



Closing the Gap

Response

Background to the Victorian Aboriginal Legal Service

The Victorian Aboriginal Legal Service (“**VALS**”) is an Aboriginal community controlled organisation established in 1972 by committee, and incorporated in 1975. VALS is committed to caring for the safety and psychological well-being of clients, their families and communities and to respecting the cultural diversity, values and beliefs of clients. VALS vision is to ensure Aboriginal and Torres Strait Islander Victorians are treated with true justice before the law, our human rights are respected and we have the choice to live a life of the quality we wish.

We operate in a number of strategic forums which help inform and drive initiatives to support Aboriginal and Torres Strait Islander people in their engagement with the justice, and broader legal system, in Victoria. We have strong working relationships with the other five peak Aboriginal Community Controlled Organisations in Victoria and we regularly support our clients to engage in services delivered by our sister organisations. Our legal practice spans across Victoria and operates in the areas of criminal, civil and family law (including child protection and family violence).

Our 24-hour support service is backed up by the strong community based role our Client Service Officers play in being the first point of contact when an Aboriginal or Torres Strait Islander person is taken into custody, through to the finalisation of legal proceedings. Our community legal education program supports the building of knowledge and capacity within the community so our people can identify and seek help on personal issues before they become legal challenges.

We seek to represent women, men and children who come to us for assistance in their legal matters, and are only hindered in doing this where there is a legal conflict of interest and we cannot act. If

this is the case, we provide warm referrals to other suitable legal representatives, which include Victoria Legal Aid, the Aboriginal Family Violence Prevention Legal Service, community legal centres and private practitioners as appropriate.

Criminal Law Practice

We represent male and female clients of all ages in immediate criminal court dealings such as bail applications, defending or pleading to charges and sentencing. In looking at bail conditions and sentencing options, we are involved in finding accommodation and supports that will not only support a client in their immediate circumstances, but also address the underlying causes of why they are committing criminal acts. This will include drug and alcohol services delivered by Aboriginal specific organisations; behavioural change programs and counselling; linkages to mental health services, and connections to community.

We also represent children who are dealing with criminal offending – their offences may not directly reflect family violence, but often, they have histories of family violence in their home. They have rights as victims of family violence, and there is a distinct lack of family violence specific responses for children, particularly non-Government counselling and healing support. Their experiences as victims of family violence are distinct from the adults in the home, and requires separate responses. They may struggle to identify family violence and how it has impacted on their life. They may feel responsible for the violence in their home, or feel guilty if they tell someone about it. A lack of stable home environment can lead to absences from school or links with sports and community activities, and can mean children are left without guidance and find themselves making poor decisions leading to criminal behaviour and charges.

Youth and Family Law Practice

Our Youth and Family Law Practice represents both adults and children's in the areas of youth justice, child protection and family law. We are increasingly seeing a significant number of children who are being removed by the Department of Health and Human Services due to family violence and/or substance misuse. In the course of representing clients we often observe children to be suffering from the anxiety of separation and being away from family, plus coming into contact with the older children who have been in the child protection system for extensive periods of time, which may cause anxiety, distress and place them at risk of harm in other ways. Often these children are involved with the justice system and the first offending often begins whilst they are in the care of DHHS.

VALS data indicates a 56% increase in family law and related matters (information, advice, referrals and legal representation) between 2010-13.¹ This reflects an increased awareness and reporting of Family Violence issues and also the current mandate for Police to respond to family violence incidents at higher rates. VALS has increased the size of the Youth and Family Law Practice through grants and yet we are still not able to meet the demand and are required to regularly refer matters out. Also, as our service model is holistic, when people require our support for police or other family violence services, we often find they require internal and external referrals for a number of other legal and holistic services, including for parenting or child protection issues.

Civil Law Practice

Our civil law practice encompasses a range of legal areas which can often follow issues concerning child safety such as family violence. When a victim of family violence needs to relocate from the family home, issues may arise i.e. preserving or relinquishing tenancy, changing locks, recovering personal property and other related matters. Issues such as maintain a tenancy, resolving debt and infringement issues and issues relating to employment and discrimination are also dealt with on a regular basis by our civil law practice as these can often lead to instability which would place our most vulnerable community members, children and the elderly at risk.

