empowered to ‘inquire into, consider and report to the Parliament on ... any proposal, matter or thing concerned with public administration or public sector finances’.<sup>139</sup> In practice, a considerable proportion of the current Parliament of Victoria’s PAEC’s work is actioned by sub-committees. This provides an opportunity for the creation of a permanent First Peoples-focused sub-committee, which will ultimately foster a more inclusive and accountable government for all Victorians.

# Recommendations

## RECOMMENDATION 9

To ensure State accountability and give effect to First Peoples’ self-determination in relation to First Peoples-related policies and programs:

- a. Building on Recommendation 4 in *Yoorrook for Justice* and through negotiation with the First Peoples’ Assembly of Victoria, the Victorian Government must support the establishment of an accountability mechanism to transfer monitoring functions and full decision-making power, authority, control and resources to First Peoples for First Peoples-related policies and programs;
- b. For all policies, strategies, frameworks and plans related to First Peoples for which the Victorian Government is responsible, the Victorian Government must develop an easily accessible online tool showing implementation stages, funding, days outstanding and date of completion, and identify the person responsible for implementation; and
- c. The Victorian Government must reduce and streamline reporting requirements for Aboriginal Community Controlled Organisations and Traditional Owner bodies for service and program delivery and managing requests and notifications, including by negotiating single funding agreements with organisations.

## RECOMMENDATION 10

To support the informed participation by Traditional Owners in treaty negotiations (Statewide and local), the Victorian Government must:

- a. Facilitate access by the First Peoples’ Assembly of Victoria and relevant Traditional Owner groups to annual data concerning the revenues collected by the Victorian Government in respect of:
  - i. freehold land;
  - ii. Crown land & waterways;
  - iii. minerals and resources;
  - iv. gas and petroleum;
  - v. forestry;
  - vi. fisheries;
  - vii. renewables; and
  - viii. water (surface, groundwater).
- b. Facilitate ongoing access by the First Peoples’ Assembly of Victoria and relevant Traditional Owner groups to registers of third party interests in the matters described in paragraphs (a)(ii) – (viii) above including:
  - i. interest ID number.
  - ii. enabling legislation;
  - iii. term (start/end date);
  - iv. any rights of renewal or regrant; and
  - v. annual royalties payable to the State.
- c. Empower the First Peoples’ Assembly of Victoria to oversee the provision and comprehensiveness of the datasets in (a) and (b) and to store any relevant data.



RECOMMENDATION 11

The Victorian Government must conduct a review of the datasets that it currently collects and publishes, as against the *National Agreement on Closing the Gap Targets*, and:

- a. Publish a copy of the review, by 30 June 2026; and
- b. Following consultation with relevant ACCOs and First Peoples organisations, ensure that all data sets are regularly publicly reported, by 30 June 2027.

RECOMMENDATION 12

The Victorian Government must:

- a. As an employer of a significant number of First Nations staff within Departments, Agencies and Statutory Authorities:
  - i. formally recognise the cultural rights and cultural and colonial loads of First Nations staff within those settings;
  - ii. introduce a positive duty upon relevant managers (or head of the organisation) to ensure cultural safety in the case of First Nations staff;
  - iii. create new First Peoples-led oversight processes for the investigation of complaints in respect of alleged occurrences of non-compliance with this duty; and
  - iv. consider the adequacy of existing remuneration and/or leave models to recognise First Nations staff’s contributions and responsibilities.
- b. In the case of all other Victorian workplaces, amend the *Occupational Health and Safety Act (Vic) 2004* to ensure cultural safety obligations on employers are embedded in legislation.

RECOMMENDATION 13

The Victorian Government must introduce into the employment contracts, performance and/or remuneration assessment processes for senior executives (SES-1 or above) assessment criteria regarding their performance in:

- a. Promoting the employment, retention and promotion of First Peoples staff;
- b. Directly engaging with relevant First Peoples communities, representative bodies and service provider organisations;
- c. Prioritising the actions within their Department/Agency necessary to support the treaty-making process; and
- d. Overseeing timely and fulsome implementation of recommendations within relevant reports.

Table 5.1: Policies, strategies and frameworks that have not commenced

	Framework/ strategy	Summary	Department	Funding	Implementation status / reporting	Timeline for completion
1	Place-Based Partnership and Community Data Project	Progresses long-term community development, responding to local priorities, implementing the National Agreement, <sup>140</sup> which commits parties to establishing six Community Data Projects across all jurisdictions by 2023. <sup>141</sup>	Department of Premier and Cabinet (DPC)	\$1 million (2024–25) <sup>142</sup>	Gippsland was nominated for the project. <sup>143</sup> Victorian Aboriginal Child and Community Agency (VACCA) is developing the proposal for 2025–26 Budget submission. <sup>144</sup>	2023–2025 <sup>145</sup>
2	Aboriginal Cultural Capability Framework, ‘Our Culture is in our Country, and our Country is our Culture’	Supports Aboriginal self-determination by developing cultural capability across the Department of Energy, Environment and Climate Action (DEECA). <sup>146</sup>	Department of Energy, Environment and Climate Action (DEECA)	Not publicly available	Delayed due to resourcing and government restructure; plan development is expected by June 2024. The implementation plan will outline timing for delivery. <sup>147</sup> No further information is available.	June 2024
3	Marra ngarrgoo, marra goorri: Victorian Aboriginal Health, Medical and Wellbeing Research Accord	Aims to improve ethical standards in health, medical and wellbeing research for Aboriginal and Torres Strait Islander peoples. <sup>148</sup>	Victorian Aboriginal Community Controlled Health Organisation (VACCHO) / Department of Jobs, Skills, Industry and Regions (DJSIR)	\$4.5 million (2024–25 Budget)  VACCHO stated: ‘[w]hile the Victorian Government has endorsed the Accord, and initiated its development, it has not committed funding to implement it’. <sup>149</sup>	Accord to be reviewed annually in the first 5 years using a Monitoring, Evaluation and Learning Framework. <sup>150</sup> There is no publicly available information about whether reviews have occurred.	Ongoing
	Aboriginal Health and Wellbeing Partnership Agreement Strategic Action Plan	Details actions for improving health services in prevention, culturally safe healthcare, and self-determined systems. <sup>151</sup>	Department of Health	No funding to implement	No reporting was requested for 2023. <sup>152</sup>	2025
4	Pathway towards an Indigenous Data Sovereignty Policy	Commits to developing a policy for Indigenous Data Sovereignty. <sup>153</sup>	Department of Energy, Environment and Climate Action (DEECA)	Not publicly available	The DEECA Board adopted the Pathway in July 2023. However, implementation has been delayed, with DEECA identifying resourcing, recruitment and competing commitments as implementation barriers. <sup>154</sup>  Several milestones have been set for 2024–25. <sup>155</sup>	2025

Table 5.2: Policies, strategies and frameworks that are behind target

	Framework/ strategy	Summary	Department	Funding	Implementation status / reporting	Timeline for completion
1	Wungurilwil Gapgapduir Aboriginal Children and Families Agreement <sup>156</sup>	Focuses on strengthening Aboriginal culture, resources, workforce and services. <sup>157</sup>	Department of Families, Fairness and Housing (DFFH)	\$191 million (2018–2022), \$140 million (2023–2027) <sup>158</sup>	Aboriginal Children's Forum monitors implementation. <sup>159</sup> Issues include the high rate of Aboriginal children in care. Quarterly reports are produced throughout ongoing implementation. <sup>160</sup>	The refreshed agreement includes an initial 18-month Implementation Plan and Strategic Action Plan (2024–28) <sup>161</sup>
2	Building strong Aboriginal community-controlled sector	Aims to increase funding for programs through Aboriginal community-controlled organisations (ACCOs). <sup>162</sup>	Whole of Victorian Government	\$3.3 million (2020–21), <sup>163</sup> \$540,000 (2023 for Early Years Summit) <sup>164</sup>	The Productivity Commission found its actions are not supporting ACCOs. <sup>165</sup> There was an Aboriginal Expenditure Review in 2023, with a second review in progress. <sup>166</sup>	By 2031
3	Victorian Closing the Gap Implementation Plan	Details actions needed to achieve National Agreement objectives, focusing on the resourcing of ACCOs, and cultural safety. <sup>167</sup>	Department of Premier and Cabinet (DPC)	Not publicly available	Annual reports are produced through the VAAF VGAAR mechanism. Review found governments failed to enact necessary transformative changes. <sup>168</sup>  The State has been working in partnership with Ngaweeyan Maar-oo to develop an Implementation Plan due to take effect on 1 July 2025. <sup>169</sup>	Extended to June 2025 <sup>170</sup>
4	Burra Lotjpa Dunguludja — Aboriginal Justice Agreement Phase 4	Aims to reduce First Peoples over-representation in justice, improve community safety, and support self-determination. <sup>171</sup>	Department of Justice and Community Safety (DJCS)	Over \$100 million <sup>172</sup>	Actions are monitored via the Aboriginal Justice Forum, <sup>173</sup> with 33 completed and 55 in progress as of December 2024. <sup>174</sup>	2018–2023, evaluation in 2024 <sup>175</sup>
5	Marrung: Aboriginal Education Plan 2016–2026 <sup>176</sup>	Plans to improve educational outcomes for First Peoples with 36 actions over 10 years. <sup>177</sup>	Department of Education is the lead department and Department of Jobs, Skills, Industry and Regions (DJSIR) is responsible for skills and TAFEs	\$86.3 million invested since 2016, 16.7 million of which was ongoing <sup>178</sup>	Actions are monitored through the Marrung governance structure. <sup>179</sup> 63% on track or completed, 36% with some progress as of April 2024. <sup>180</sup>	2016–2026

