

# Presentation to the Criminal Lawyers of the Northern Territory Biennial Conference - Darwin Convention Centre, 28 June 2022

## "Victoria's Yoorrook Truth and Justice Commission"

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### **Introduction**

The Yoorrook Justice Commission was announced by the Victorian government on 9 March 2021.

At the time, Acting Premier James Merlino described the Yoorrook Justice Commission as: *“an opportunity for truth telling, and an opportunity for truth healing.”*

He told Victorians that a Royal Commission was being established to inquire into more than two centuries of colonisation and oppression of indigenous people in the state. It was to be tasked with making findings and recommendations for government.

It was the first time an Australian State or Territory had established a formal truth-telling process in respect of the impact of colonisation.

The announcement came at an interesting time for Victorians, who had just emerged from 4 consecutive hard lockdowns totalling 186 days and not knowing that a further 104 days of hard lockdown was still to come.

During the lockdowns Victorians experienced (most for the first time in their lives) serious limitations in their ability to move around, attend social and public functions and even leave their homes.

For most Victorians this imposition of government restriction and limitations on their lives was an entirely unprecedented experience.

By way of contrast, it's worth remembering that since colonisation, the experience of many of the First Peoples living in what is now known as Victoria, has been marked by limitation and restriction. Historically, this has included restrictions upon movement and activity, detrimental government interventions, limitations to the rights to marry, own property and work, and limited opportunity for self-determination.

This history is little known or understood by most of the Victorian populace.

One of the important functions of the Yoorrook Justice Commission to educate Victorians and bring them 'along the journey'.

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The impetus for the Yoorrook Justice Commission arose from the Victorian treaty process.

The First Peoples Assembly is the semi elected body of indigenous representatives established in 2019 to implement the treaty making process between First Peoples and the State of Victoria.

When undertaking the consultative process with Indigenous Peoples in Victoria the First Peoples Assembly was told on multiple occasions that there can be no treaty without truth, leading to the Assembly calling upon government to establish a formal truth telling process.

To the current time, Victoria is the only State or Territory to date that has enacted both the treaty and truth elements of the Uluru Statement from the Heart.

### **The Uluru Statement from the Heart**

As all present at this conference will know well, the Uluru statement is the 2017 manifesto that called for an Indigenous “voice” in the constitution and a truth-telling commission to enable agreements between First Nations people and the federal government.

By way of brief recap:

Back in 2015 Indigenous leaders met with then Prime Minister Malcolm Turnbull and Opposition leader Bill Shorten at Kirribilli House where the Kirribilli Statement was issued calling for constitutional recognition of First Peoples.

In response, the Prime Minister and Opposition leader established the Referendum Council to advise the Prime Minister and Leader of the Opposition on options for constitutional reform.

The Referendum Council ran a series of 13 First Nations Regional Dialogues to discuss options for constitutional reform, and to ensure that Aboriginal decision making is at the heart of the reform process.

These regional dialogues began in 2016 and progressed through to 2017.

The Referendum Council held the **National Constitutional Convention** at Uluru, and the process ratified the decision making of the Regional Dialogues.

The Uluru Statement from the Heart was issued by the Convention to the Australian people. This called for a constitutionally entrenched First Nations voice to Parliament and a Makarrata commission to oversee a process of treaty making and truth telling.

In June 2017 , The Referendum Council handed down its final report which endorses the Uluru Statement from the Heart and its call for voice, treaty, and truth in that order.

The Commonwealth Government subsequently rejected the call for a voice to Parliament on the basis it distorts Australia's bicameral system by introducing a “third chamber”.

The Uluru Statement’s call for a truth-telling emerged from the Aboriginal and Torres Strait Islander peoples themselves.

Interestingly, it also emerged independently from the dialogue process as it was initially designed, which did not contain a truth-telling process as a separate option for reform; rather, it emerged organically but undeniably from the dialogues themselves as a step on the journey for how Aboriginal and Torres Strait Islander peoples believed they could address current disadvantage and power imbalance on their own terms.

### **Transitional Justice and Truth Telling Commissions**

The Uluru Statement acknowledges the trend to engage in transitional justice through a formal truth telling commission process to advance reconciliation.