Balit Ngulu

Balit Ngulu has been established by the Victorian Aboriginal Legal Service in response to the needs of Aboriginal youth to have a say in their own affairs and to be able to work towards breaking the cycle of disadvantage. Balit Ngulu aims to provide legal advice and assistance in the areas of youth justice, child protection, family law, and civil law issues to Aboriginal and/or Torres Strait Islander youth across Victoria. Balit Ngulu will provide integrated and culturally appropriate services to Aboriginal and/or Torres Strait Islander youth to address issues such as recidivism, cultural, family, education, employment, and leadership so that they can self-determine their own futures.

¹ VALS Data 243 2009/10 – 380 2012/13.

Community Justice Programs

VALS holistic supports to clients are provided by way of the Community Justice Program's Sections which conducts our pre-and post-release support programs, our Local Justice Worker Programs and our Aboriginal Community Justice Panels Programs. The CJP Section also facilitates our 24-hour support service which is backed up by the strong community based role our Client Service Officers play in being the first point of contact when an Aboriginal or Torres Strait Islander person is taken into custody, through to the finalisation of legal proceedings.

LETTER FROM THE CHIEF EXECUTIVE OFFICER

The Victorian Aboriginal Legal Service welcomes this opportunity to make a submission to the Closing the Gap Refresh consultation process. As an Aboriginal Community Controlled Legal Service we see the systemic disadvantage of Aboriginal people on a daily basis. , The underlying factors that Closing the Gap seek to address – education, health, employment and poverty – are the driving factors for the high rates of incarceration experienced by Aboriginal and Torres Strait Islander peoples.

Yet 10 years of Closing the Gap has also highlighted immense failures. The revolving-door of policy makers and politicians has seen a staggered commitment to achieving COAG targets. Further, the exclusion of justice targets in Closing the Gap has been conversely accompanied by skyrocketing incarceration rates. Every annual parliamentary report on Closing the Gap has demonstrated little to no progress on the key targets, with some even regressing. So it is no surprise that imprisonment rates for Aboriginal and Torres Strait Islander men, women, children and young people continue to rise. There *are* ways that targets as outlined by Closing the Gap can be achieved – but there needs to be a refresh not only in targets, but also in process.

1. Firstly, any strategy that is developed must be driven by Aboriginal and Torres Strait Islander communities underpinned by the international principle of self-determination.
2. Second, in respecting diversity and communities' right to self-determination, any strategy must include national, state and local targets.
3. Third, incarceration, youth justice and child protection targets **must** be included, as the foundation for achieving equality in health, education and employment.

Lastly, VALS takes this opportunity to ask the question: what will non-Indigenous Australia – including its governments, NGOs, businesses and citizens – do to contribute to closing the gap?

The inequalities found in this country are based on pervasive racism, and an unwillingness to engage with the oldest living culture on the planet. This begs the question, and also the challenge: what targets will non-Indigenous Australia set upon itself to learn an Indigenous language, to engage with Indigenous histories, and ensure that voices of Aboriginal and Torres Strait Islander peoples in their local community are heard, respected and acknowledged?

Finally, our aspiration is not to merely close the gap, but to surpass it. My vision is to see our kids have even more opportunity and greater success than the Closing the Gap targets call for. I want to see even less kids in youth detention than their non-Indigenous counterparts. I want to see communities which are even healthier than their non-Indigenous neighbours, and to see Aboriginal and Torres Strait Islander businessmen and women thriving economically. To see our children not just equalling their non-Indigenous schoolmates, but rising above and excelling in education. The outcome of this, will be far less Aboriginal and Torres Strait Islander people in prison, which is another target we should be aiming for in any refreshed Closing the Gap strategy.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Wayne Muir', written in a cursive style.

