



Victorian Aboriginal Legal Service Submission to the
Productivity Commission's Review of the Closing the Gap
Agreement

October 2023



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Background to the Victorian Aboriginal Legal Service

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

Legal Services

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

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

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

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

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

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

Community Justice Programs

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

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



Policy, Research and Advocacy

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

Acknowledgement

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

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

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

Contributors

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

- Isabel Robinson, Senior Policy Officer
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- Emily Chauvel, Deputy Head of Policy, Strategy and Communication

Note on Language

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



SUMMARY OF RECOMMENDATIONS

Priority reform 1: formal partnerships and shared decision making

Recommendation 1. The Justice Policy Partnership (JPP) should be reformed significantly to ensure that it is a genuine partnership between Aboriginal parties and governments, including by:

- Changing the composition of the JPP so that Aboriginal and Torres Strait Islander Legal Services (ATSILS) from each jurisdiction are represented on the JPP, both to contribute direct jurisdictional expertise and ensure that State and Territory governments are accountable;
- Increasing funding to the National Aboriginal and Torres Strait Islander Legal Services (NATSILS), ATSILS, Coalition of the Peaks Members and independent JPP members to ensure they can effectively participate in the JPP;
- Increasing engagement between the JPP Secretariat and ATSILS (including ATSILS JPP Policy Officers), including for research tasks and to feed input into preparation of meeting papers;
- Increasing engagement between the JPP and jurisdictional CTG Partnerships;
- Ensuring that Government members of the JPP are authorised to make decisions;
- Increasing Ministerial engagement with the JPP;
- Enhancing mechanisms for collaboration between the JPP and other Closing the Gap (CTG) Policy Partnerships.

Recommendation 2. ATSILS should continue to receive funding for a JPP Policy Officer for the duration of the National Agreement.

Priority Reform 2: building the community-controlled sector

Recommendation 3. Funding arrangements must be reformed so that ACCOs, Traditional Owners and other Aboriginal organisations have access to adequate, sustainable, and autonomous financial resources.

Recommendation 4. Expenditure reviews should be conducted regularly, and ACCOs must be involved in the design and delivery of these reviews.

Priority Reform 3: transforming government organisations

Recommendation 5. The Victorian Government should respond in detail to the recommendations in the Yoorrook Justice Commission Critical Issues Report.

Recommendation 6. The Victorian Government must transfer decision-making power, authority, control and resources to First Peoples, giving full effect to self-determination in the Victorian child protection and criminal legal systems.

Recommendation 7. The Productivity Commission should request information from the Victorian Government about the progress and timeframe for finalising the Victorian whole-of-government Anti-Racism Strategy. The information should be shared with stakeholders who provided submissions on this Strategy.



Priority Reform 4: shared access to data and information at a regional level

Recommendation 8. Priority Reform 4 under the National CTG Agreement should be amended to explicitly commit governments to achieving Indigenous Data Sovereignty (**IDS**) and Indigenous Data Governance (**IDG**).

Recommendation 9. Commitments under the National Agreement and jurisdictional implementation plans to achieve IDS and IDG should include: data sharing agreements; investing in and enhancing ACCO data management and analytics; and enshrining IDS and IDG in legislation.

Embedding responsibility and accountability

Recommendation 10. Collection, management and use of data for the National Agreement should be led by an independent Aboriginal-led mechanism within each jurisdiction, that provides oversight for implementing the Agreement in that jurisdiction. IDS and IDG must be incorporated into legislation and policies establishing the independent mechanism in each jurisdiction.

Recommendation 11. Governments and Aboriginal communities in each jurisdiction should establish independent Aboriginal-led mechanisms, to provide oversight and accountability, similar to PAEC, for implementing the National Agreement in each jurisdiction (including priority reform areas and socio-economic targets).

Recommendation 12. As recommended by the Commission, employment requirements of all public sector CEOs, executives and employees require them to continually demonstrate how they have sought to: improve their cultural capability; develop relationships with Aboriginal and Torres Strait Islander people; identify and eliminate institutional racism; support the principles outlined in the National Agreement on Closing the Gap.

Recommendation 13. That the Victorian Government commit to funding an independent review of Victoria's Implementation Plan on Closing the Gap every two years for the duration of the Agreement.

Recommendation 14. For stronger accountability mechanisms to be built into the second Victorian Implementation Plan on Closing the Gap so all parties share responsibility in progressing agreed actions.

Recommendation 15. As recommended by the Commission, all documents developed under the National Agreement – including partnership stocktakes, agreements, expenditure reviews and evaluations – should be publicly available.



DETAILED SUBMISSIONS

Introduction

The Victorian Aboriginal Legal Service (**VALS**) welcomes the opportunity to provide feedback on the Draft Report of the Productivity Commission's ("**the Commission**") Review of the National Closing the Gap Agreement ("**National Agreement**").

As the first review of the National Agreement, the Commission's Review ("**the Review**") is a critical opportunity to strengthen mechanisms for implementation, accountability and oversight. In Victoria, there is significant work to be done in relation to all four of the Priority Reforms, as well as the socio-economic targets (particularly the justice and child protection targets).