	Framework/ strategy	Summary	Department	Funding	Implementation status / reporting	Timeline for completion
6	Barring Djinang: First Peoples Workforce Development Framework 2024–28	Focuses on increasing First Peoples employment in the Victorian Public Service (VPS). <sup>181</sup>	Victorian Public Sector Commission (VPSC)	Not publicly available	Progress is slow; 1.2 per cent of VPS employees are Aboriginal, <sup>182</sup> with systemic barriers to advancement <sup>183</sup> including challenges in retention, promotion, and workplace safety. <sup>184</sup>	Target 2 per cent by 2028 <sup>185</sup>
7	Aboriginal Workforce Strategy 2021–2026 <sup>186</sup>	Aims to make the Department of Health and Department of Families, Fairness and Housing employers of choice for Aboriginal people through culturally safe workplace practices. <sup>187</sup>	Department of Families, Fairness and Housing (DFFH), Department of Health	Not publicly available	Regular updates were planned; <sup>188</sup> workforce participation was stable in 2021. <sup>189</sup> Limited status updates were found.	2026
8	Balit Murrup: Aboriginal Social and Emotional Wellbeing Framework 2017–2027	Aims to improve mental health and resilience of First Peoples through various actions across four domains. <sup>190</sup>	Department of Health	\$7.7 million (Mental health initiative), <sup>191</sup> \$22 million (Traineeships and positions) <sup>192</sup>	Half of immediate actions funded and completed or in progress; long-term actions linked to the Royal Commission into Mental Health. Evaluation planned in 2025–26. <sup>193</sup>	2027
9	Mana-na woorn-tyeen maar-takoort: Victorian Aboriginal Housing and Homelessness Framework (VAHHF)	Lays out a 20-year roadmap authored by Aboriginal Housing Victoria for Aboriginal-specific housing and homelessness sector with strategic goals for housing outcomes. <sup>194</sup>	Department of Families, Fairness and Housing (DFFH) (Note: This is an Aboriginal Housing Victoria policy that falls within DFFH's portfolio of responsibility) <sup>195</sup>	Homes Victoria is funding Aboriginal Housing Victoria \$1.166 million over three years to 'support the implementation and stewardship of the Framework', which is an ongoing commitment reviewed annually. <sup>196</sup>  The State has increased the proportion of funding in the total housing budget allocated to First Peoples as part of fulfilling the goals of this framework. <sup>197</sup>	Progress tracked through annual report cards. New social housing projects underway, with funding allocated to homelessness programs. VAHHF 5-year plan is in development. <sup>198</sup>  The State has made progress towards all five of this framework's goals, but acknowledged that some are still behind target. <sup>199</sup>	2040 (20-year agenda)



	Framework/ strategy	Summary	Department	Funding	Implementation status / reporting	Timeline for completion
10	Blueprint for an Aboriginal Specific Homelessness System <sup>200</sup>	Provides for culturally safe service system for homelessness developed by Aboriginal Housing Victoria after extensive consultation. <sup>201</sup>	Department of Families, Fairness and Housing (DFFH) (Note: This is an Aboriginal Housing Victoria policy that falls within DFFH's portfolio of responsibility)	\$730k (18-month pilot), \$7.3 million (2023–24 and 2024–25) <sup>202</sup>	The government has taken limited steps; 18-month pilots were funded for two entry points. Steering committee is overseeing implementation. <sup>203</sup>	2031
11	Victorian Aboriginal Affairs Framework (VAAF) 2018–2025 <sup>204</sup>	Provides a framework for improving outcomes for First Peoples, with 111 measures across six domains. <sup>205</sup>	Whole of Victorian Government , Department of Premier and Cabinet (DPC)	A wide range of initiatives and programs with varying funding sources are covered by the VAAF.	Reports on self-determination through the VGAAR. <sup>206</sup> Annual reports are published; independent Aboriginal-led evaluation mechanism was planned but delayed due to COVID-19. It aligns with Victoria's treaty process. <sup>207</sup>	Extended to June 2025 to allow time for ongoing consultation with First Peoples stakeholders to self-determine next steps in the development of a new framework <sup>208</sup>
12	Victorian Traditional Owners Cultural Landscape Strategy <sup>209</sup>	Guides land management policies and supports Traditional Owners in cultural land management. <sup>210</sup>	Department of Energy, Environment and Climate Action (DEECA)	\$11 million (2021–22), \$800k (core funding for 4 years) <sup>211</sup>	Ongoing implementation, with more funding needed to build Traditional Owners' capacity. Monitoring and evaluation supported by the Cultural Landscapes Co-Governance Group. <sup>212</sup>	Ongoing
13	Victorian Traditional Owners Cultural Fire Strategy <sup>213</sup>	Provides a framework for Traditional Owners to undertake cultural burning for land management.	Department of Energy, Environment and Climate Action (DEECA)	\$22.5 million (2021–2025), \$6.3 million annually ongoing, \$10.3 million (2021–22, 2022–23) <sup>214</sup>	Traditional Owners receiving core funding for cultural fire programs; funding has supported 10 successful projects to deliver cultural fire projects across Victoria. More investment needed to reduce barriers and ensure safe delivery. <sup>215</sup>	Ongoing
14	Victorian Traditional Owner Game Management Strategy & Sustainable Hunting Action Plan 2021–2024 <sup>216</sup>	Aims to increase Traditional Owner participation in game and wildlife management, including hunting, land management and conservation. The Strategy and Action 2.3 of the Plan will be implemented through four pilot projects and with co-governance. <sup>217</sup>	Department of Jobs, Skills, Industry and Regions (DJSIR)	\$965k (allocated in 2022 to provide funding for Department of Energy, Environment and Climate Action (DEECA) to enter into grant agreements with four Traditional Owner Corporations to deliver hunting-related pilot programs) <sup>218</sup>	Delays in pilot project execution; Federation of Victorian Traditional Owner Corporations reports significant barriers to hunting rights; <sup>219</sup> no public reporting or accountability measures are available on the progress of the Traditional Owner Game Management Strategy.	Unknown

	Framework/ strategy	Summary	Department	Funding	Implementation status / reporting	Timeline for completion
15	Dhelk Dja Safe our Way 3-Year Action Plan Dhelk Dja: Safe Our way — Strong Culture, Strong Peoples, Strong Families within a Self Determination Framework	Supports self-determination for First Nations people and communities, regarding family violence support and services. <sup>220</sup>	Department of Families, Fairness and Housing (DFFH)	\$18.2 million has been set up for the Dhelk Dja Family Violence Fund over two years as a flexible pool of funding streams for Aboriginal organisations and community groups to enable First Peoples-led responses for victim survivors and people who use violence. <sup>221</sup>	Dhelk Dja Partnership Forum monitors progress against the Dhelk Dja Agreement 'routinely, with annual reporting against actions and indicators' with some indicators 'suitable for reporting on at the end of each 3-year Action Plan'. <sup>222</sup>  Department of Families, Fairness and Housing (DFFH) noted that a number of actions under the previous Dhelk Dja (2019–2022 Action Plan) were not completed, or carried over to the current plan. <sup>223</sup>	2023–2025