Wayne Muir

Chief Executive Officer

VICTORIAN ABORIGINAL LEGAL SERVICE CO-OPERATIVE LIMITED

EXECUTIVE SUMMARY

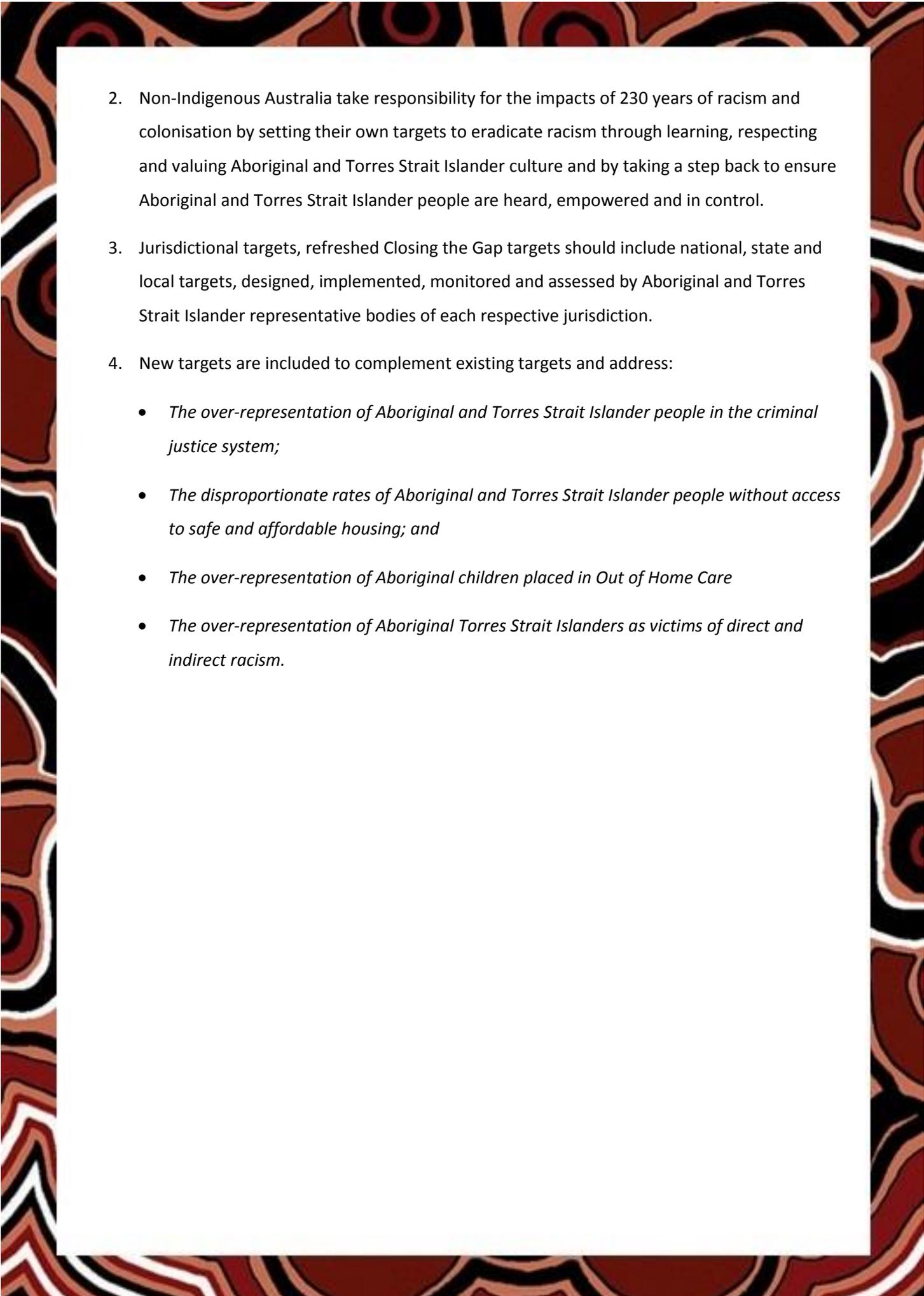
The Victorian Aboriginal Legal Service is well-placed to provide insight and practical recommendations to strengthen and enrich the outcomes of the Closing the Gap targets. As an Aboriginal Community Controlled Organisation that provides frontline legal assistance to Victoria's Aboriginal community we are well aware of the relationship of health, education and employment with the justice system. It has been ten years since the Closing the Gap initiative was launched and we have had sufficient time and opportunity to assess what parts of the strategy are and are not working. It is clear that Closing the Gap has failed to make a significant difference to the health, education and employment of Victoria's Aboriginal population.

The setting of targets to reduce the gap between Aboriginal and non-Aboriginal Australians can and should drive new policies, funding and relationships that empower Aboriginal Torres Strait Islander people. In order for such targets to fulfil their objectives it is critical that self-determination is at the centre of policy development, implementation, monitoring and assessment. In practice this means properly funded Aboriginal Community Controlled Organisations having control of funding and data in this space, which would empower them to properly assess the impacts of policy and legislative changes and hold the government accountable.

For the Closing the Gap Refresh to be effective in producing new policies that deliver changes to health, education and employment it must address the underlying drivers of inequality. The empowerment of the Aboriginal community through the direct funding of Aboriginal organisations with control over policy design, implementation, monitoring and reporting is critical to correcting the power imbalance created by the ongoing impacts of colonisation.