The objective of transitional justice includes:

- to shed light on past violations of human rights;
- to address challenges of the present; and
- to prepare the ground for future relations based on democracy and human rights.<sup>1</sup>

Since 1974, there have been at least 40 national truth commissions around the world.

One of the most notable commissions is the South African Truth and Reconciliation Commission, (of which the Yoorrook Justice Commission was modelled) which investigated and sought reconciliation following the human rights abuses that arose under apartheid. In 2003, that Commission granted amnesty to the perpetrators who confessed to their crimes.

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<sup>1</sup> (Professor the Hon Kevin Bell AM QC, ‘First Peoples’ Truth and Justice Commissions’).

Another Commission worth noting is the Canadian Truth and Reconciliation Commission established in 2008 to investigate the crimes and harm done by the government by forcibly removing First Nations Children and placing them in residential schools which operated between 1878 to 1996.

That Commission concluded by issuing 94 “calls to action” to redress the harm and advance reconciliation.

Similar Commissions are currently underway in Sweden, Norway and Finland to examine the forced assimilation of the Sami people.

### **Victorian Experience- Treaty process**

The Victorian Yoorrook Justice Commission arose directly from the Victorian treaty process,

By way of a brief overview of the treaty process so far in Victoria:

- In 2016 the Victorian Government committed to engaging in a treaty process.
- In 2017 the Victorian Treaty Advancement Commission was created.
- a First Peoples working group engaged in two years of consultation then presented its final report on the 'Aboriginal Representative Body' in 2018.
- more than 400 Aboriginal Victorians attended a Treaty State-wide Gathering (with many more watching online) to discuss the proposed Aboriginal Representative Body model.
- Also in 2018 the 'Advancing the Treaty Process with Aboriginal Victorians Bill' was debated in Parliament and passed by both Chambers.
- The Act prescribes guiding principles for the treaty process and also critically, envisages the establishment of a self-determination fund.
- In 2019 an Aboriginal Representative Body called First Peoples' Assembly of Victoria was established after a five-week voting election period.
- Notably despite the extensive consultation process The Assembly is not without its critics from the Indigenous community.

In May 2020, the Victorian Government announced the establishment of a truth and justice process to formally recognise the historical wrongs and address the ongoing injustices for Aboriginal Victorians.

### **The Yoorrook Justice Commission:**

The Yoorrook Justice Commission is unique in that it will investigate First Peoples' experiences of colonisation in Victoria since 1788 to present.<sup>2</sup>

Victoria's policies towards its first peoples throughout this period included early benevolence and 'protectionism' (against a backdrop of actual brutality and violence), later followed by policies of segregation and policies forced assimilation.

This includes the devastating policies which caused the 'stolen generation'.

The Letters Patent for the Yoorrook Justice Commission establish a broad remit for the Commission to investigate and create an official public record of systemic injustices experienced by first peoples of Victoria since colonisation.

One of the Commission's important objectives is building a new foundation for a relationship between First Peoples and the State of Victoria and all Victorians.

## 2. OBJECTIVES

The objectives of this Royal Commission are to:

- a) establish an official public record based on First Peoples' experiences of Systemic Injustice since the start of Colonisation;
- b) 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;
- c) determine the causes and consequences of Systemic Injustice including the role of State policies and laws and which State Entities or Non-State Entities bear responsibility for the harm suffered by First Peoples since the start of Colonisation;
- d) develop a shared understanding among all Victorians of the diversity, strength and resilience of First Peoples' cultures, knowledge, and traditional practices;
- e) help build the foundations for a new relationship between First Peoples and the State of Victoria and all Victorians, based on truth and justice to prevent the recurrence of injustice;
- f) support the treaty-making process between the State of Victoria and First Peoples, including through the identification of subject matters for potential inclusion in a treaty or treaties; and
- g) 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.

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<sup>2</sup> Historically, Victoria had several inquiries into the circumstances of its First Peoples including the early 1836 and 1877 inquiries, titled the Report of the Parliamentary Select Committee on Aboriginal Tribes (British Settlements) (20 February 1837) and Royal Commission on the Aborigines: Report of the Commission together with Minutes of Evidence and Appendices (Victoria, 1877).