**Table 5.3:** Policies, programs, strategies and frameworks with no public accountability mechanisms

	Framework/ Strategy	Summary	Department	Funding	Implementation status / reporting	Timeline for completion
1	Aboriginal Cultural Competence Framework	Sets out standards to improve service delivery and outcomes for Aboriginal children and families. <sup>224</sup>	Department of Families, Fairness and Housing (DFFH)	Not publicly available	Not publicly available	Unknown
2	‘The Nest’ Aboriginal Family Wellbeing Service Model Framework <sup>225</sup>	Provides a framework for consistent, high-quality care for First Peoples children. <sup>226</sup>	Department of Health	Not publicly available	Not publicly available	Unknown
3	Victorian Aboriginal Early Years Health Framework	Sets out a holistic strategy to improve health and wellbeing of First Peoples children in their first 1000 days. <sup>227</sup>	Department of Health	Not publicly available	Not publicly available	Unknown
5	Aboriginal Economic Development (AED) Fund	Supports ‘Supporting Traditional Owner Corporations, Aboriginal business and employment programs and supporting Aboriginal cultural tourism initiatives’. <sup>228</sup>	Department of Jobs, Skills, Industry and Regions (DJSIR)	\$7 million (2023–24) <sup>229</sup>	Not publicly available	Unknown
6	Wurreker; The Koorie Community and TAFE in Victoria Equal Partnership Strategy (2000) <sup>230</sup>	Aims to improve education outcomes for First Peoples students through partnership and reforms. Partnership agreement between the Victorian Government and the VAEAI to improve education and training delivery for First Peoples students in the VET sector. <sup>231</sup>	Department of Jobs, Skills, Industry and Regions (DJSIR)	Unknown	Not publicly available	Unknown
7	Strategy for Aboriginal Community-led Recovery 2023 <sup>232</sup>	Aims to support First Peoples communities in recovery planning and delivery. <sup>233</sup>	Emergency Recovery Victoria (ERV) / Department of Justice and Community Safety (DJCS)	Unknown. The policy states that a strategic priority for ERV is to ‘prioritise Aboriginal needs in funding allocation’. <sup>234</sup>	Annual reporting required; <sup>235</sup> no public reports available.	Unknown

	Framework/ Strategy	Summary	Department	Funding	Implementation status / reporting	Timeline for completion
8	Aboriginal and Torres Strait Islander Cultural Safety Framework for the Victorian Health, Human and Community Services Sector	Provides a framework to create culturally safe workplaces and services. <sup>236</sup>	Department of Health, Department of Families, Fairness and Housing (DFFH)	Not publicly available.	Implemented in 2019. No review has been undertaken. Both DH and DFFH also have separate, internal Cultural Safety Frameworks, for which progress is tracked in annual reports. <sup>237</sup>	Unknown.
9	Dhelk Wukang 2022–2026 (Aboriginal Inclusion Plan) <sup>238</sup>	Sets out a plan to strengthen First Peoples representation and cultural safety in the department, including the VPS and teaching service. <sup>239</sup>	Department of Education	Not publicly available	The plan states that outcomes are reported against the Victorian SDRF. <sup>240</sup>	2026
10	Yuma Yirramboi (Invest in Tomorrow) Victorian Aboriginal Employment and Economic Strategy (2022) <sup>241</sup>	Aims for employment and economic parity for First Peoples in Victoria.	Department of Jobs, Skills, Industry and Regions	\$8.7 million allocated over 2024–2027 <sup>242</sup>	Yoorrook heard this program lacks an implementation plan; needs increased funding and accountability. <sup>243</sup>	Ongoing
11	Aboriginal Inclusion Action Plan for The Orange Door	Sets out actions to improve access and equity to the family violence system for First Peoples. <sup>244</sup>	Department of Families, Fairness and Housing (DFFH)	Not publicly available	The policy is undergoing a staged implementation over three years. <sup>245</sup>	2024
12	Police and Aboriginal Community Protocols Against Family Violence <sup>246</sup>	Provides protocols for culturally informed police responses to family violence. <sup>247</sup>	Victoria Police	Not publicly available	The protocols are supported by a State-wide Steering Group that is accountable to the Dhelk Dja Partnership Forum and the Aboriginal Justice Forum. Each protocol site has a local reference group that monitors and reports to the Steering Group. <sup>248</sup> Yoorrook has not identified publicly available information on substantive progress made under this protocol. <sup>249</sup>	Unknown
13	Nargneit Birrang Holistic Healing Framework for Family Violence	Provides a framework for First Peoples-led healing programs for family violence, promoting long-term recovery. <sup>250</sup>	Department of Families, Fairness and Housing (DFFH)	Not publicly available	VACCA has stated that a ‘detailed work plan’ is required to be developed and led by First Peoples. <sup>251</sup> Yoorrook has not identified public information regarding progress.	Full implementation aimed in 3 years <sup>252</sup>



	Framework/ Strategy	Summary	Department	Funding	Implementation status / reporting	Timeline for completion
14	Aboriginal Health and Wellbeing Partnership Agreement	Sets out an action plan for members of the Aboriginal Health and Wellbeing Partnership Forum focusing on prevention, culturally safe healthcare, and self-determined health systems. <sup>253</sup>	Department of Health	Yoorrook heard that there is no funding to implement this policy <sup>254</sup>	The Department of Health told Yoorrook that Partnership Forum partners have not been requested to report on the National Agreement's activities and outcomes for 2023. <sup>255</sup>	2025
15	Aboriginal Private Rental Assistance Program (APRAP) <sup>256</sup>	Assists First Nations people at risk of homelessness with securing or maintaining private rentals. <sup>257</sup>	Department of Families, Fairness and Housing (DFFH)	\$4 million allocated over two years, to support the program commencing at the end of 2020 <sup>258</sup>	Funding was renewed in the 2021–22 State Budget, but the total amount of funding for this program was not stated. <sup>259</sup> The program has been noted as successful. <sup>260</sup>	Unknown
16	Victorian Aboriginal and Local Government Strategy 2021–2026	Provides a roadmap for self-determination, including a framework for First Peoples and local government partnerships. <sup>261</sup>	Department of Government Services, Department of Jobs, Precincts and Regions	\$400,000 allocated in 2022–23 <sup>262</sup>	The strategy states that 'a governance mechanism will be established to monitor progress against the Strategy'. <sup>263</sup> Yoorrook has not identified any public information regarding status or monitoring.	2026
17	Aboriginal Governance and Accountability Framework	Sets governance mechanisms for First Peoples communities to lead initiatives with government support. <sup>264</sup>	Department of Health	Not publicly available	A formal review was scheduled for 2020 in the original plan. Yoorrook has not identified information regarding the outcome of this review.	Unknown
18	Aboriginal Strategic Governance Forum Strategy	Establishes an advisory forum to guide the Department of Families, Fairness and Housing (DFFH) strategic direction on First Peoples initiatives. <sup>265</sup>	Department of Families, Fairness and Housing (DFFH)	Funding for 2 full-time equivalent staff and approximately \$30,000 to participate in meetings <sup>266</sup>	Not publicly available	Unknown
19	Self-determination Plan: Advancing Self-determination in DTF Plan <sup>267</sup>	Sets actions to advance self-determination through policy changes and First Peoples business procurement. <sup>268</sup>	Department of Treasury and Finance (DTF)	Not publicly available	DTF's record regarding meeting its commitments as of May 2020 is contained in the Advancing Self-Determination in DTF Report. <sup>269</sup>  A Self-Determination Taskforce was established in 2019 and undertook a series of workshops to progress plans. <sup>270</sup>	Unknown

	Framework/ Strategy	Summary	Department	Funding	Implementation status / reporting	Timeline for completion
20	Korin Korin Balit-Djak Strategic Plan 2017–2027	Sets out a plan to improve health, wellbeing and safety for First Peoples, including by improving cultural safety in health and human services, creating a strong and sustainable First Peoples workforce, creating stable, secure and appropriate housing and improved social and emotional wellbeing. <sup>271</sup>	Department of Families, Fairness and Housing (DFFH)	\$14 million (split between Department of Health and Department of Families, Fairness and Housing (DFFH)) <sup>272</sup>	The policy states that a 'detailed evaluation approach will be developed with key Aboriginal research, evaluation and service delivery organisations in consultation with Aboriginal communities'. <sup>273</sup> Yoorrook did not identify any public information regarding status and reporting.	2027
21	Victorian Aboriginal Fishing Strategy 2012 <sup>274</sup>	Focuses on training and engagement related to First Peoples' fishing rights.	Department of Jobs, Skills, Industry and Regions (DJSIR)	Not publicly available	The State noted that this strategy 'requires updating and this process will involve renewed consultation with ... Traditional Owner groups'. <sup>275</sup>	Unknown
22	Victorian Self-Determination Reform Framework (SDRF) <sup>276</sup>	Guides government action towards enabling self-determination in First Peoples affairs.	Premier and Cabinet (DPC)	Not publicly available	Departments report annually to the Victorian Secretaries' Board. <sup>277</sup>	Ongoing

	Framework/ Strategy	Summary	Department	Funding	Implementation status / reporting	Timeline for completion
23	Wurrek-al 'Talking with Purpose' Engagement Framework <sup>278</sup>	Provides a framework to put in place a consistent portfolio-wide process for engaging with First Peoples regarding transport and planning, underpinned by a commitment to free, prior and informed consent. <sup>279</sup>	Department of Transport and Planning	Not publicly available	Ongoing; no specific status updates.	Ongoing
24	Victorian Traditional Owner Native Food and Botanicals Strategy	Sets out a strategy to build the native foods and botanicals sector in partnership with Traditional Owners, focusing on legislation, investment and intellectual property protection. <sup>280</sup>	Department of Energy, Environment and Climate Action (DEECA)	\$100,000 in 2021 for development of the strategy, <sup>281</sup> \$2 million allocated for implementation <sup>282</sup>	The strategy is administered through a co-governance model between Federation of Victorian Traditional Owner Corporations and relevant Victorian Government stakeholders. Federation of Victorian Traditional Owner Corporations and Dja Dja Wurrung Clans Aboriginal Corporation (DJAARA) call for full resourcing and implementation. <sup>283</sup> Strategy not yet fully resourced or implemented. <sup>284</sup>	Unknown