Treaty presents an important opportunity to progress self-determination in Victoria, through transfer of power, resources, data and control; yet the commitments under the National Agreement require urgent action. Alongside Treaty negotiations, there must be immediate reforms to progress Victoria's obligations to the National Agreement, as detailed in the Victorian Implementation Plan.

Our submission is based on our experience as members of the Victorian Aboriginal Justice Caucus, the Victorian Partnership Forum on Closing the Gap (**CTG**) and the Justice Policy Partnership (**JPP**).

Our submission addresses each of the priority reforms, as well as the Commission's proposals on embedding responsibility and accountability. We look forward to engaging with the Commission further, as needed, and trust that there will be important changes to the National Agreement governance and accountability mechanism as a result of this Review.

Priority reform 1: formal partnerships and shared decision making


Information Request 1

- Are adequate support structures (such as resourcing and sufficient timeframes to provide views) in place to enable the participation of Aboriginal and Torres Strait Islander people and organisations?
- What else would help to support participation?
- How do policy partnerships build accountability into their structure and governance?
- Are the policy partnerships the right mechanism to address change across the five sectors? Are there other mechanisms that would be more effective?

Justice Policy Partnership (JPP)

VALS has participated in the JPP as a member of the National Aboriginal and Torres Strait Islander Legal Services (**NATSILS**) since its commencement in September 2021. We have played a more active role in the JPP since July 2022, when the VALS CEO was elected as an independent JPP member.

VALS has also contributed to the JPP and NATSILS submissions to the Commission's Review. We endorse the full set of recommendations contained in the JPP submission.




Since May 2022, we have received funding from the Commonwealth Attorney-Generals’s Department to employ a part-time JPP policy officer, who initially supported NATSILS and now primarily supports the VALS’ CEO in her capacity as an independent member on the JPP. The funding for the JPP policy officer was initially provided for a period that did not cover the life of the Agreement, and is now been extended for another three years. It is important that this funding is flexible and long term, so that JPP members can better support progress to achieving strategic priorities.

Our experience with the JPP shifted significantly following the appointment of the VALS CEO as an independent member. Prior to this, we experienced challenges with information flow, as ATSILS JPP Policy Officers were not authorised to formally engage with the JPP. Because of this, JPP Policy Officers were unable to participate in JPP meetings and were not able to access documents relating to the JPP (including minutes of meetings, agendas etc.)

Since the VALS CEO was appointed as a JPP independent member, our experience with the JPP has improved. However, we still continue to see the following challenges:

- The majority of policy issues identified by the JPP to achieve the justice targets are determined at State and Territory levels, meaning that the ability of the JPP to develop policy is limited and the JPP has functioned more as an information sharing network. Exceptions to this include issues such as implementation of the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)* and access to Medicare and the Pharmaceutical Benefits Scheme (**PBS**) for people in custody.
- This challenge is exacerbated by the fact that ATSILS – who have direct experience and expertise in justice issues in each jurisdiction – are not directly represented on the JPP. While some of the Aboriginal members on the JPP work at ATSILS and are able to bring the direct jurisdictional expertise and experience of their organisations and Communities, the current membership composition does not guarantee that the perspectives of each ATSILS are heard within the JPP. As key stakeholders in Aboriginal justice policy in each jurisdiction, ATSILS should be directly represented on the JPP, particularly given that each government is represented. Including each ATSILS would ensure that there is an equivalent jurisdictional perspective from ATSILS and would make the partnership would be much more effective and balanced.
- The JPP does not represent a true partnership between governments and Aboriginal Communities. There are a number of reasons for this, including:
 - Composition of the JPP and lack of representation of each ATSILS (as a discussed above)
 - Aboriginal members are not empowered to participate in JPP forums on the same footing as Government members (including as a result of funding constraints, information barriers, unwillingness of Government members to provide information, and insufficient time to consider papers and substantive agenda items).
 - The opaqueness of the JPP and lack of information’s sharing also undermines the capacity of the JPP to engage in genuine consultation and decision-making with Aboriginal Communities across the country.
 - Lack of resourcing for Aboriginal JPP members (particular independent members) means that Commonwealth Attorney-General prepares a lot of the papers and materials for the partnership. This creates a clear risk that the JPP agenda is driven by

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- governments and members have limited capacity to be across the papers enough to engage meaningfully.
- Government representatives on the JPP don't have authority to agree to anything under the JPP, which undermines the capacity of the JPP as a decision-making body. We agree with the Commission's findings that police partnerships "currently function as forums for discussion, with little if any authority for shared decision-making on significant policy issues."¹
 - There is no accountability for government parties that do not genuinely engage with the JPP.
 - It is VALS' contention that all these points are contrary to the intent of the Agreement to Implement the JPP being a 'joined up approach' to addressing the overrepresentation of Aboriginal and Torres Strait Islander peoples in the Criminal Justice System, particularly clause 20 relating to decisions making being shared and based on the principle of self-determination².
- Although the JPP has made the most progress out of any of the partnerships, the process of establishing the JPP has also been slow. We believe the ATSILS JPP Policy Officers are under-utilised in providing research support and feedback founded in our practice expertise. Despite the JPP's lack of engagement with the ATSILS JPP Policy Officers, the Victorian ATSILS JPP Policy Officer has made a substantial contribution to VALS policy and advocacy work on Victorian Aboriginal justice issues, including: bail reform, decriminalising public intoxication, prison healthcare, police accountability and independent detention oversight.