The Victorian Aboriginal Legal Services recommends that the Refresh process focuses on four areas:

1. Self-determination, as outlined in the UN Declaration on the Rights of Indigenous People, be the number one priority in addressing issues related to Aboriginal and Torres Strait communities.

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2. Non-Indigenous Australia take responsibility for the impacts of 230 years of racism and colonisation by setting their own targets to eradicate racism through learning, respecting and valuing Aboriginal and Torres Strait Islander culture and by taking a step back to ensure Aboriginal and Torres Strait Islander people are heard, empowered and in control.
 3. Jurisdictional targets, refreshed Closing the Gap targets should include national, state and local targets, designed, implemented, monitored and assessed by Aboriginal and Torres Strait Islander representative bodies of each respective jurisdiction.
 4. New targets are included to complement existing targets and address:
 - *The over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system;*
 - *The disproportionate rates of Aboriginal and Torres Strait Islander people without access to safe and affordable housing; and*
 - *The over-representation of Aboriginal children placed in Out of Home Care*
 - *The over-representation of Aboriginal Torres Strait Islanders as victims of direct and indirect racism.*

SELF DETERMINATION AND REFRESHING THE CLOSING THE GAP FRAMEWORK

The need to work in ‘genuine partnership with Indigenous Australians’ has been widely recognised by State and Federal Governments, however, much more needs to be done to empower Aboriginal organisations to constructively engage in such a partnership.² This submission outlines the importance of adequate funding, independence and control over reporting to enable Aboriginal organisations to practice self-determination and therefore be able to participate as ‘partners’ in Closing the Gap.

To refresh the Closing the Gap Strategy into a strategy that achieves its targets a complete overhaul of the strategy is required. Simply adjusting existing targets and adding more targets will not drive change and will not address the reasons existing systems have failed to deliver change. Any effort to radically improve the health, education and employment outcomes for Aboriginal and Torres Strait Islander people must have self-determination at its core from the design of targets and policies, to their implementation, monitoring and assessment.

The Closing the Gap strategy was not a government initiative but an Aboriginal initiative, however, the targets have not been designed, implemented, monitored or assessed by Aboriginal organisations, instead they have been overseen by COAG and therefore any positive trajectories have been severely interrupted by changes of both state and national governments.

In 2005, Tom Calma, in his role as Aboriginal and Torres Strait Islander Social Justice Commissioner, called on the government to commit to closing the gap in health and life expectancy within 25 years. This call was not taken up by government but by a partnership between Aboriginal organisations and other supporting organisations called the National Indigenous Health Equality Campaign. The campaign was formed by the National Aboriginal Community Controlled Health Organisation (“**NACCHO**”), Australian Indigenous Doctors Association (“**AIDA**”), Human Rights and Equal Opportunity Commission, Congress of Aboriginal and Torres Strait Islander Nurses and Midwives, Indigenous Dentists’ Association of Australia, Oxfam Australia and Australians for Native Title and Reconciliation (“**ANTAR**”). In 2007 they launched the *Close the Gap* campaign and in 2008 most

² Department of Premier and Cabinet, *Closing the Gap: Prime Minister’s Report 2018*, 2018, available at <https://closingthegap.pmc.gov.au/executive-summary>

states and territories signed onto the Indigenous Health Equality Statement of Intent that included not only a commitment to achieve equality in health and life expectancy by 2030 but also ‘the full participation of Aboriginal and Torres Strait Islander peoples... in all aspects of addressing their health needs’ and to ‘working collective to systematically address the social determinants that impact on achieving health equality.’³ Unfortunately these commitments have not been kept and in the last ten years we have seen the Closing the Gap strategy become little more than a government report card on government policies.

The importance of self-determination to any policy solution involving Aboriginal and Torres Strait Islander people has been echoed in countless reports, reviews and submissions over the last 25 years. In 2016 the Redfern Statement outlined policies to ensure self-determination was central to the development and implementation of policy and emphasised that self-determination ‘is the key to closing the gap in outcomes for the First Peoples of these lands and waters.’⁴ The evidence of this statement is seen all over the country where under-resourced Aboriginal run organisations achieve better outcomes for Aboriginal and Torres Strait Islander people than the better resourced mainstream services. In a 2015 paper on ‘effective community-managed programs and organisations’ Child Family Community Australia found that ‘Indigenous control of the planning, design and implementation of programs is a critical factor to success.’⁵ Also in 2015, the Aboriginal Health and Medical Research Council found that evaluations of Aboriginal Community Controlled Health Services ‘consistently illustrate increases in service utilisation with the introduction of the program.’⁶