The Commission is named after “Yoo-rrook”, which means “truth” in the Wemba-Wemba/Wamba Wamba language spoken around north-western Victoria.

### **The pros and cons of a Royal Commission truth telling process**

A Royal Commission is useful tool to implement transitional justice.

Victorian Royal Commissions have certain powers granted by the *Inquiries Act 2014*. These include the power to compel production of documents and attendance of witnesses, issue and vary notices to produce or notices to attend. If a person fails to comply with a notice, the Commission may order the person to comply with the notice within a period specified by the Court.

A Royal Commission can conduct its inquiry in the manner it sets fit with consideration to procedural fairness requirements, letters patent and the Act.

The Letters Patent established the Royal Commission and among other things, sets the investigative themes.

A Royal Commission is not bound by the rules of evidence and may inform itself of any matter it sees fit.

Some of the Terms of Reference include to inquire and report on injustices such as **cultural violations, theft and misappropriation and destruction of cultural knowledge, massacres, and the dispossession and displacement of Aboriginal peoples, families and children.**

Some of the recognised strengths of a formal truth telling commission include:

- An opportunity for political leaders and civil society to help their country understand why and how certain events happened, and what lasting impacts there are on society;
- An opportunity to help prevent further abuses occurring again;
- An opportunity to identify and implement reparations, justice, and institutional and policy reforms; and
- An opportunity for individual, family, community, and national healing.

However, criticisms of a formal truth telling commission include:

- Lack of self-determination in the establishment of any formal commission (although contrast with the consultative process adopted for the YJC);
- Unclear or contested expectations, parameters and terms of reference, for example, focussing exclusively on the past, whether amnesty should be offered, and whether a commission should have powers of compulsion;
- Lack of support for those telling and hearing the truth;
- Limited or no guarantee the abuse or conflict will stop;

- Lack of justice or substantive reform;
- Potential for recommendations to not be implemented; and
- Unwillingness to address the fundamental causes of conflict or abuse.

When questioned about the Yoorrook Justice Commission after it was announced, Minister Williams stated:

*“I suppose what was appealing about a royal commission as a structure for this particular phase was around the ability to compel information and the like,”*

*“However, it needs to be said it was always open to the commission itself to make recommendations around any need to have an ongoing or extended truth-telling process.”*

The Commission has expressed several priorities it wants to see result from its work exploring issues that have faced indigenous Victorians since colonisation. In brief:

- A transformed Victoria, based on truth and justice and grounded in First Peoples enduring spirit culture and self-determination
- Establishing the truth of Victoria’s past
- Deep listening to the voices of First Peoples, hearing their experience and learning how culture has evolved and survived amid trauma
- The Commission will propose changes to laws, institutions, and systems which can be taken up through treaty negotiations and other ways

In order to achieve this, the Commission has articulated that it will implement a number of strategic priorities to ensure that these goals are met which includes:

- Laying strong foundations for trust and cultural legitimacy
- Honour First Peoples’ Elders and preserve knowledge
- Lay the foundations for a comprehensive picture of systemic injustices against First Peoples and Promoting a coherent and holistic reform agenda

### **Interaction of Yoorrook Justice Commission and Acts/International instruments**

The Commission has been set up explicitly to undertake a ‘human rights-based approach’. Clause 1 of the Letters Patent which provides the 'background' in which the State of Victoria acknowledges its responsibilities under both legislative instruments enacted in Australia and various international instruments including:

- *Charter of Human Rights & Responsibilities Act 2006 (Vic)* which recognises that Aboriginal persons have distinct cultural rights;

- The *Traditional Owner Settlement Act 2010* (Vic), which recognises the right of traditional owners to land justice and establishes a facilitating mechanism;
- The *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic), which establishes processes and institutions for state-based treaty-making between the First Peoples and the State; and
- United Nations instruments including the Declaration on the Rights of Indigenous Peoples (UNDRIP).

### Collection of evidence

After an open selection process, five Commissioners were appointed to the Yoorrook Justice Commission comprising a majority first nations Commissioners.<sup>3</sup>

The Commission commenced with what it calls "yarning circles "with Elders on Country in regional Victoria.

It aimed to ensure their insights influence the investigative process to consider what issues are most important for the inquiry to focus on.