To address these challenges, there is a need for substantial changes to the JPP governance and accountability mechanism, including:

- Each ATSILS should be represented on the JPP: CEO's (or senior management) of each ATSILS should be members of the JPP; and ATSILS JPP Policy Officers should be invited to attend as observers.
- The JPP Secretariat should engage further with ATSILS' (including ATSILS JPP Policy Officers), including for research tasks and to feed input into preparation of meeting papers.
- National Aboriginal and Torres Strait Islander Legal Services (**NATSILS**), ATSILS, Coalition of the Peaks Members and independent JPP member must receive substantially increased funding to participate in the JPP;
- There should be mechanisms for cross-sector collaboration and engagement, including between the JPP and other CTG Policy Partnerships;
- Government members of the JPP must be authorised to make decisions;
- Ministers for each jurisdiction should engage further with the JPP.

Victorian Closing the Gap Partnership Forum

¹ Commission Review, p. 4.

² Joint Council on Closing the Gap, 'Agreement to Implement the Justice Policy Partnership', September 2021. Accessed via [weblink](https://www.ag.gov.au/legal-system/publications/agreement-implement-justice-policy-partnership): <https://www.ag.gov.au/legal-system/publications/agreement-implement-justice-policy-partnership>



VALS is a member of both Ngaweeyan Maar-oo, the Koorie Caucus of the Victorian Closing the Gap Partnership Forum and the Partnership Forum itself. VALS supports the submission to this review made by Ngaweeyan Maar-oo and the recommendations put forward.

The significant delays and lack of progress on Victoria's Implementation Plan has a direct correlation to community members who are in crisis. The ACCOs sector in Victoria is ready to implement and progress the priority reform areas and meet the targets, but the Victorian government has continually deferred necessary reform, awaiting outcomes of treaty negotiations. Our children, families and communities deserve more.

RECOMMENDATIONS

Recommendation 1. The Justice Policy Partnership (**JPP**) should be reformed significantly to ensure that it is a genuine partnership between Aboriginal parties and governments, including by:


- Changing the composition of the JPP so that Aboriginal and Torres Strait Islander Legal Services (**ATSILS**) from each jurisdiction are represented on the JPP, both to contribute direct jurisdictional expertise and ensure that State and Territory governments are accountable;
- Increasing funding to the National Aboriginal and Torres Strait Islander Legal Services (**NATSILS**), **ATSILS**, Coalition of the Peaks Members and independent JPP members to ensure they can effectively participate in the JPP;
- Increasing engagement between the JPP Secretariat and **ATSILS** (including **ATSILS** JPP Policy Officers), including for research tasks and to feed input into preparation of meeting papers;
- Increasing engagement between the JPP and jurisdictional CTG Partnerships;
- Ensuring that Government members of the JPP are authorised to make decisions;
- Increasing Ministerial engagement with the JPP;
- Enhancing mechanisms for collaboration between the JPP and other Closing the Gap (CTG) Policy Partnerships.

Recommendation 2. **ATSILS** should continue to receive funding for a JPP Policy Officer for the duration of the National Agreement.

Priority Reform 2: building the community-controlled sector

The National Agreement commits Government to support the development of a strong community-controlled sector, including through sustained capacity development and investment, and ensuring that ACCOs have a dedicated, reliable and consistent funding model.³

³ National agreement, para 45.



Although we are three years into the National Agreement, our experience indicates that service and program funding continues to be defined by short-term funding arrangements, which significantly undermine our capacity to progress self-determined solutions.

Under UNDRIP, Indigenous peoples “have the right to autonomy of self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.”⁴ Issues concerning the funding and resourcing of Aboriginal Community Controlled Organisations and institutions have been highlighted by United Nations human rights bodies in criticisms of the Commonwealth Government.⁵

As noted by the Commission, “it is unclear how much funding is allocated to ACCOs and non-Indigenous, non-government organisations (**NGOs**), as most governments (with the exception of the NSW and ACT Governments) have not published their expenditure reviews (and some have not undertaken them).”⁶ VALS advocates for regular expenditure reviews across jurisdictions, and strongly contends that government and Inside Policy should work closely with VALS and other ACCOs in designing and delivering this review.

As recommended recently in our submission to the Yoorrook Justice Commission:

- The Victorian Government should negotiate a Justice Treaty with Aboriginal Communities and ACCOs, which sets a new foundation to transform the criminal legal system, including through progressive transfer of power, resources, data and control to allow for Aboriginal justice models.
- Funding arrangements must be reformed so that ACCOs and other Aboriginal organisations have access to adequate, sustainable, and autonomous financial resources.
- Both the Victorian and Commonwealth governments should be required to report annually on the percentage of government funding going to Aboriginal specific investments. Reporting should be broken down into funding that goes to government departments and agencies, funding that goes to mainstream services, and funding that goes to Aboriginal organisations and individuals. Investments in Aboriginal Communities should be evaluated through Aboriginal-led evaluation, to analyse their impact and outcomes, and inform the design of future initiatives and investments.⁷

⁴ Article 4, [UNDRIP](#).

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

⁶ Commission, p. 4.