The 2018 Ten Year Review of the Closing the Gap Strategy carried out by the Close the Gap Steering Committee found that the Strategy had fundamentally failed to address the underlying structural factors that determine health outcomes. The Review reminded the government that self-

³ *Close the Gap Indigenous Health Equality Statement*, 2008, available at https://www.humanrights.gov.au/sites/default/files/content/social_justice/health/statement_intent.pdf

⁴ National Congress of Australia’s First Peoples, *Redfern Statement*, 2016, p.5, available at https://nationalcongress.com.au/wp-content/uploads/2017/02/The-Redfern-Statement-9-June-_Final.pdf

⁵ Sam Morely, ‘What works in effective Indigenous community-managed programs and organisations’, Child Family Community Australia, 2015, p.12, available at <https://aifs.gov.au/cfca/sites/default/files/publication-documents/cfca-paper32-indigenous-programs.pdf>

⁶ Aboriginal Health and Medical Research Council of NSW, ‘Aboriginal Communities Improving Aboriginal Health’, 2015, p.14, available at <http://www.ahmrc.org.au/media/resources/research/298-aboriginal-communities-improving-aboriginal-health/file.html>

determination is critical to addressing the underlying causes of health inequality and that as signatories to the United Nations Declaration on the Rights of Indigenous Peoples they are in fact obliged to respect and fund the right to self-determination:

“At the national level, this means Aboriginal and Torres Strait Islander-government partnerships in health planning. At the community level, it means community governance and control of health services. In other words, to ‘get the inputs right’, investment must be guided into the kinds of services, health infrastructure and other responses as determined by Aboriginal and Torres Strait Islander health leaders and communities.”⁷

The Victorian Aboriginal Legal Service recommends the following:

- The Federal Government looks to the Redfern Statement Alliance Leadership Group for leadership in the development of a national Closing the Gap agreement and provides them with adequate resources and independence for them to operate as true partners.
- The Federal Government restore the \$534 million cut from the Indigenous Affairs portfolio in the 2014 Budget.
- The Federal Government reforms the Indigenous Advancement Strategy and other Federal funding programs with greater emphasis on service/need mapping (through better engagement) and local Aboriginal and Torres Strait Islander organisations as preferred providers.
- State and federal governments set targets for all Aboriginal and Torres Strait Islanders to have access to health, education, employment, housing and justice services provided by Aboriginal Community Controlled Organisations by 2030.

⁷ *A ten-year review: the Closing the Gap Strategy and Recommendations for Reset*, Close the Gap Steering Committee, 2018, available at https://www.humanrights.gov.au/sites/default/files/document/publication/CTG%202018_FINAL-WEB.pdf

STRUCTURAL RACISM AND THE CLOSING THE GAP FRAMEWORK

For a refreshed Closing the Gap strategy to truly address the underlying causes of inequality in health, education and employment it is critical that targets to reduce and eliminate racism be implemented. Systemic racism is an underlying driver of inequality in Australian society that highlights the need for shifting the responsibility for inequality to those that perpetrate and perpetuate racial discrimination. The onus on improving Aboriginal health and wellbeing needs to be shifted from the shoulders of Aboriginal people to those that are responsible for the discrimination that disempowers and devastates Aboriginal communities.

The links between racism and disadvantage in health, education, employment and contact with the justice system are well understood and clearly documented. One of the most comprehensive studies on the impacts of racism on Aboriginal people in Victoria was carried out in 2013 and found that 97% of Aboriginal Victorians had experienced racism in the previous 12 months. The study also found that the more an Aboriginal person experienced racism the greater their psychological distress.⁸ The 2016 report by Price Waterhouse Coopers 'Unlock the Facts' found that experiences of racism were one of the key drivers of overrepresentation of Aboriginal people in the criminal justice system.⁹

The Federal Government's National Aboriginal and Torres Strait Islander Health Plan 2013-2023 identifies racism as:

*'a key social determinant of health for Aboriginal and Torres Strait Islander people' and that 'experiences of racism are compounded by the traumatic legacy of colonisation, forced removals and other past government discriminatory policies. The consequences of these events have been profound, creating historical disadvantage that has been passed from one generation to the next.'*¹⁰

⁸ Ferdinand *et al*, 2013, 'Mental Health Impacts of Racial Discrimination in Victorian Aboriginal Communities', The Lowitja Institute, p.23.