Table 5.4: Policies, strategies and frameworks with no publicly available information / cannot be located

	Framework/ Strategy	Summary	Department	Funding	Implementation status / reporting	Timeline for completion
1	Strategic Aboriginal Heritage Assessment Project	Establishes a pilot program (announced in June 2024) for Aboriginal heritage assessments with three themes: partnerships, organisational culture, and improved guidance and processes. <sup>285</sup>	Department of Premier and Cabinet (DPC)	Not publicly available	Not publicly available	Unknown
2	Closing the Gap — Universal Early Years Healthcare	Funds continued support for maternal and child health services delivered by First Peoples organisations. <sup>286</sup>	Department of Health	\$10.2 million allocated in 2022–23 <sup>287</sup>	No specific status reported	Unknown
3	Supporting Self-Determined Aboriginal Community Controlled Health Organisations (ACCHOs)	Yoorrook did not identify any information regarding this policy (aside from the title in the List of Policies). <sup>288</sup>	Department of Premier and Cabinet (DPC)	Not publicly available	No specific status reported	Unknown
4	Aboriginal Cultural Safety Capability Framework	Provides a basis for building the cultural capability and improvement of outcomes through supporting employees and leaders, by embedding First Peoples-led collective action, self-determination, and systemic change to enable the vision of becoming an employer of choice for First Nations people. <sup>289</sup>	Department of Health , Department of Families, Fairness and Housing (DFFH)	Not publicly available	This framework sets out reporting mechanisms, including an annual reporting template, impact assessment tool and measurement and assessment tool. <sup>290</sup>  Yoorrook did not identify any progress reports or implementation data.	Unknown



# Endnotes

1. Select Committee of the Legislative Council on the Aborigines, [Report of the Select Committee of the Legislative Council](#) (Victoria, Report, 1859).

2. Victoria, Royal Commission on the Aborigines, [Report of the Commissioners](#) (Final Report, 1877).

3. See, for example, the Parliamentary Inquiry into Conditions at Coranderk (1881); Charles McLean, *Report upon the Operation of the Aborigines Act 1928 and the regulations and orders made thereunder* (Report, 1956–1957); Social Development Committee, *Report upon Inquiry into Compensation for Dispossession and Dispersal of the Aboriginal People* (Parliament of Victoria, 1984); *Royal Commission into Aboriginal Deaths in Custody* (Report, April 1991); Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Report, April 1997); Stolen Generations Reparations Victoria, *Stolen Generations Reparations Steering Committee Report* (Report, 2021).

4. See also Yoorrook Justice Commission, *Yoorrook for Justice (2023) Chapter 3 ‘Accountability, Capability, and Compliance with Human Rights Obligations’, 92–104.*

5. See ‘Policies, frameworks, strategies and plans’; *‘Failure to set precise targets’.*

6. See “‘Business as usual’ and government inertia”.

7. See Yoorrook Overarching Recommendations 3 and 4

8. The Victorian Aboriginal Justice Caucus has for many years advocated for the establishment of an independent agency to ensure greater accountability of government to the community in relation to the achievement of better justice outcomes for Aboriginal people in Victoria: Lowitja Institute and Victorian Aboriginal Community Controlled Health Organisation, [Victorian Aboriginal Authority: An Initial Feasibility Study for Discussion](#) (Report, 2023), 16.

Community advocacy in the development of the Victorian Aboriginal Affairs Framework (VAAF) reiterated that government action must be accountable to and by community: Victorian Government, [Victorian Aboriginal Affairs Framework 2018–2023](#) (Framework, 2018), 58.

9. See Yoorrook Overarching Recommendations 3 and 4

10. Other values are responsiveness, integrity, impartiality, respect, leadership and human rights: *Public Administration Act 2004* (Vic) s7(1).

11. *Public Administration Act 2004* (Vic) s1(a).

12. *Public Administration Act 2004* (Vic) s7(1)(d).

13. Victorian Public Sector Commission, [‘Public Sector Values’](#) (Webpage, 9 September 2024).

14. Victorian Public Sector Commission, [‘Public Sector Values’](#) (Webpage, 9 September 2024).

15. Transcript of Minister Harriet Shing MP, 24 April 2024, 9–10 [45].

16. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 14 [10].

17. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 14 [26]–[29].

18. Transcript of Premier Jacinta Allan MP, 29 April 2024, 36 [11]–[14].

19. Transcript of Commissioner Brigid Monagle, 13 June 2024, 54 [1]–[11].

20. Victorian Government, [Victorian Aboriginal Affairs Framework 2018–2023](#) (Framework, 2018),

21. Victorian Government, [Victorian Government Self-Determination Reform Framework](#) (2019).

22. See Department of Premier and Cabinet, Response to NTP-004-003 – ‘DPC response to Requests for Information Health and land injustice lines of inquiry December 2023’, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 4 December 2023.

23. Note that the Victorian State Implementation plan was extended to June 2025: Victorian State Government, *Victorian Closing the Gap Implementation Plan 2021–2023*.

24. Victorian State Government, *Victorian Closing the Gap Implementation Plan 2021–2023*.

25. Closing the Gap, [‘National Agreement on Closing the Gap’](#) (Webpage).

26. Productivity Commission, [Review of the National Agreement on Closing the Gap](#) (Study Report, 24 January 2024), 3.

27. Productivity Commission, [Review of the National Agreement on Closing the Gap](#) (Study Report, 24 January 2024), 3.

28. Productivity Commission, [Review of the National Agreement on Closing the Gap](#) (Study Report, 24 January 2024), 3.

29. Productivity Commission, [Review of the National Agreement on Closing the Gap](#) (Study Report, 24 January 2024), 3, 84–86.

30. Productivity Commission, [Review of the National Agreement on Closing the Gap](#) (Study Report, 24 January 2024), 3, 86.

31. Productivity Commission, [Review of the National Agreement on Closing the Gap](#) (Study Report, 24 January 2024), 3, 41.

32. Productivity Commission, [Review of the National Agreement on Closing the Gap](#) (Study Report, 24 January 2024), 3.

33. First Peoples State Relations, [‘Victoria’s Partnership Forum on Closing the Gap Implementation’](#) (Webpage, 6 March 2024).

34. Ngaweeyan Maar-oo, [‘Ngaweeyan Maar-oo’](#) (Webpage).

35. Transcript of Nerita Waight, 27 May 2024, 30 [25].

36. Transcript of Nerita Waight, 27 May 2024, 30 [25].

37. Transcript of Nerita Waight, 27 May 2024, 28 [5].

38. Transcript of Nerita Waight, 27 May 2024, 27 [30].

39. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023](#) (Report, 2024), 5.

40. Victorian State Government, [Victorian Aboriginal Affairs Framework 2018–2023](#) (Framework, 2018).

41. Victorian State Government, [Victorian Aboriginal Affairs Framework 2018–2023](#) (Framework, 2018).

42. Victorian Government, [‘Victorian Aboriginal Affairs Framework \(VAAF\) data dashboard’](#) (Dashboard, 30 September 2024).

43. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023](#) (Report, 2024), 12.

44. Data is provided for some (but not all) measures in the VGAAR. The 2023 VGAAR notes that the assessment of progress on many measures relies ‘on datasets that are infrequently collected’ and ‘[n]o new data was available at the time of reporting’: Victorian Government, [Victorian Government Aboriginal Affairs Report 2023](#) (Report, 2024), 12.

45. Transcript of Nerita Waight, 27 May 2024, 28 [35]–[45].

46. Victorian State Government, [Victorian Aboriginal Affairs Framework 2018–2023](#) (Framework, 2018), 58.

47. See Engage Victoria, [‘Aboriginal-led accountability of government’](#) (Webpage); Victorian Government, *Establishing an Aboriginal-led Evaluation and Review mechanism in Victoria – Discussion Guide 1* (Report, February 2019); Victorian Government, *Establishing an Aboriginal-led Evaluation and Review mechanism in Victoria – Community engagement report* (Report, October 2019).

48. Department of Premier and Cabinet, Response to NTP-004-003 – ‘DPC response to Requests for Information Health and land injustice lines of inquiry December 2023’, 7, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 4 December 2023.