⁷ VALS, Nuther-mooyoop to the Yoorrook Justice Commission: Criminal Legal System, pp. 29, 30 and 44.



We note that under the Victorian Treaty Negotiation Framework, funding and revenue raising are identified as a potential subject matter for statewide and Traditional Owner Treaty negotiations.⁸

RECOMMENDATIONS

Recommendation 3. Funding arrangements must be reformed so that ACCOs, Traditional Owners and other Aboriginal organisations have access to adequate, sustainable, and autonomous financial resources.

Recommendation 4. Expenditure reviews should be conducted regularly, and ACCOs must be involved in the design and delivery of these reviews.

⁸ Treaty Negotiation Framework: First People’s Assembly of Victoria and the State of Victoria, pp. 40-41.



Priority Reform 3: transforming government organisations

The National Agreement requires systemic and structural transformation of mainstream government organisations to improve accountability and respond to the needs of Aboriginal and Torres Strait Islander people.⁹ This includes: identifying and eliminating racism; embedding meaningful cultural safety; delivering services based on genuine partnerships; increasing accountability through transparent funding allocations; supporting Aboriginal cultures; and improving engagement with Aboriginal people.

In Victoria, the Yoorrook Justice Commission (**Yoorrook**) and Treaty present an opportunity for transformational change. In this regard, we strongly support the following recommendations from Yoorrook, which seek to achieve transformational change in the child protection and criminal legal systems:

- The Victorian government must transfer decision-making power, authority, control and resources to First Peoples, giving full effect to self-determination in the Victorian child protection and criminal legal systems.¹⁰ This includes negotiating through the Treaty process, including through interim agreements.
- The Victorian government must take all necessary steps to begin and diligently progress the establishment of a dedicated child protection system for First Peoples children and young people supported by stand-alone legislation based on the right of First Peoples to self-determination and underpinned by human and cultural rights.¹¹
- The Victorian Government must negotiate with the First People’s Assembly of Victoria (FPAV), the establishment of an independent and authoritative oversight and accountability commission for the monitoring and evaluation of First Peoples related policies and programs.¹²
- The Victorian Government must as soon as possible significantly upscale the capability, competence and support in relation to human rights, including Aboriginal cultural rights, of all persons appointed to work or working in the child protection, corrections, youth justice, adult criminal legal system, Victoria Police and the forensic mental health system.¹³

We also note that the Victorian Government is in the process of developing a whole-of-government Anti-Racism Strategy.¹⁴ VALS made extensive submissions to the Anti-Racism Taskforce regarding this Strategy,¹⁵ which was due to be finalised in June 2022, but is still not final. Despite this, and despite following up on several occasions, there have been no updates to stakeholders regarding progress or timeframes for finalising this work.

Addressing systemic racism in Victoria must be seen as a priority, and we are disappointed to note the lack of progress for this reform area. VALS welcomes the opportunity to work in partnership with government across significant reform areas and ensure community voices are heard and their rights are

⁹ National Agreement, p. 11.

¹⁰ Yoorrook, Critical Issues report, Recommendations 1(a) and 2.

¹¹ Recommendation 1(c).

¹² Recommendation 4.

¹³ Recommendation 5.

¹⁴ [Anti-Racism Taskforce | vic.gov.au \(www.vic.gov.au\)](https://www.vic.gov.au/anti-racism-taskforce)

¹⁵ VALS, Submission on Victoria’s Anti-Racism Strategy (2021).



promoted, upheld and respected. Where these engagement and reform processes stall or are delayed has an impact on ACCOs, advocacy in these areas requires considerable resources to be dedicated, to foster trust and confidence between government and ACCOs there must be greater transparency and accountability.

RECOMMENDATIONS

Recommendation 5. The Victorian Government should respond in detail to the recommendations in the Yoorrook Justice Commission Critical Issues Report.

Recommendation 6. The Victorian Government must transfer decision-making power, authority, control and resources to First Peoples, giving full effect to self-determination in the Victorian child protection and criminal legal systems.

Recommendation 7. The Productivity Commission should request information from the Victorian Government about the progress and timeframe for finalising the Victorian whole-of-government Anti-Racism Strategy. The information should be shared with stakeholders who provided submissions on this Strategy.

Priority Reform 4: shared access to data and information at a regional level

Aboriginal Data Sovereignty and Aboriginal Data Governance

Information Request 4

- What are the substantive differences between the way Priority Reform 4 is currently described in the National Agreement on Closing the Gap and an explicit reference to Indigenous data sovereignty as the objective of Priority Reform 4?
- If the Agreement had Indigenous data sovereignty as the explicit objective of Priority Reform 4, what would governments have to do differently compared to what they have already committed to?
- What, if any, legislative or policy barriers are preventing governments from sharing data with Aboriginal and Torres Strait Islander people and organisations, or giving Aboriginal and Torres Strait Islander people more control over how data about them is governed?
- What changes are needed to overcome these barriers, and what would be the costs and benefits of these changes?

Priority Reform 4 under the National Agreement is that Aboriginal people have access to, and the capability to use, locally-relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development.



In our view, Indigenous Data Sovereignty (IDS)¹⁶ and Indigenous Data Governance (IDG)¹⁷ are inherent within Priority Reform 4. We strongly believe that IDS and IDG should be explicitly identified in the Agreement, to ensure that Aboriginal ownership and control over Aboriginal data is central to Priority Reform 4.