⁹ Price Waterhouse Coopers, 'Indigenous Incarceration: Unlock the Facts', 2017, p. 24.

¹⁰ Australian Government, 2013, 'National Aboriginal and Torres Strait Islander Health Plan 2013 to 2023', p.15.

Central to reducing racism and increasing the resilience of Aboriginal people in dealing with experience of racism is the increased understanding and strengthening of culture for both Aboriginal and non- Aboriginal people.

The 2009 State of Victoria's Children Report found that:

*'A positive cultural identity assists Aboriginal children and young people to deal with racism and to navigate dominant culture... Accessible cultural practice can also reduce the negative impacts of colonisation... Strong culture is also important in the education of the non-Aboriginal community, with increased acknowledgement of and respect for the diversity of Aboriginal culture helping to break down negative stereotypes.'*¹¹

The strengthening of culture and recognition of the impacts of racism also plays an important part in Aboriginal people receiving fairness and justice in the Australian justice system, increasing their rehabilitation prospects and reducing recidivism. The 2018 Australian Law Reform Commission Report *Pathways to Justice* recommended that significant reforms be made to sentencing that recognise and consider the relationship between racism and Aboriginal offending and the value of culture to the justice process. VALS made significant contributions to this area with two discussion papers: 'Aboriginal Considerations in Sentencing: Proposed Sentencing Act Amendment' and 'Aboriginal Community Justice Reports: Addressing Over-Incarceration'. The three ALRC recommendations that address this are:

Recommendation 6-1:

*'Sentencing legislation should provide that, when sentencing Aboriginal and Torres Strait Islander offenders, courts take into account unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples.'*¹²

Recommendations 6-2:

'State and territory governments, in partnership with relevant Aboriginal and Torres Strait Islander organisations, should develop and implement schemes that would facilitate the preparation of

¹¹ Department of Education and Early Childhood Development, 'The State of Victoria's Children 2009', p. 45.

¹² Australian Law Reform Commission, 2018, 'Pathways to Justice – An Inquiry into the Incarceration of Aboriginal and Torres Strait Islander Peoples', p. 204.

'Indigenous Experience Reports' for Aboriginal and Torres Strait Islander offenders appearing for sentence in superior courts.'

Recommendation 6-3:

'State and territory governments, in partnership with relevant Aboriginal and Torres Strait Islander organisations and communities, should develop options for the presentation of information about unique systemic and background factors that have an impact on Aboriginal and Torres Strait Islander peoples in the courts of summary jurisdiction, including through Elders, community justice groups, community profiles and other means'¹³

The introduction of these reforms would significantly contribute to the recognition of Aboriginal experiences of racism and discrimination, while at the same time increasing the value, knowledge and importance of Aboriginal culture to both Aboriginal and non-Aboriginal people.

The Victorian Aboriginal Legal Service recommends the following:

- Cultural competency training to be completed by all registered education, justice and health staff
- All Aboriginal people incarcerated or on Community Corrections Order to have access to cultural programs managed by ACCOs
- Sentencing Acts be amended to require courts to consider systemic and background factors affecting Aboriginal offenders in sentencing.
- ACCOs be funded to produce Aboriginal Community Justice Reports that are considered by courts in the same way as *Gladue* reports in Canada.

¹³ Australian Law Reform Commission, 2018, 'Pathways to Justice – An Inquiry into the Incarceration of Aboriginal and Torres Strait Islander Peoples', p. 214.

RESPONSE TO THE CONSULTATION PAPER

Question 1:

How can governments, Aboriginal and Torres Strait Islander Peoples, and businesses work more effectively together? What is needed to change the relationship between government and community?

The strengthening of genuine self-determination is the most critical factor to governments, Aboriginal and Torres Strait Islander People, and business to work more effectively together, and to improve the relationship between Aboriginal and Torres Strait Islanders and the government. Central to such a shift is ACCOs being appropriately resourced to have their own 'seat at the table' rather than being called upon for input into already defined policies and strategies. This Closing the Gap Refresh is representative of the way in which government has engaged ACCOs as organisations to consult rather than as partners. By government independently producing the consultation questions the power relationship devalues the knowledge, experience and capabilities of ACCOs to develop and implement policy.