49. Victorian Government, [Victorian Government Self-Determination Reform Framework](#) (2019). See also Department of Premier and Cabinet, Response to NTP-004-003 – ‘DPC response to Requests for Information Health and land injustice lines of inquiry December 2023’, 5, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 4 December 2023.

50. First Peoples State Relations, [‘Reporting against the Framework’](#) (Webpage, 23 September 2019).

51. Victorian Government, [Victorian Government Self-Determination Reform Framework](#) (2019), 18.

52. First Peoples State Relations, [‘Reporting against the Framework’](#) (Webpage, 23 September 2019).

53. First Peoples State Relations, [Self-Determination Reform Framework; Department of Premier and Cabinet Report 2021](#) (Report, 2021).

54. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023](#) (Report, 2024), 9.

55. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023](#) (Report, 2024), 9.

56. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023](#) (Report, 2024), 12.

57. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023](#) (Report, 2024).

58. First Peoples State Relations, [‘Victorian Aboriginal Affairs Framework \(VAAF\) data dashboard’](#) (Webpage, 2022).

59. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023](#) (Report, 2024).

60. Transcript of Nerita Waight, 27 May 2024, 29 [15]. See also Ngaweeyan Maar-oo, Submission 662 (Education, Health and Housing), 17.

61. Transcript of Nerita Waight, 27 May 2024, 29 [20].

62. Transcript of Nerita Waight, 27 May 2024, 29 [40].

63. Transcript of Nerita Waight, 27 May 2024, 30 [10].

64. Transcript of Nerita Waight, 27 May 2024, 30 [10].

65. Ngaweeyan Maar-oo, Submission 662 (Education, Health and Housing), 17.

66. Witness Statement of Minister Natalie Hutchins MP, 18 April 2024, 32 [158].

67. Transcript of Minister Natalie Hutchins MP, 18 April 2024, 17 [9]–[10].

68. Transcript of Minister Natalie Hutchins MP, 18 April 2024, 17 [12].

69. Response to questions taken on notice by Minister Natalie Hutchins MP, Minister for Treaty and First Peoples, on 18 April 2024, Attachment B – First Peoples Frameworks and Strategies.

70. Yoorrook’s analysis of policies, frameworks and strategies is based on evidence received from the State and third parties as well as publicly available information identified by the Yoorrook team (as at January 2025). Yoorrook acknowledges that in some instances, a mechanisms implementation may have progressed, with relevant information not yet being publicly available.

71. Transcript of Paul Paton, 17 April 2024, 75 [25]–[35].

72. Transcript of Treasurer Tim Pallas MP, 26 June 2024, 6 [28]–[31].

73. Yoorrook notes that at the time he gave evidence in June 2024, Tim Pallas was Treasurer of Victoria. As of December 2024, the Hon Jaclyn Symes is the Treasurer. See Premier of Victoria, Hon Jacinta Allan MP, [‘A Strong And Focused Team To Build Homes And Help Families’](#) (Webpage, 19 December 2024).

74. Transcript of Treasurer Tim Pallas MP, 26 June 2024, 14 [34]–[44]; 15 [23]–[27]; Witness Statement of Treasurer Tim Pallas MP, 8 March 2024, 4–5 [20]–[21]; Witness Statement of Treasurer Tim Pallas MP, 24 June 2024, 3–4 [15], [17], [22].

75. Transcript of Treasurer Tim Pallas MP, 26 June 2024, 15 [25].

76. Transcript of Treasurer Tim Pallas MP, 26 June 2024, 15 [10]–[12].

77. Transcript of Paul Paton, 17 April 2024, 65 [30].

78. See *Financial Management Act 1994* (Vic) div 4A; Victorian State Government, Treasury and Finance, [‘Gender Responsive Budgeting in Victoria’](#) (Webpage, 6 January 2025).

79. Transcript of Treasurer Tim Pallas MP, 26 June 2024, 16 [7]–[10].

80. Victorian State Government, Treasury and Finance, [‘Gender Responsive Budgeting in Victoria’](#) (Webpage, 6 January 2025).

81. Transcript of Treasurer Tim Pallas MP, 26 June 2024, 17 [6], [34]–[35].

82. Victorian Aboriginal Housing and Homelessness Forum, [Mana-na woorn-tyeen maar-takoort: Every Aboriginal Person has a Home. The Victorian Aboriginal Housing and Homelessness Framework](#) (Framework, 2020).

83. First Peoples’ Assembly of Victoria, Submission 490 (Education, Health and Housing), 38.

84. First Peoples’ Assembly of Victoria, Submission 490 (Education, Health and Housing), 38.

85. Aboriginal Housing and Homelessness Forum, Submission 536, 11, citing AHV commissioned research by Dr Noor Khalidi to prepare Aboriginal community population and housing need projections.

86. Aboriginal Housing and Homelessness Forum, Submission 536, 8, 6, 13; Victorian Aboriginal Housing and Homelessness Forum, [Mana-na woorn-tyeen maar-takoort 2022 Annual Report Card](#) (Framework, 2023), 37. See also Department of Families, Fairness and Housing, [Aboriginal Private Rental Assistance Program \(APRAP\) Guidelines](#) (Guidelines, July 2023).

87. Aboriginal Housing and Homelessness Forum, Submission 536, 13.

88. [Recommendations arising from Wendy Ston, Zoë Almeida Goodall, Andrew Peters, Piret Veeroja, Aboriginal Private Rental Access in Victoria: ‘Excluded from the start’](#) (Report, November 2021), 10–11.

89. Witness Statement of Minister Harriet Shing MP, 3 June 2024, 33 [29].

90. First Peoples’ Assembly of Victoria, Submission 490 (Education, Health and Housing), 41.

91. Transcript of Dannii de Krester, 7 June 2024, 34 [6]–[22].



92. See Department of Health and Human Services, Victorian Government, [Balit Murrup: Aboriginal Social and Emotional Wellbeing Framework 2017–2017](#) (Policy, 2017).

93. Witness Statement of Minister Ingrid Stitt MP, 12 June 2024, 19 [107].

94. Witness Statement of Minister Ingrid Stitt MP, 12 June 2024, 43 [241]–[242].

95. Victorian Aboriginal Community Controlled Health Organisation, Submission 445 (Education, Health and Housing), 59–60.

96. Victorian Aboriginal Community Controlled Health Organisation, Submission 445 (Education, Health and Housing), 59–60.

97. Transcript of Rueben Berg, Co-Chair of First Peoples' Assembly of Victoria, 17 April 2024, 46 [40]–47 [1]; Transcript of Paul Paton, 17 April 2024, 65 [10]–[15].

98. See Chapter 11: Traditional Owner settlements. See also Transcript of Will Crawford, 16 April 2024, 76 [37]–[40]; Taungurung Land and Waters Council, Submission 572 ('Specific issues arising out of the hearings'), 2.

Yoorrook notes that initial and periodic outcomes reviews of settlements are embedded in all Recognition Settlement Agreements (RSAs) agreed to date. See Department of Premier and Cabinet, Response to RFI — 'Yoorrook Justice Commission – Land Justice Unit', 22–23, produced by the State of Victoria in response to the Commission's Request for Information dated 2 February 2024.

99. Transcript of Will Crawford, 16 April 2024, 77 [5]–[40].

100. Taungurung Land and Waters Council, Submission 572 ('Specific issues arising out of the hearings'), 2; Department of Government Services, Response to NTP-003-007 – 'Local Government Recognition and Settlement Agreements with Traditional Owners', 3, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2024.

101. Dja Dja Wurrung Clans Aboriginal Corporation, Dja Dja Wurrekatjalangu (RSA) Team, Submission 504, 7. See also The Public Land Consultancy, *Independent Audit of Compliance of the Dja Dja Wurrung Land Use Activity Agreement; by the Public Land Consultancy for the Land Justice Unit, Department of Justice and Community Safety. Final Report* (Report, December 2021), 36; Department of Energy, Environment and Climate Action, Response to NTP-003-012 — 'Public Land Consultancy, 'Independent Audit of Compliance of the Dja Dja Wurrung Land Use Activity Agreement; by the Public Land Consultancy for the Land Justice Unit, Department of Justice and Community Safety: Final Report', 8, produced by the State of Victoria in response to the Commissioner's Notice to Produce dated 17 November 2023.

102. Department of Energy, Environment and Climate Action, Response to NTP-003-012 — 'Public Land Consultancy, 'Independent Audit of Compliance of the Dja Dja Wurrung Land Use Activity Agreement; by the Public Land Consultancy for the Land Justice Unit, Department of Justice and Community Safety: Final Report', 44, produced by the State of Victoria in response to the Commissioner's Notice to Produce dated 17 November 2023.

103. Department of Government Services, Response to NTP-003-007 – 'Local Government Recognition and Settlement Agreements with Traditional Owners', 3, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2024.