Under the Victorian Implementation Plan for Closing the Gap (“**Victorian Implementation Plan**”), and the Victorian Aboriginal Affairs Framework, and other policy frameworks,¹⁸ the government has recognised the importance of Aboriginal ownership and control of data,¹⁹ and committed to Indigenous Data Sovereignty and Governance. This includes:

- departments to develop sector wide data access and data sharing agreements with and for ACCOs and Traditional Owners in their sector (local, statewide and peak) with advice and input from the appropriate Aboriginal governance mechanism
- departments to prioritise additional investment in ACCO data management and analytics as a core function of ACCOS and Traditional Owners and collaboratively develop options to properly resource this function through allocations from departmental funding programs and through the annual budget process.²⁰

Despite the commitments in the Victorian Implementation Plan, there has been little progress towards data sharing agreements and the government continues to control and embed a deficit based narrative about Aboriginal people and communities, by controlling access to and use of data. VALS and other ACCOS face consistent challenges in accessing (let alone controlling) data about our communities. If we are going to provide adequate services, access sufficient resources, advocate for change and redefine the narrative about the criminal legal system and its impact on Aboriginal people, we need access to data, and we need to be able to use this data as we choose.

For example, we know that the rate of Aboriginal women in prison in Victoria on remand often exceeds 50% and has exceeded 70%. This data is damning and should be in the public domain; yet it is not reported publicly by the government. Instead, we are required to waste valuable resources to prepare Freedom of Information (FOI) applications, and then wait for months to receive a response.²¹ Another example is the confidentiality restrictions placed on data at governance forums like the Aboriginal Children’s Forum, where data that relates to Aboriginal children and families is shared with members,

¹⁶ Indigenous Data Sovereignty is defined as: “the right of Indigenous peoples to exercise ownership over Indigenous Data. Ownership of data can be expressed through the creation, collection, access, analysis, interpretation, management, dissemination and reuse of Indigenous Data.” See Indigenous Data Sovereignty Summit, *Communique*. 20 June 2018, p. 1.

¹⁷ Indigenous Data Governance is “the right of Indigenous Peoples to autonomously decide what, how and why Indigenous Data are collected, accessed and used. It ensures that data on or about Indigenous peoples reflects our priorities, values, cultures, worldviews and diversity.” See Indigenous Data Sovereignty Summit, *Communique*, (20 June 2018), p. 1.

¹⁸ AJA4 and Wirkala Kupla. *Burra Lotjpa Dunguludja* seeks to increase Aboriginal Community ownership of and access to justice data,¹⁸ including through improved collection and availability of Aboriginal justice data. *Burra Lotjpa Dunguludja*, p. 50: Goal 4.1 (“Greater accountability for justice outcomes”), Outcome 4.1.2 (“Increased Aboriginal community ownership of and access to data”). *Wirkara Kulpa*, p. 50.

¹⁹ Victorian State Government, *Victorian Closing the Gap Implementation Plan 2021-2023*, p. 46.

²⁰ Victorian CTG Implementation Plan, p. 27.

²¹ On average, VALS waits 12 months to receive a response to an FOI request directed at Victoria Police.



however this data cannot be shared publicly as part of ACCOs advocacy about these families’ needs and rights, and holding the government accountable.

Lack of transparency relating to data was highlighted by the Yoorrook Commission, which was required to request access to data relating to the criminal legal and child protections systems – this data was not publicly available and was certainly not controlled and managed by Aboriginal communities. Accordingly, Yoorrook made a number of recommendations relating to publicly accessible data,²² as well as IDS and IDG.²³

Additionally, under the Treaty Negotiation Framework, IDS is a potential subject matter for negotiation in Statewide and Traditional Owner treaties.²⁴ Although we strongly support negotiations on IDS through Treaty, it is critical that steps are taken immediately to support the rights of Aboriginal people and communities, individually and collectively, to:

1. Exercise control over the manner in which data concerning Aboriginal individuals and communities is gathered, managed, interpreted and utilised; and
2. Access and collect data obtained about Aboriginal individuals and communities.

In other jurisdictions, significant progress is being made towards IDS and IDG. For example, in 2022, British Columbia, Canada, was the first government in North America to enact an *Anti-Racism Data Act*,²⁵ which establishes a process for the government to seek consent from Indigenous communities to use their data. The Act aims to “dismantle systemic racism and discrimination” by helping to “identify gaps in programs and services, and allow government to better meet the needs of Indigenous, Black and racialized British Columbians.”²⁶

We strongly support immediate steps towards IDS and IDG, including data-sharing agreements, investing in and enhancing ACCO data management and analytics, and enacting IDS and IDG in legislation. VALS supports the implementation of the *Maiam nayri Wingara* Indigenous Data Sovereignty Principles²⁷.

RECOMMENDATIONS

Recommendation 8. Priority Reform 4 under the National CTG Agreement should be amended to explicitly commit governments to achieving Indigenous Data Sovereignty (IDS) and Indigenous Data Governance (IDG).