It is also important to recognise that ACCOs have been the only bodies providing consistent strategies, while governments have chopped and changed and undermined the ability of Aboriginal and Torres Strait Islander communities to build trusting relationships with government. There is no clearer example than the treatment of the recommendations of the Royal Commission into Aboriginal Deaths in Custody, while successive governments have ignored these recommendations. VALS and other ACCOs have consistently argued that within them are real solutions to tackling incarceration rates and the many impacts incarceration has on health, education and employment.

Question 2:

How could Closing the Gap targets better measure what is working and what is not?

For Closing the Gap targets to more effectively measure outcomes we recommend that a new independent body be established to collect data, monitor impacts of policy, develop new policy and report on the Closing the Gap targets. This body should be based on the principles of self-determination and have representatives of ACCOs from all states and territories as part of its governance structure. Such a body would provide much needed cohesiveness and consistency, which has been lacking due to changing government priorities caused by election cycles, party politics and a desire by governments to appear 'tough on crime'.

In order for the monitoring of Closing the Gap targets to identify what is and is not working it, we also emphasise the importance of new targets, such as justice targets, to recognise the relationships between different factors. The current framework of Closing the Gap targets separates health, education and employment from each other and ignores the significant impact of justice, housing and child removal.

Question 3:

What indicators should government focus on to best support the needs and aspirations of Aboriginal and Torres Strait Islander Peoples? Should governments focus on indicators such as prosperity, wellbeing or other areas?

Existing Closing the Gap targets can be effective indicators for government to focus on, but they must also include new targets, such as those recommended in this submission, that recognise the interrelationship between different factors.

Other indicators that would better support the needs and aspirations of Aboriginal and Torres Strait Islander people are on the direct funding of ACCOs. There must be transparency and easily accessible data on the proportion of government funds allocated to Aboriginal and Torres Strait Islander people that is actually controlled by Aboriginal organisations. Such an indicator is critical for

the development of genuine self-determination and will ensure that programs and policies are community led, culturally safe and compatible with human rights obligations.

Question 4: Should Aboriginal and Torres Strait Islander culture be incorporated into the Closing the Gap framework? How?

Aboriginal and Torres Strait Islander culture must be incorporated into the Closing the Gap Framework as all Closing the Gap priority areas are intrinsically tied to culture. However, it is critical that the introduction of culture into the Closing the Gap Framework not be dictated by government agencies and that each ACCO and representative body in each jurisdiction shape and design how culture is incorporated into Closing the Gap. For such a change to be made it is critical that ACCOs be appropriately funded and that there be a national Aboriginal and Torres Strait Islander body to support ACCOs in this area and to coordinate the ways in which local developments related to cultural empowerment can inform and shape national policies.

Incorporating culture into the Closing the Gap framework would also contribute to elevating the government's and the wider non-Indigenous communities understanding and value of the important role of culture in all aspects of Aboriginal and Torres Strait Islander life. Studies on the relationship between culture and wellbeing have consistently found culture to be a critical protective factor and that the loss of culture negatively impacts health, education and employment outcomes.

Question 5: What do you think are the key targets or commitments that should be measured in a refreshed Closing the Gap agenda?

We believe that four new headline targets are needed to ensure there is a shift that addresses the underlying causes of disadvantage and that we believe are critical to driving real and lasting change. Our proposed new targets are in the areas of justice, housing, child protection and institutional racism. These are all areas that are currently ignored by existing the Closing the Gap targets but have significant impact on them and each other.

We also support the retention of all existing Closing the Gap targets for Aboriginal and Torres Strait Islanders to achieve equality with non-Indigenous Australians in the areas of child mortality, early childhood education, school attendance, reading and numeracy, Year 12 attainment, employment and life expectancy.

NEW TARGETS IN DETAIL

The establishment of measurable targets can be an effective means to hold governments to account and drive positive change. However, for targets to be successful drivers of change they must be designed, monitored and measured by Aboriginal organisations. Interim and jurisdictional targets are also required to better hold government to account, empower local communities and drive change. Targets must also recognise the relationship between different factors that underpin Aboriginal disadvantage, such as the relationships between structural racism, family violence, child removal, incarceration, education, employment and health.

For new targets to be effective we strongly recommend that they be tied to existing strategies to tackle Aboriginal and Torres Strait Islander disadvantage and that a new national action plan be developed to address imprisonment and violence rates. Existing strategies that must be connected to the justice targets include the National Indigenous Law and Justice Framework 2009-2015, the National Framework for Australia's Children 2009-2022 and the National Plan to Reduce Violence Against Women and their Children 2010-2022.