The ongoing Victorian lockdowns during the early months of the Commission created significant delays for the Commission.

Importantly, the Commission has expressed a priority in engaging in culturally appropriate processes in the gathering evidence to promote respect and wellbeing.

For example, provision is made for evidence be given by witnesses in a confidential space and on Country to support their social and emotional wellbeing.

There is a recognition by the Yoorrook Justice Commission that injustices and associated trauma experienced by First Peoples may remerge during the Commission and a range of supports (including legal support) are provided.

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<sup>3</sup> The Commissioners are : **Professor Eleanor Bourke**, a Wergaia/Wamba Wamba Senior Elder, Traditional Owner and Chair ; **Dr Wayne Atkinson** (retiring as at June 2022), a Yorta Yorta/Dja Dja Wurrung Senior Elder and Traditional Owner; **Ms Sue-Anne Hunter**, a Wurundjeri and Ngurai illum Wurrung woman and Traditional Owner; **Distinguished Professor Maggie Walter**, an Aboriginal Tasmanian (Palawa) woman and descendant of the Pairrebenne People of the North-East Nation; Professor the Hon Kevin Bell AM QC (non-Aboriginal).



## **Wurrek Tyerrang (Public Hearings)**

The Commission formally launched at the Stolen Generations Marker in Fitzroy.

As at the time of giving this presentation, The Commission has had two rounds of Public Hearings (wurrek tyerring).

The Commission held the public hearings at a building in Charcoal Lane in Fitzroy, a place of significance which between 2009 until it was closed on 16 September 2021 supported and provided training to more than 300 Aboriginal and Torres Strait Islander people.

The hearings touched on a many of the key recurring themes for First Nations people since colonisation including the trauma of the Stolen Generation, the criminal justice system and incarceration, aboriginal missions and losses of language, culture and country.

In the hearings, which were able to be viewed by the public via a video link from the Commission's website the Commissioners first heard evidence from Elders. (their evidence can still be viewed on the YJC website).

The Elders who gave evidence included:

**Uncle Jack Charles**, an Elder and prominent First Nations actor, who shared his experience growing up under Australia's forced assimilation programme, and his journey to discover his culture and history. He also spoke of his personal experience in the justice system and drug addiction.

**Uncle Johnny Lovett**, Gunditjmara and Boandik Elder, who spoke about his childhood, living in an Aboriginal mission, as well as being a part of the stolen generations. Uncle Lovett also spoke of the issues with the criminal justice system and deaths in custody.

**Aunty Fay Carter**, a Yorta Yorta and Dja Dja Wurrung Elder who shared her experience growing up at Cummeragunja Mission and then at a settlement on the outskirts of Mooroopna, her experience racism in medical care at the Echuca Hospital and the resilience of her people.

**Aunty Alma Thorpe**, an Elder who spoke of growing up in Fitzroy during the Great Depression and her insights into the oppressive and traumatic effects of the Aborigines Protection Act 1886 (Vic). She also described forced sterilisation and First Peoples activism during the 1970s.

In the final two days of the first hearing block the Commission then called for evidence from the First Peoples Assembly and the State of Victoria.

**Mr Marcus Stewart**, Co-Chair of the First Peoples Assembly of Victoria and a proud Nira illim bulluk man of the Taungurung Nation spoke about the purpose of the Assembly in the treaty process journey in Victoria.

He discussed the need for self-determination in the form of representation in parliament, constitutional recognition and reform and the need to address land and data sovereignty.

On the final day of the first hearing block (wurrek tyerring), The Minister for Aboriginal affairs, **Gabrielle Williams MP** addressed the Commission.

She acknowledged that trust needs to be formed between First Nations and the government and said:

*“Certainly, as a representative of the government, I don’t have a right to expect that there should be automatically faith in us. That is something ... that needs to be built”*

The Minister acknowledged on behalf of the State, that that sovereignty was never ceded.