104. Department of Premier and Cabinet, Response to RFI — 'Yoorrook Justice Commission – Land Justice Unit', 24, produced by the State of Victoria in response to the Commission's Request for Information dated 2 February 2024.

105. Victorian Aboriginal Children and Young People's Alliance, Submission 431 (Education), 6, 9.

106. Department of Education and Training, *Marrung: Aboriginal Education Plan; 2016–2026* (Policy, 2016), 5, 22, 34.

107. Victorian Aboriginal Children and Young People's Alliance, Submission 431 (Education), 6, 9.

108. Department of Education and Training, [Marrung: Aboriginal Education Plan; 2016–2026](#) (Policy, 2016), 34.

109. Department of Education and Training, [Marrung: Aboriginal Education Plan; 2016–2026](#) (Policy, 2016), 34.

110. Deputy Secretary Stephen Fraser told Yoorrook: 'There is no mapping document that says how these actions and outcomes [Marrung] translate into those other areas [Closing the Gap, VGAAR]': Transcript of Deputy Secretary Stephen Fraser, 6 June 2024, 32 [24]–[25].

111. Transcript of Michael Graham, 27 May 2024, 11–12 [45].

112. Transcript of Premier Jacinta Allan MP, , 29 April 2024, 35 [5]–[10].

113. Cliff Wandin, Submission 453, 4; Uncle Dr Wayne Atkinson, Submission 406, 16.

In its 2024 Closing the Gap review, the Productivity Commission found that '[u]nless governments address the power imbalance in their systems, policies and ways of working, the Agreement risks becoming another broken promise to Aboriginal and Torres Strait Islander people': Victorian Aboriginal Legal Service, Submission 449 (Health), 22–23, citing Productivity Commission, Australian Government, [Review of the National Agreement on Closing the Gap](#) (Study Report, January 2024) vol 1, 3,

114. Ngaweeyan Maar-oo, Submission 662 (Education, Health and Housing), 6; Transcript of Lisa Briggs, 27 May 2024, 17 [44]; Transcript of Chris Harrison, 3 March 2023, 118 [24]–[27]; Transcript of Paul Paton, 17 April 2024, 75 [27]–[34].

115. Transcript of Paul Paton, 17 April 2024, 75 [46]–76 [3].

116. Witness Outline of Dr Eddie Cubillo, 15 December 2022, 4 [17].

117. Transcript of Paul Paton, 17 April 2024, 75 [46]–76 [3].

118. Transcript of Rueben Berg, Co-Chair of First Peoples' Assembly of Victoria, 17 April 2024, 46 [40]–47 [45].

119. Transcript of Rueben Berg, Co-Chair of First Peoples' Assembly of Victoria, 17 April 2024, 47 [1]–[10], 47 [45]–48 [5].

120. Transcript of Ngarra Murray, Co-Chair of First Peoples' Assembly of Victoria, 17 April 2024, 49 [28]–[30].

121. Transcript of Nerita Waight, 27 May 2024, 25 [10]–[30].

122. Transcript of Premier Jacinta Allan MP, 29 April 2024, 23 [13]–[35].

123. Transcript of Premier Jacinta Allan MP, 29 April 2024, 23 [28]–[35].

124. Victorian Government, [Victorian Government Response to the Yoorrook for Justice Report](#) (April 2024).

125. Victorian Government, [Victorian Government Response to the Yoorrook for Justice Report](#) (April 2024), 6.

126. Victorian Government, [Victorian Government Response to the Yoorrook for Justice Report](#) (April 2024), 6.

127. Victorian Government, [Victorian Government Response to the Yoorrook for Justice Report](#) (April 2024), 7.

128. Victorian Government, [Victorian Government Response to the Yoorrook for Justice Report](#) (April 2024), 5.

129. Department of Health, '[About the Royal Commission](#)' (Webpage, 4 December 2024); Victorian Government, '[About the Royal Commission into Family Violence](#)' (Webpage, 23 September 2023).

130. Transcript of Premier Jacinta Allan MP, 29 April 2024, 22 [10]–[15].

131. First Peoples – State Relations, '[Victorian Government Implementation Progress Report: Yoorrook for Justice – October 2024](#)' (14 January 2025).

132. First Peoples – State Relations, '[Victorian Government Implementation Progress Report: Yoorrook for Justice – October 2024](#)' (14 January 2025), 20.

133. First Peoples – State Relations, '[Victorian Government Implementation Progress Report: Yoorrook for Justice – October 2024](#)' (14 January 2025), 7.

134. Transcript of Nerita Waight, 27 May 2023, 13 [5].

135. Transcript of Michael Graham, 27 May 2023, 33 [30].

136. Transcript of Nerita Waight, 27 May 2023, 12 [40]–[45].

137. The Hon Natalie Hutchins MP, Ngarra Murray and Rueben Berg, [Joint Statement on Treaty Negotiations](#), 13 January 2025 (Webpage, 13 January 2025).

138. Victorian Aboriginal Legal Service, Submission 494 (Family Violence), 11.

139. *Parliamentary Committees Act 2003* (Vic), s 14.

140. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023 \(Report, 2024\)](#), 17.

141. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023 \(Report, 2024\)](#), 25.

142. Victorian Government, *State Budget 2024–25*, Service Delivery, 58.

143. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023 \(Report, 2024\)](#), 17.

144. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023 \(Report, 2024\)](#), 17.

145. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023 \(Report, 2024\)](#), 17.

146. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — 'DEECA frameworks, roadmaps, strategies, and commitments concerning First Peoples' rights and interests, connection to Country and First Peoples' self-determination and their implementation to date', 6, produced by the State of Victoria on 10 November 2023 in response to the Commission's Notice to Produce dated 8 November 2023.

147. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — 'Annexure B – Self Determination Frameworks', 5, produced by the State of Victoria on 19 February 2024 in response to the Commission's Notice to Produce dated 5 November 2023; Department of Energy, Environment and Climate Action, Response to NTP-003-031 — 'Annexure B – Self Determination Frameworks', 4, produced by the State of Victoria on 5 November 2023 in response to the Commission's Notice to Produce dated 5 November 2023.

148. State Government and Victorian Aboriginal Community Controlled Health Organisation, [marra ngarrgoo, marra goorri: The Victorian Aboriginal Health, Medical and Wellbeing Research Accord](#) (2023), 11.

149. Victorian Aboriginal Community Controlled Health Organisation, Submission 445 (Education, Health and Housing), 72.

150. State Government and Victorian Aboriginal Community Controlled Health Organisation, [marra ngarrgoo, marra goorri: The Victorian Aboriginal Health, Medical and Wellbeing Research Accord](#) (2023) 27.

151. Aboriginal Health and Wellbeing Partnership Forum, [Victorian Aboriginal Health and Wellbeing Partnership Agreement Action Plan 2023–2025](#) (2023), 6.

152. Department of Health, 'Yoorrook Justice Commission Health Workstream Request for Information – Response', 10, produced by the State of Victoria in response to Commission's Request for Information.

153. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — 'DEECA frameworks, roadmaps, strategies, and commitments concerning First Peoples' rights and interests, connection to Country and First Peoples' self-determination and their implementation to date', 5, produced by the State of Victoria on 10 November 2023 in response to the Commission's Notice to Produce dated 8 November 2023.

154. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — 'Annexure B – Self Determination Frameworks', 5, produced by the State of Victoria on 5 November 2023 in response to Commission's Request for Information dated 5 November 2023.

155. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — 'Annexure B – Self Determination Frameworks', 11, produced by the State of Victoria in response to Commission's Request for Information dated 5 November 2023.

156. Victorian State Government, Families Fairness and Housing, '[Wungurilwil Gapgapduir Aboriginal Children and Families Agreement](#)' (Webpage).

157. Victorian State Government, Families Fairness and Housing, '[Wungurilwil Gapgapduir Aboriginal Children and Families Agreement](#)' (Webpage).

158. SNAICC, [Family Matters Report 2024](#) (Report, 2024), 91.

159. Department of Families, Fairness and Housing, '[Aboriginal Children's Forum](#)' (Webpage).

160. Department of Families, Fairness and Housing, '[Aboriginal Children's Forum](#)' (Webpage).

161. Department of Families, Fairness and Housing, Response to RFI — 'DFFH response to Yoorrook Justice Commission's Accountability RFI questions – Tranche 1', 12, produced by the State of Victoria in response to Commission's Request for Information dated 5 November 2023; Aboriginal Children's Forum, [Communique](#) (August 2024) 1.

162. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023 \(Report, 2024\)](#), 20.

163. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023 \(Report, 2024\)](#), 21.

164. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023 \(Report, 2024\)](#), 21.

165. Productivity Commission, *Review of the National Agreement on Closing the Gap* (Study Report), 50.

166. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023 \(Report, 2024\)](#), 20–21.

167. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023 \(Report, 2024\)](#), 14.