²² Recommendation 28(c), 32(f), 40(b)


²³ Recommendation 43(c). The Victorian Government must, as soon as possible and after consultation with the First Peoples’ Assembly of Victoria and relevant Aboriginal organisations, take all necessary steps to structurally reform the Victorian prison system based on the recommendations of the Cultural Review of the Adult Custodial Corrections System and in particular, enhanced data capability and information management system (recommendation 2.6), but which must apply Indigenous Data Sovereignty principles in relation to data of First Peoples

²⁴ Treaty Framework, para 25.2.

²⁵ [Anti-Racism Data Act](#) [SBC 2022].

²⁶ [New anti-racism data act will help fight systemic racism | BC Gov News](#)

²⁷ *Maiam nayri Wingara. (2018). Indigenous Data Sovereignty Communique Indigenous Data Sovereignty Summit 20th June 2018, Canberra, ACT. Available [here](#).*



Recommendation 9. Commitments under the National Agreement and jurisdictional implementation plans to achieve IDS and IDG should include: data sharing agreements; investing in and enhancing ACCO data management and analytics; and enshrining IDS and IDG in legislation.

Embedding responsibility and accountability

The Commission has recommended a number of measures aimed at increasing responsibility and accountability for implementing the National Agreement. This includes:

- An organisation to lead data development (draft recommendation 1)
- Designating a senior leaders or leadership group to drive jurisdiction-wide change (draft recommendation 2)
- Embedding responsibility into public sector employment requirements (draft recommendation 3)
- Central agencies leading changes to Cabinet, Budget, funding and contracting processes (draft recommendation 4)
- Legislative requirement for all Government agencies to report annually on Closing the Gap (draft recommendation 5)
- Publish all documents developed under the agreement, including partnership stocktakes and agreements, expenditure reviews and evaluations (draft recommendation 5).

Although not framed as a draft recommendation, the Commission has also included some guidance on the features of independent accountability mechanisms, which are to be established in each jurisdiction by 2023, pursuant to the National Agreement.²⁸

Organisation to lead data development

The Commission is recommending that there be an organisation or entity with dedicated resourcing and staffing to lead data development.²⁹ This entity would have primary responsibility for data development under the National Agreement, which is currently split across multiple working groups and organisations, including the Commission.

Information Request 6

- What governance structure would ensure it has the authority and capability to deliver?
- What capabilities, skills or attributes should the organisation's leadership and staff have?
- How might it apply principles of Indigenous data sovereignty and governance in data development?

²⁸ Report, p. 73. National Agreement, para 67.

²⁹ Draft recommendation 1, p. 10.



VALS strongly supports the need for independent data development for the National Agreement, to support independent and Aboriginal-led monitoring and evaluation. In our view, data development is best located within the mechanisms established in each jurisdiction to ensure oversight and accountability for implementing the Agreement. To ensure compliance with IDS and IDG, the organisation should be an Aboriginal organisation.

Whichever ACCO organisation(s) is assigned to take the lead on data development, Closing the Gap data must be collected, used and managed in compliance with IDS and IDG. As above, this means that the entity responsible for data development should establish mechanisms – preferably in legislation – to support the rights of Aboriginal people and communities, individually and collectively, to:

1. Exercise control over the manner in which data concerning Aboriginal individuals and communities is gathered, managed, interpreted and utilised; and
2. Access and collect data obtained about Aboriginal individuals and communities.

RECOMMENDATIONS

Recommendation 10. Collection, management and use of data for the National Agreement should be led by an independent Aboriginal-led mechanism within each jurisdiction, that provides oversight for implementing the Agreement in that jurisdiction. IDS and IDG must be incorporated into legislation and policies establishing the independent mechanism in each jurisdiction.


Independent mechanism

The National Agreement requires that by 2023, governments each identify, develop or strengthen an independent mechanism, or mechanisms, that will support, monitor, and report on the transformation of mainstream agencies and institutions (Priority Reform 3).³⁰

Information Request 9

- What are the essential features of the independent mechanism?
- What levers should the independent mechanism have to enable it to hold governments to account?
- Should the independent mechanism have a broader role – beyond Priority Reform 3 – so that it can drive accountability for progress towards all of the Priority Reforms in the Agreement?
- How could the independent mechanism improve the timeliness of accountability?
- How should the independent mechanism be situated with respect to the new and emerging Aboriginal and Torres Strait Islander bodies (such as the proposed Voice to the Australian Parliament and Government, state and territory representative bodies, Voices to State Parliaments, treaty processes, and justice commissions)? Is a stand-alone independent mechanism still required?

³⁰ National Agreement, para 67.

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- What role should the independent mechanism play in reviewing and/or approving Closing the Gap implementation plans and annual reports?

In Victoria, the Government has previously committed to the establishment of an Aboriginal-led evaluation and review mechanism to independently monitor the Victorian Aboriginal Affairs Framework (**VAAF**) 2018-2023. Since then, accountability, monitoring and review mechanisms have also been identified as an area to be progressed through Treaty.³¹

Until an independent Aboriginal-led evaluation and review mechanism is established, the Government continues to report on Closing the Gap implementation under the Victorian Aboriginal Affairs Report (**VGAAR**), which is tabled in Parliament annually in July.³² The VGAAR is not independent and does not accurately incorporate the views of Aboriginal communities about justice outcomes in Victoria.³³ In the interim, and before an independent Aboriginal-led oversight mechanism is established, the VGAAR process must be strengthened.