She acknowledged that colonisation involved massacres, wars and extra-judicial violence and the deliberate exclusion of First Peoples, and that the impact of these wrongs are still being felt:

4. It must be acknowledged that the long-lasting, far-reaching and intergenerational consequences of the dispossession of First Peoples of their Country in this part of the continent are a direct result of Colonisation and the establishment of the State of Victoria. The reality of Colonisation involved establishing Victoria with the specific intent of excluding Aboriginal people and their laws, cultures, customs and traditions, including through horrific violence perpetuated at individual, societal and systemic levels. This history, and the systems it gave rise to, continue to harm First Peoples today.
5. I acknowledge the extraordinary strength and resilience of First Peoples in the face of historical and ongoing injustices, and the survival of their living cultures, knowledge and traditions.

The Minister emphasised that the government wants to avoid repeating the mistakes of the past and intends to make commitments prior to the end of this process.

She stated the Government welcomes a discussion around any issues including constitutional reform and dedicated First Peoples seats in Parliament if that is what the Commission or Treaty process recommends.

First People’s Assembly of Victoria co-chair and Bangerang-Wiradjuri Elder **Aunty Geraldine Atkinson** later said in respect to the Minister’s speech:

*“Never in my lifetime would I have imagined a government minister would so clearly detail the harms to our people caused by colonisation and at the hands of the State.”*

**The second hearing block** comprised further evidence from Elders.

Again the evidence traversed broad themes relating to the Stolen Generation, indigenous interactions with the criminal justice system, the treatment of children declared as Wards of the State, healthcare, intergenerational trauma, the exclusion of Indigenous soldiers from the returned soldiers settlement scheme and the importance of culture and land.

The Commissioners heard from **Uncle Colin Walker** who described his childhood and recollections of the Cummeragunja Mission. He also discussed his connection to country, and the impacts that climate change is having on the waterways, native birds and animals. He discussed his recollections of his mother being taken away in the back of a truck from the Cummeragunja Mission.

He also discussed his involvement as a key witness in the Yorta Yorta native title claim and the difficulty in successfully proving the continuous connection to land.<sup>4</sup>

The Commission also heard from **Uncles Coombs** who represented Australia as a Paralympian in the Sydney 2000 Olympics. He discussed regret at his loss of language, experiences of racism and the value of 'sobering up centres'.

The Commission has yet not announced what its processes or priorities will be following the publication of its interim report in early July.

### **Indigenous Data Sovereignty:**

An early interest evident from the work of the Commission to date is that of the handling and collection of data about First Peoples, including by the Commission itself.

To this end the Commission has established an indigenous data sovereignty framework for collection and handling of information from or regarding First Peoples.

The Commission is also pushing for legislative reform with respect to the retention and handling of its data once the Commission concludes.<sup>5</sup>

Historically, colonial and state government officials (and other government agencies) imposed their own ways of counting Indigenous populations, cultures and territories. These practices produced data focused on First Peoples'

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<sup>4</sup> As a result of the centuries of land leases, private sales, home ownership, public use and dispossession of land including forced removals, the State of Victoria (and other parties which joined the proceedings as respondents) were able to successfully argue that the continuous connection to land had been broken, in no small part to the colonisation of the state and therefore native title could not be found.

<sup>5</sup> The Commission has requested for the Victorian Government to amend the *Inquiries Act 2014* (Vic) to allow First Peoples' ongoing control of records provided to the Commission, and an exemption be provided from the Freedom of Information Act 1982 (Vic) for the Commission's records.

disadvantages, ignoring their self-determination (sometimes referred to as "deficit data").

Indigenous Data Sovereignty is:

*"...linked with indigenous peoples' right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as their right to maintain, control, protect and develop their intellectual property over these"*<sup>6</sup>

Since at least 2015, scholars have recognised the IDS issues following the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP):.

*"The absence or lack of data that reflect where and how many indigenous peoples there are, and how they are faring in relation to the realisation of their individual and collective rights is directly related to the weakness of governments and intergovernmental bodies in formulating and implementing indigenous-sensitive decisions and programs"*<sup>7</sup>.

Commissioner Maggie Walter in her essay titled 'Data Politics and Indigenous representation in Australian Statistics' argues that '*population statistics are imbued with meaning derived from the dominant social norms, values and racial hierarchies of colonising nation-states.*' She notes her experience that a Google search for 'indigenous statistics' reveal[ed] an overwhelming focus on what she terms the five 'Ds' of Indigenous Australian data (5D data): disparity, deprivation, disadvantage, dysfunction and difference.