168. First Peoples – State Relations, '[Victorian Government Aboriginal Affairs Report 2023: Victoria's approach to implementing the National Agreement on Closing the Gap](#)' (Webpage).

169. Department of Premier and Cabinet, 'YJC Accountability Hearing (HB8) 2024; RFI Response: DPC', 3–4, produced by the State of Victoria.

170. First Peoples – State Relations, '[The Victorian Closing the Gap Implementation Plan](#)' (Webpage, 28 February 2024).

171. Yoorrook Justice Commission, [Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems](#) (Report, 31 August 2023), 243.

172. Witness Statement of Attorney General Jaclyn Symes, 31 March 2023, 14 [73]–[74].



173. Victorian Government and Aboriginal Community, [Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement Phase 4](#) (Partnership Agreement, 2018), 56.

174. Victorian Government, [‘The AJA in Action’](#), Victorian Aboriginal Justice Agreement (Webpage).

175. First Peoples – State Relations, Victorian 2023 Closing the Gap Tables, [‘Annual Reporting Tables 2023’](#), 25.

176. Department of Education and Training (Vic), [Marrung: Aboriginal Education Plan 2016–2026](#) (July 2016).

177. The Victorian Department of Education was known as the Department of Education and Training from January 2015 until January 2023. From this time, TAFE, training and higher education were transferred to the Department of Jobs, Skills, Industry and Regions: Victoria, [Victoria Government Gazette](#), No S 673, 5 December 2022.

178. Department of Education, Response to NTP-004-013 — ‘Yoorrook Justice Commission – Social Injustice RFI; Response from Department of Education (DE)’, 12, produced by the State of Victoria on 2 April 2024 in response to the Commission’s Request for Information dated 28 March 2024.

179. Department of Education, Response to NTP-004-013 — ‘Yoorrook Justice Commission – Social Injustice RFI; Response from Department of Education (DE)’, 9, produced by the State of Victoria on 2 April 2024 in response to the Commission’s Request for Information dated 28 March 2024.

180. Department of Education, Response to NTP-004-013 — ‘Yoorrook Justice Commission – Social Injustice RFI; Response from Department of Education (DE)’, 9, produced by the State of Victoria on 2 April 2024 in response to the Commission’s Request for Information dated 28 March 2024.

181. Victorian Public Sector Commission, Response to NTP-004-025 — ‘Barring Djinang’, produced by the State of Victoria on 3 June 2024 in response to the Commission’s Request for Information dated 2 June 2024. See also Witness Statement of Commissioner Brigid Monagle, 31 May 2024, 6 [33]; Victorian Public Sector Commission, Response to NTP-004-025 — ‘Attachment F-Barring Djinang First Peoples Workforce Development Framework 2024–28’, produced by the State of Victoria on 3 June 2024 in response to the Commission’s Request for Information dated 2 June 2024.

182. First Peoples State Relations, [‘Victorian Aboriginal Affairs Data Dashboard’](#) (Webpage, 30 September 2024).

183. Department of Health, [‘Aboriginal and Torres Strait Islander cultural safety framework’](#) (Webpage, 8 February 2023). See Witness Statement of Commissioner Brigid Monagle, 31 May 2024, 7 [38]; Ngaweeyan Maar-oo, Submission 662 (Education, Health and Housing), 16.

184. Debbie Bargallie, Bronwyn Carlson and Madi Day, [Make Us Count: Understanding Aboriginal Women’s Experiences in Victorian Public Sector Workplaces](#) (Research Paper, 2023), 22.

185. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023](#) (Report, 2024), 95.

186. Department of Families, Fairness and Housing, [Aboriginal workforce strategy 2021–2026](#) (2021).

187. Department of Families, Fairness and Housing, [Aboriginal workforce strategy 2021–2026](#) (2021), 11.

188. Department of Health, [‘Aboriginal workforce strategy 2021–2026’](#) (Webpage, 29 April 2023).

189. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023](#) (Report, 2024), 89.

190. Transcript of Deputy Secretary Katherine Whetton, 17 June 2024, 84 [43]–85 [6]; State of Victoria, [Balit Murrup: Aboriginal social emotional wellbeing framework 2017–2027](#) (October, 2017), 36–47.

191. State of Victoria, [Balit Murrup: Aboriginal social emotional wellbeing framework 2017–2027](#) (October, 2017), 47.

192. State of Victoria, [Balit Murrup: Aboriginal social emotional wellbeing framework 2017–2027](#) (October, 2017), 13.

193. Transcript of Deputy Secretary Katherine Whetton, 17 June 2024, 82 [37]–[38].

194. Aboriginal Housing and Homelessness Forum, Submission 536, 1.

195. See response to questions taken on notice by Minister Natalie Hutchins MP, Minister for Treaty and First Peoples, on 18 April 2024, Attachment B – First Peoples Frameworks and Strategies, [35] 1.

196. Department of Families, Fairness and Housing, Response to NTP-004-011 – ‘Response to Social Injustice (Housing) Request for Information Questions 1 to 20’, 36 [137], provided by the State of Victoria on 28 March 2025 in response to the Commission’s Request for Information. See also Victorian Aboriginal Housing and Homelessness Framework, [Annual Report Card 2022](#), 40; Victorian Government, [Victorian Government Aboriginal Affairs Report 2023](#) (Report, 2024), 54; Aboriginal Housing Victoria, *Mana-na woorn-tyeen maar-takoort: Every Aboriginal Person has a Home. The Victorian Aboriginal Housing and Homelessness Framework* (Framework, 2020), 90.

197. Witness Statement of Minister Harriet Shing MP, 13–20 [69]–[113]; Department of Families, Fairness and Housing, Response to NTP-004-011 – ‘Response to Social Injustice (Housing) Request for Information Questions 1 to 20’, 39–41, provided by the State of Victoria on 28 March 2025 in response to the Commission’s Request for Information.

198. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023 \(Report, 2024\)](#), 54.

199. See Witness Statement of Minister Harriet Shing MP, 3 June 2024, 13–20 [69]–[113].

200. Department of Families, Fairness and Housing, Response to NTP-004-007 – ‘First Peoples Housing – Enquiries, Frameworks and Reports’, 8, produced by the State of Victoria in response to the Commission’s Request for Information.

201. Aboriginal Housing and Homelessness Forum, Submission 536, 4.

202. Department of Families, Fairness and Housing, Response to NTP-004-007 – ‘First Peoples Housing – Enquiries, Frameworks and Reports’, 8, produced by the State of Victoria in response to the Commission’s Request for Information.

203. Witness Statement of Minister Harriet Shing MP, 3 June 2024, 18 [100]. See also Transcript of Dannii de Kretser, 7 June 2024, 40 [2]–[9].

204. Victorian Government, [Victorian Aboriginal Affairs Framework 2018–2023](#) (Framework, 2018); First Peoples State Relations, [‘Victorian Aboriginal Affairs Framework’](#) (Webpage, 27 February 2024).

205. First Peoples’ – State Relations, [‘Taungurung Recognition and Settlement Agreement’](#) (Webpage, 22 January 2024).

206. First Peoples State Relations, [‘Victorian Aboriginal Affairs Framework’](#) (Webpage, 27 February 2024).

207. Department of Premier and Cabinet, Response to NTP-004-003 — ‘DPC response to Requests for Information Health and land injustice lines of inquiry December 2023’, 7, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 4 December 2023. See also Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 25 [116]–28 [131].

208. Victorian Government, [Victorian Government Self-Determination Reform Framework](#) (2019).

209. The Victorian Traditional Owner Cultural Fire Knowledge Group, [Victorian Traditional Owners Cultural Fire Strategy](#); Department of Energy, Environment and Climate Action, Response to NTP-003-031 — ‘Annexure B – Self Determination Frameworks’, 10–11.

210. The Victorian Traditional Owner Cultural Fire Knowledge Group, [Victorian Traditional Owners Cultural Fire Strategy](#); Department of Energy, Environment and Climate Action, Response to NTP-003-031 — ‘Annexure B – Self Determination Frameworks’.

211. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — ‘Annexure B – Self Determination Frameworks’, 10–11.

212. Victorian Government, [Victorian Government Aboriginal Affairs Report 2023 \(Report 2024\)](#), 173; Department of Energy, Environment and Climate Action, Response to NTP-003-031 — ‘Annexure B – Self Determination Frameworks’, 10–11.

213. Victorian Traditional Owner Cultural Fire Knowledge Group, [Victorian Traditional Owner Cultural Fire Strategy](#).

Yoorrook acknowledges from information supplied by the State that the Cultural Fire Strategy is the subject of: a funding allocation for the implementation of the strategy equal to \$22.5 million over four years, with \$6.3 million per year ongoing; \$800,000 to each Traditional Owner Corporation over a four-year period; Cultural Fire Grants Program available to all Traditional Owners including those who do not yet have their rights to Country legally recognised, with \$10.3 million in funding expended in 2021–22 and 2022–23; \$5.2 million committed to date for the 2023–24 and 2024–25 periods.