As noted above, Yoorrook has also recently recommended that the Victorian Government must negotiate with the First People’s Assembly of Victoria (**FPAV**), the establishment of an independent and authoritative oversight and accountability commission for the monitoring and evaluation of First Peoples related policies and programs.³⁴ We support the establishment of an independent and authoritative oversight and accountability commission, but we believe that it should have functions which go beyond monitoring and evaluation of policies and programs and propose an Aboriginal led-Public Accounts and Estimates Committee be established..

Lack of government accountability continues to be a major challenge for ACCOs and Aboriginal communities in Victoria. This is clear from the evidence submitted to Yoorrook, both in submissions and oral evidence. For example, in 2022, the Victorian Parliament Legislative and Social Issues Committee handed down a report on the criminal legal system in Victoria, including 73 findings and 100 recommendations.³⁵ Despite a legislative requirement to respond to the report within 6 months, the Government is yet to table a formal response.

In relation to the criminal legal system, both VALS and the Victorian Aboriginal Justice Caucus (**AJC**) have advocated for an independent statutory office of the Aboriginal Social Justice Commissioner (**ASJC**), with adequate resources and powers to provide oversight for Aboriginal justice in Victoria.³⁶ This would include oversight for implementing coronial recommendations and recommendations from the Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**), but could also play a role in providing independent Aboriginal-led oversight for justice targets under the National Agreement. Importantly,

³¹ Treaty Negotiation Framework,


³² See for example, Victorian Government, [VGAAR 2022](#) (2023).

³³ Aboriginal Executive Council, Analysis of VGAAR, 2020.

³⁴ Recommendation4.

³⁵ Parliament of Victoria, Legislative and Social Issues Committee, Inquiry into Victoria’s Criminal Justice System: Final Report, (2022).

³⁶ VALS, *Nuther-mooyoop to the Yoorrook Justice Commission: Criminal Legal System* (2022) pp. 44-45.



the ASJC would need to have robust powers, so that its recommendations are not ignored by Government.

RECOMMENDATIONS

Recommendation 11. Governments and Aboriginal communities in each jurisdiction should establish independent Aboriginal-led mechanisms, to provide oversight and accountability, similar to PAEC, for implementing the National Agreement in each jurisdiction (including priority reform areas and socio-economic targets).

Sector-specific accountability mechanisms

In addition to whole-of-government accountability mechanisms, the Commission is also asking for information regarding sector-specific accountability mechanisms, including for example, children's commissioners, ombudsman and other complaints mechanisms.

Information request 11

- What makes these sector-specific accountability mechanisms effective or ineffective?
- How could they contribute to enhancing accountability for outcomes under the National Agreement on Closing the Gap?
- How can dedicated Aboriginal and Torres Strait Islander accountability mechanisms (such as Aboriginal and Torres Strait Islander Children's Commissioner roles) help to improve accountability to Aboriginal and Torres Strait Islander people?

In Victoria, there are a number of sector-specific oversight and accountability mechanisms, including:

- Independent Broad-based Anti-corruption Commission (**IBAC**)³⁷
- Victorian Ombudsman³⁸
- Victorian Equal Opportunity and Human Rights Commission³⁹
- Mental Health and Wellbeing Commission⁴⁰
- Health Complaints Commissioner⁴¹
- Disability Services Commissioner⁴²
- Commission for Children and Young People.⁴³

³⁷ See <http://www.ibac.vic.gov.au>

³⁸ See <https://www.ombudsman.vic.gov.au/complaints/#who-can-i-complain-about>

³⁹ See <https://www.humanrights.vic.gov.au/>

⁴⁰ See <https://www.mhwc.vic.gov.au/role-mental-health-and-wellbeing-commission>

⁴¹ See <https://hcc.vic.gov.au/>

⁴² See <https://odsc.vic.gov.au/making-a-complaint/>

⁴³ See <https://ccyp.vic.gov.au/monitoring-and-advocacy/>



It is not possible to analysis each of these mechanisms in detail, however, VALS has previously raised significant concerns about the lack of robust oversight mechanisms particularly in relation to police,⁴⁴ prisons⁴⁵ and child protection.⁴⁶ Both Yoorrook⁴⁷ and the Cultural Review of the Adult Custodial Corrections System⁴⁸ have also raised concerns about the lack of oversight and accountability.

Based on our concerns, VALS and AJC have advocated for many years for an ASJC, to provide independent and culturally safe oversight of justice issues in Victoria.⁴⁹ We have also advocated for an independent police complaints body, as well as independent investigations into police-contact deaths.⁵⁰

Senior leader or leadership group to drive change in each jurisdiction

Information Request 10

- Which senior leader or leadership group should be tasked with promoting and embedding changes to public sector systems and culture, in order to improve cultural capability and relationships with Aboriginal and Torres Strait Islander people and to eliminate institutional racism throughout the public sector?
- What tasks should they be assigned (see draft recommendation 2)?
- What would be the advantages and disadvantages of your preferred leader or leadership group?
- What particular skills or attributes would they need in order to improve cultural capability and relationships with Aboriginal and Torres Strait Islander people throughout the public sector?
- How would the role, powers and functions of this leader or leadership group need to change in order for them to succeed in this specific role?
- How could this leader or leadership group drive accountability right through the public sector, including operationally on the ground?