The dearth of data on indigenous peoples that present an alternative narrative to the 5Ds serves to cement a 'deficit data–problematic people' correlation.<sup>8</sup>

The first formal Notice to Produce documents which was issued by the Commission on the State of Victoria sought documents from all Departments and Victoria Police relating to any policies in place regarding Indigenous Data Sovereignty. It also sought information regarding consultation with First Peoples in respect to any such policies.

It is reasonable to expect that the Commission will conclude that further work needs to be undertaken by the Victorian Government and the Victorian public sector generally in relation to First Peoples data collection and management.

### **National developments:**

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<sup>6</sup> (Indigenous Data Sovereignty: Toward an Agenda).

<sup>7</sup> (Indigenous Data Sovereignty: Toward an Agenda).

<sup>8</sup> In effect, the politics of data are embedded in 'who' has the power to make determinations and who controls the narratives surrounding indigenous peoples' lives. Currently, it is not indigenous peoples themselves.

At the national level, promising steps have been taken to promote the rights of First Peoples. The newly elected Labour government has promised to hold a referendum on a permanent forum as a First Peoples' voice in its first term.

Labour has promised \$26.5 million in funding toward a national truth telling project, the Makarrata Commission. It is anticipated that State and Territory governments will match this funding.

The Makarrata Commission will consist of two functions like that of the Yoorrook Justice Commission. The first being a truth telling function and a second being a treaty oversight function. Professor Megan Davis estimates that the treaty oversight function will involve negotiating over 200 treaties on a nation-by-nation basis.

We continue to watch developments in this space.

### **Recent Victorian Developments**

In recent developments regarding the treaty process, just over a week ago the landmark Treaty Authority bill was passed in the lower house of the Victorian parliament. Under the bill, still to go to the upper house, the new authority, composed entirely of First Nations people, would be an independent body responsible for facilitating negotiations and resolving disputes between the government and First Nations people on a treaty. The legislation, the first of its kind, is designed to ensure a fair and just reconciliation process for First Nations people.

### **Conclusion**

The Commission is set to hand down the interim report in early July of 2022 and the final report in June of 2024. Some witnesses have requested that the Commission runs for significantly longer than it has been commissioned for and we may yet see a recommendation to extend its mandate.

Drawing back to the Uluru Statement from the Heart, Victoria is making progress along the journey of reconciliation having established what is functioning as and what may further be developed into a Voice to Parliament in the First Peoples Assembly, it has established the truth and justice Makarrata style commission and has now announced and created by legislation an authority to oversee the treaty negotiations.

Whilst the Yoorrook Justice Commission continues with its mandate, we look forward with great anticipation to similar processes being established across Australia other States and territories.

In the words of Alice Pepper,<sup>9</sup> one of the members of the First People's Assembly:

*'In order to know where you're going you must know where you've come from. Even if it's in your face or hard to swallow, people need to know the true history in order to move forward.'*

Nicole Spicer, 28 June 2022

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<sup>9</sup> (and a Yorta Yorta, Arrernte, Gunnai, Gunditjmara and Djab Wurrung woman).

Annexure "A"

## **Brief Overview of Victorian Government and Policy history**

One of the first official government policies targeted at First Peoples was outlined in the 1849, the first Police Magistrate for the Port Philip District, William Lonsdale's duties. He was instructed on his duties :

*“It will be one of your most important duties to protect the Aboriginal natives of the District from any manner of wrong, and to endeavour to conciliate them by kind treatment and presents... and to improve by all practicable means their moral and social condition.”*

Records show as settlement encroached further into tribal land, attacks by dispossessed First Peoples, counter attacks and killings became more frequent.

Between 1835 and 1837, the British House of Commons Select Committee on Aborigines was established to deal with the situation. The Select Committee devised the Protectorate Scheme. Despite its name his scheme led to brutal treatment of the local Aboriginal population.

A so-called 'Chief Protector' was appointed in 1839 with George Robinson and the office ran with the main responsibility of providing “protection to Aborigines”.

Crown Land Commissioners were appointed as honorary protectors and dutifully visited reserves and reported on the condition of First Peoples and supply them with food and clothing.