Further, Yoorrook acknowledges: ongoing co-governance through the re-establishment of the Cultural Fire Leadership Group with an independent Aboriginal secretariat that guides budget decisions and prioritises implementation steps; ongoing support for Traditional Owners to deliver self-determined cultural burns through the Joint Fuel Management Program. Traditional Owners nominate and carry out the burns with support from Forest Fire Management Victoria or the Country Fire Authority.

214. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — ‘Annexure B – Self Determination Frameworks’, 7–10.

215. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — ‘Annexure B – Self Determination Frameworks’, 7–10.

216. The development of a Traditional Owner Game Management Strategy was funded by the Department of Jobs, Precincts and Regions (DJPR) as an action under the Victorian Government’s Sustainable Hunting Action Plan: Federation of Victorian Traditional Owner Corporations, *Traditional Owner Game Management Strategy* (Strategy, 2021).

217. Federation of Victorian Traditional Owner Corporations, *Traditional Owner Game Management Strategy* (Strategy, 2021), 4; Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practices and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 10–11, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023.

218. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practices and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 11, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023.

219. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 28.

220. See response to questions taken on notice by Minister Natalie Hutchins MP, Minister for Treaty and First Peoples, on 18 April 2024, Attachment B – First Peoples Frameworks and Strategies, [35] 6.

221. [Victorian Government and Family Safety Victoria, Dhelk Dja Safe Our Way – Strong Culture, Strong Peoples, Strong Families: 3-year Action Plan 2023–2025](#) (Report, April 2024).

222. Victorian Government and Family Safety Victoria, *Dhelk Dja: Monitoring, Evaluation and Accountability Plan* (Report, June 2021), 19.

In correspondence to Yoorrook dated 7 March 2025, the State informed Yoorrook the Dhelk Dja Partnership Forum monitors progress with quarterly reporting.

223. Department of Families, Fairness and Housing, Response to questions taken on notice by The Hon Vicki Ward MP, Minister for Prevention of Family Violence, and Dr Melanie Heenan, Deputy Secretary, Family Safey Victoria, on 20 June 2024, 6–32.

224. Department of Human Services and Victorian Aboriginal Child Care Agency (now Victorian Aboriginal Child and Community Agency), *Aboriginal cultural competence framework* (2008).

225. Department of Health, Response to NTP-004-010 — ‘The Nest’ Aboriginal family Wellbeing Service Model Framework’, produced by the State of Victoria on 2 April 2024 in response to the Commission’s Notice to Produce dated 28 March 2024.

226. VACCHO, [‘VACCHO Reaffirms Commitment to Aboriginal and Torres Strait Islander Families on Aboriginal and Torres Strait Islander Children’s Day’](#) (Webpage, 3 August 2024).

227. Karabena Consulting, *Literature Review: Victorian Aboriginal Early Years Health Framework* (2023), 6.

228. Department of Jobs, Skills, Industry and Regions, [‘Priorities and initiatives: Developing rural and regional Victoria’](#) (Webpage, 6 November 2024).

229. Response to questions taken on notice by Minister Tim Pallas MP, Treasurer of Victoria, on 26 June 2024 , 1.

230. VAEAI and Department of Education, Employment and Training, [Wurreker: The Koorie Community and TAFE in Victoria Equal Partnership](#) (Strategy, July 2000).

Yoorrook also notes the Wannik Strategy (2008–2021), which was funded over five years with \$30.8 million. The timeline for completion of Wannik was 2021, but the policy was superseded by Marrung (2016–2026). This policy aimed to improve education outcomes for First Peoples students by changing the culture and mindset of the government school system, implementing structural reforms, and making better use of mainstream efforts and programs. See Department of Education and Early Childhood Development, [Wannik: Learning Together – Journey to Our Future](#); Education Strategy for Koorie Students (Strategy, 2008); Victorian Auditor-General, *Indigenous Education Strategies for Government Schools* (Report, June 2011), vii.

231. VAEAI and Department of Education, Employment and Training, [Wurreker: The Koorie Community and TAFE in Victoria Equal Partnership](#) (Strategy, July 2000).

232. Emergency Recovery Victoria, [Strategy for Aboriginal Community-led Recovery](#) (April 2023); Victorian Government, [‘Strategy for Aboriginal Community-led Recovery’](#) (Webpage, 1 August 2023).

233. Emergency Recovery Victoria, [Strategy for Aboriginal Community-led Recovery](#) (April 2023), 6.

234. Emergency Recovery Victoria, [Strategy for Aboriginal Community-led Recovery](#) (April 2023), 18.



Emergency Recovery Victoria (ERV) told Yoorrook in correspondence dated 7 March 2025 that ‘ERV does not require specific funding to deliver this strategy; minor costs associated with delivery are met from ERV operating budget’.

235. Emergency Recovery Victoria, [Strategy for Aboriginal Community-led Recovery](#) (April 2023), 19.

236. Department of Health, ‘[Aboriginal and Torres Strait Islander cultural safety framework](#)’ (Webpage, 8 February 2023); Department of Health and Human Services, Response to NTP-004-010 — ‘*Aboriginal and Torres Strait Islander cultural safety framework; For the Victorian health, human and community services sector*’, produced by the State of Victoria on 2 April 2024 in response to the Commission’s Notice to Produce dated 28 March 2024.

237. Department of Health, *Department of Health: Annual Report 2023–24* (Report, October 2024), 77; Department of Families, Fairness and Housing, *Department of Families, Fairness and Housing: Annual Report 2023–24* (Report, October 2024), 77.

238. Department of Education and Training, [Dhelk Wukang 2022–2026: Aboriginal Inclusion Plan](#) (2022).

239. Department of Education and Training, [Dhelk Wukang 2022–2026: Aboriginal Inclusion Plan](#) (2022).

240. Department of Education and Training, [Dhelk Wukang 2022–2026: Aboriginal Inclusion Plan](#) (2022), 31.

241. Department of Jobs, Skills, Industry and Regions, [Yuma Yirramboi: Victorian Aboriginal Employment and Economic Strategy](#) (2022). See also Witness Statement of Minister Natalie Hutchins MP, 9 November 2023, 30–31 [147]–[152].

242. Victorian Government, *State Budget 2024–25*, Service Delivery, 3.

243. First Peoples’ Assembly of Victoria, Submission 593 (Economic Prosperity), 7.

244. Department of Families, Fairness and Housing, Response to NTP-004-005 — ‘*Aboriginal Inclusion Action Plan for The Orange Door*’, 5, produced by the State of Victoria on 2 February 2024 in response to the Commission’s Request for Information dated 25 September 2024.

245. Department of Families, Fairness and Housing, Response to NTP-004-005 — ‘*Aboriginal Inclusion Action Plan for The Orange Door*’, 5, produced by the State of Victoria on 2 February 2024 in response to the Commission’s Request for Information dated 25 September 2024.

246. Victoria Police, ‘[Family violence and Aboriginal communities](#)’ (Webpage, 28 January 2025).

247. Victoria Police, ‘[Family violence and Aboriginal communities](#)’ (Webpage, 28 January 2025).

248. Victoria Police, ‘[Family violence and Aboriginal communities](#)’ (Webpage, 28 January 2025).

249. The MARAM (Multi-Agency Risk Assessment and Management) annual implementation report 2022–23 noted that the number of local police sites participating in the Protocol increased from 10 to 17. See State of Victoria, Department of Families, Fairness and Housing, *Annual report on the implementation of the Family Violence Multi-Agency Risk Assessment and Management Framework 2022–23* (Report, February 2024), 26.

250. Government of Victoria, ‘[Nargneit Birrang – Aboriginal holistic healing framework for family violence](#)’ (Webpage, 1 December 2019). See also Witness Statement of Argiri Alisandratos, 24 April 2023.

251. VACCA, ThinkPlace and Family Safety Victoria, *The Nargneit Birrang Framework: Aboriginal Holistic Healing Framework for Family Violence* (December 2019), 29.

252. VACCA, ThinkPlace and Family Safety Victoria, *The Nargneit Birrang Framework: Aboriginal Holistic Healing Framework for Family Violence* (December 2019), 29.

253. Victorian Aboriginal Community Controlled Health Organisation, Victorian State Government, Department of Health, [Victorian Aboriginal Health and Wellbeing Partnership Agreement Action Plan 2023–2025](#), 5.

254. Victorian Aboriginal Community Controlled Health Organisation stated: ‘The Cabinet of the Victorian Government endorsed the Victorian Aboriginal Health and Wellbeing Partnership Forum Action Plan 2023–2025 in May 2023 but has not set aside funding to implement it.’ Victorian Aboriginal Community Controlled Health Organisation, Submission 445 (Education, Health and Housing, ), 59.

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