Currently in Victoria, overarching responsibility for implementing the National Agreement in Victoria rests with the Minister for Treaty and First Peoples, and the First Peoples – State Relations Group within the Department of Premier and Cabinet (DPC). In 2022, the Government established the Closing the Gap Partnership Forum, which is the implementation body for Closing the Gap in Victoria. *Ngaweeyan Maar-*

⁴⁴ See VALS, *Nuther-mooyoop to the Yoorrook Justice Commission: Criminal Legal System* (2022) pp. 65-66; VALS, *Policy Paper: Reforming Police Oversight in Victoria* (2022).

⁴⁵ VALS, *Nuther-mooyoop to the Yoorrook Justice Commission: Criminal Legal System* (2022) p. 70.

⁴⁶ VALS, *Nuther-mooyoop to the Yoorrook Justice Commission: Child Protection System* (2022).

⁴⁷ Yoorrook Justice Commission, *Report into Victoria's Child Protection and Criminal Justice Systems* (2023), Recommendation 27 and pp245-279.

⁴⁸ The Review recommended that the Victorian government establish a new independent statutory Inspectorate of Custodial Services, with roles of Inspector of Adult Custodial Services and Aboriginal Inspector of Adult Custodial Services to provide monitoring and inspection of the adult custodial corrections system. See Cultural Review of the Adult Custodial Corrections System (2022), Recommendation 2.3.

⁴⁹ VALS, *Nuther-mooyoop to the Yoorrook Justice Commission: Criminal Legal System* (2022) pp. 44-45.

⁵⁰ VALS, *Nuther-mooyoop to the Yoorrook Justice Commission: Criminal Legal System* (2022) pp. 65-66; VALS, *Policy Paper: Reforming Police Oversight in Victoria* (2022).



oo is the Koorie Caucus of the Forum and has 13 ACCO representatives from 14 sectors and delegates from the Aboriginal Governance Forums.

We strongly support draft recommendation 3, that the employment requirements of all public sector CEOs, executives and employees require them to continually demonstrate how they have sought to: improve their cultural capability; develop relationships with Aboriginal and Torres Strait Islander people; identify and eliminate institutional racism; support the principles outlined in the National Agreement on Closing the Gap.

Additionally, the Commission is recommending that there should be whole-of-government processes in each jurisdiction to drive changes to implement the Agreement (draft recommendation 4). At a minimum, the Commission recommends that this will require central agencies to review Cabinet, Budget, funding and contracting arrangements to ensure that they support the Agreement.

RECOMMENDATIONS

Recommendation 12. As recommended by the Commission, employment requirements of all public sector CEOs, executives and employees require them to continually demonstrate how they have sought to: improve their cultural capability; develop relationships with Aboriginal and Torres Strait Islander people; identify and eliminate institutional racism; support the principles outlined in the National Agreement on Closing the Gap.

Implementation plans and annual reports

Information Request 8

The Commission is seeking further information on how to improve the quality of governments' implementation plans and annual reports, and what is needed for governments to prepare the plans and reports according to the agreed criteria. Could this include a function for an external group (such as the independent mechanism) to assess adherence to the criteria?

The Victorian Closing the Gap Implementation Plan 2021-2023 was developed jointly by the Aboriginal Executive Council (**AEC**) and the Victorian Government. It is concerning and deeply disappointing that this Implementation Plan has not been adhered to, and there have been significant delays to progressing critical reforms. Greater government accountability mechanisms need to be built in to ensure this cannot be repeated. As above, oversight and monitoring of Victoria's progress in implementing the National Agreement should be carried out by an independent Aboriginal-led mechanism in Victoria to provide oversight and accountability for implementing the National Agreement in Victoria.

The Commission is recommending that each government agency be required by legislation to report annually on Closing the Gap (draft recommendation 5). In Victoria, this would require entities to report separately in their annual reports, in addition to the VGAAR. We support this recommendation,



however, annual reporting by government entities (either separately or combined) must be complemented by independent monitoring and evaluation.

The next Victorian Implementation Plan is currently being developed by the Victorian Partnership Forum on Closing the Gap.

RECOMMENDATIONS

Recommendation 13. That the Victorian Government commit to funding an independent review of Victoria’s Implementation Plan on Closing the Gap every two years for the duration of the Agreement.

Recommendation 14. For stronger accountability mechanisms to be built into the second Victorian Implementation Plan on Closing the Gap so all parties share responsibility in progressing agreed actions.

Transparency

We strongly support the Commission’s draft recommendation 6, that all documents developed under the National Agreement – including partnership stocktakes, agreements, expenditure reviews and evaluations – should be publicly available.

As discussed above, our experience with the JPP has previously been defined by opacity and poor information flow. There is a clear need to increase transparency across all aspects of the National Agreement, including each of the governance structures, as well as processes linked to development of jurisdictional Implementation Plans and monitoring implementation.

RECOMMENDATIONS

Recommendation 15. As recommended by the Commission, all documents developed under the National Agreement – including partnership stocktakes, agreements, expenditure reviews and evaluations – should be publicly available.