The Central Board was established in 1860, and later renamed the Board for the Protection of Aborigines in 1967 after a Select Committee inquired into Aboriginal Welfare. The Board established reserves and supply depots throughout Victoria. The Board was supported by the Protection and Management of the Aboriginal Natives of Victoria 11 November 1886, (No. CCCXLIX), which outlines the primary concern of the board to protect First Peoples from 'European evils' including drinking alcohol and the provision of food and clothing at stations and depots and education of First Peoples children.

The Victorian legislation continued to develop around First Peoples' affairs between 1886 to 1957. The *Aborigines Protection Act 1886* redefined the Board's responsibilities including the reclassification of Aboriginal people as “Aboriginal natives” and “half-castes” with further classification according to their living status. For example: “female half-castes” either married or previously married to “Aboriginal natives.” Those identified as “half castes” were given limited benefits and had to be licensed in order to reside with “Aboriginal natives.” Aboriginal people who were living on the stations during this time were expected to work hard for little return to make up the costs of maintaining the stations.

In 1890, the *Aborigines Act (No. 1059)* gave further power to the Board in respect to “half-caste” children including to licence, enter the children into apprenticeships and transfer “half-caste” orphans into care.

The Board for the Protection of Aborigines was abolished under the *Aborigines Act 1957 (No. 6086)* and was replaced by the Aborigines’ Welfare Board. The Board was comprised of the Ministers of Education, Health, and Housing as well as five other members including two Aboriginal people under guidance of the Chief Secretary. The powers of the Board had largely the same powers with aim to “promote the moral, intellectual, and physical welfare of Aborigines (including persons of Aboriginal descent) with a view to their assimilation into the general community”.

The 1967 referendum which extended voting rights to First Peoples and federal Constitutional change led to the Commonwealth taking primary responsibility for policies targeting First Peoples away from the States.

In 1968, Victoria appointed its first Minister of Aboriginal Affairs which signalled a new direction for government policy away from assimilation towards creating opportunities for First Peoples through “promoting economic and social advancement”.

From 1975, the State Premier took over the responsibility at the state level and soon the Aboriginal Affairs unit transferred Minister of Planning in 1985. The Minister of Planning responsible for the State archaeological functions. Other ministers such as the Minister for Education took on responsibilities impacting First Peoples in their respective portfolios.

In 1991 a Department of Aboriginal Affairs also known as Aboriginal Affairs Victoria was established. A year later the Department was abolished and Aboriginal Affairs was reconstituted under the Department of Health and Community Services.

In 2022 responsibility for Aboriginal Affairs is now a cross departmental responsibility following an acknowledgement that different aspects of Aboriginal affairs require particular expertise to address. In this the First Peoples State Relations unit of the Department of Premier and Cabinet and the Aboriginal Justice unit of the Department of Justice and Community Safety.



Annexure "B"

### **Commonwealth - previous reports and Inquiries**

At the national level, the government has examined the treatment of First Peoples through the Royal Commission into Aboriginal Deaths in Custody of 1991 and the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families ('Bringing them Home' report) in 1997 and the Australian Law Reform Commission's Pathways to Justice Inquiry (1998).

In 2012, the Final report of the Expert Panel on Recognising Aboriginal and Torres Strait Islander people in the Commonwealth Constitution recommended substantive changes that recognises the true status of First Australians and the removal of racial discrimination in the document.

The *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* (Cth) passed and acknowledged that Aboriginal and Torres Strait Islander people are the first inhabitants of this nation and identifies a broad timeframe for the holding of the referendum to recognise this in the Constitution. The Minister was to commence within 12 months after the commencement of the Act a review of support for a referendum to amend the Constitution, however the Act expired and ceased effect in 2018.

The Anderson Review (Final Report Aboriginal and Torres Strait Islander Act of Recognition Review Panel) was established to assess the level of public awareness and support of the 2013 Act in Constitutional recognition of the First Peoples. The Report recommended that no later than 2017, a referendum should be set and to prevent the 2013 Act from sunseting.

A Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander peoples was established in 2013 to consider the recommendations of the Expert Panel report and delivered its report in June 2015.