Interim targets

Interim targets are necessary to better hold state and federal governments to account during their term and better track policies and funding with outcomes. To that end, interim targets of 1-3 years should be developed for all existing and new Closing the Gap targets. These targets should be based on trend analysis in different jurisdictions and the required timeline to achieve respective targets.

In the ten years of Closing the Gap we have repeatedly seen how governments are able to shift responsibility and manipulate the interpretation of statistics to absolve themselves of responsibility

for policy failures. Interim targets designed and overseen by an independent Aboriginal body would ensure that local, state and federal governments are held to account for their policies during their term in office.

Jurisdictional targets

Jurisdictional targets are essential to any approach based on self-determination and respect the unique circumstances of different communities across Australia. We recognise and agree that the existing national targets, and the state targets that have been established from them, play an important role in recognising the gravity of Aboriginal and Torres Strait Islander disadvantage and discrimination. However, the absence of regional and local targets has undermined the ability of regional and local achievements to be recognised, celebrated and replicated. Jurisdictional targets can also play an important role in empowering Aboriginal communities and ensuring appropriate resources are allocated directly to those most in need. An example of how jurisdictional targets can work alongside national targets is evident in our recommended new targets, which include both national and Victorian justice targets. We have not provided jurisdictional targets for our other recommended targets as there are many other Victorian ACCOs with specialist understanding in these areas.

Headline Target 1:

Close the gap in the overrepresentation of Aboriginal and Torres Strait Islander people in all areas of the Criminal Justice System by 2040.

Nationally and within Victoria justice targets are needed to address the gross overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system and as victims of violence. The disproportionately high levels of incarceration and violence experienced by Aboriginal and Torres Strait Islander people compound the trauma of colonisation and undermine the efforts to strengthen culture and achieve the Closing the Gap aims of improving health, education and employment outcomes. The Victorian Aboriginal Legal Service strongly believes that justice targets must be included in the Closing the Gap Strategy as a means of addressing the over-representation of Aboriginal and Torres Strait Islanders in the criminal justice system and to contribute to improving outcomes in health, education and employment.

There have been calls for justice targets by a broad range of Aboriginal leaders and organisations since the beginning of the Closing the Gap Strategy. The important role justice targets could play in addressing other areas was outlined in the Social Justice Report 2009:

*'... you will not be able to meet these targets if you continue to have such a high proportion of the Indigenous population caught up in the criminal justice system because imprisonment compounds individual and community disadvantage. Over time we would hope that the Closing the Gap targets will lead to an improvement in life chances and therefore a reduction in imprisonment but this could take a generation at the very least. For this reason, specific justice targets are needed now.'*¹⁴

High imprisonment rates also divert resources from other priority areas, and given the current trend of growing incarceration rates it will be more and more difficult to allocate the necessary funding to the areas of health, education and employment. The 2017 report 'Indigenous Incarceration: Unlock the Facts' found that locking up Aboriginal and Torres Strait Islander people cost nearly \$7.9 billion per annum in 2016 and that this cost is set to rise to \$9.7 billion per year in 2020 and \$19.8 billion per year in 2040.¹⁵

In Victoria the proportion of the prison population that is Aboriginal and Torres Strait Islander has increased from 6.3% in 2010-2011 to 8% in 2015-2016. This trend is even worse for Aboriginal young people in Victoria, with those under youth justice supervision increasing from 13.9 per 1,000 young people in 2007-08 to 15.2 per 1,000 young people in 2015-16.¹⁶ This difference is recognised in existing Victorian justice targets, with separate justice targets for adults and young people allowing effective tracking of both groups. However, it is of equal importance that justice targets be gendered, as Aboriginal and Torres Strait Islander women are the fastest growing segment of the prison population in all states including Victoria.

¹⁴ Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Social Justice Report 2009', p.54.

¹⁵ Price Waterhouse Coopers, 'Indigenous Incarceration: Unlock the Facts', 2017, p. 27.

¹⁶ Department of Premier and Cabinet, 'Victorian Aboriginal Affairs Report 2017', p.59.

For too long the experiences of Aboriginal women with the justice system have been ignored or bundled with those of Aboriginal men. This has led to a lack of recognition and understanding of the unique circumstances of Aboriginal women and limited the development of tailored responses. Aboriginal women are the fastest growing segment of the prison population both nationally and within Victoria, and therefore this should be a priority area for policy makers and service providers. A gendered focus on the justice system ensures issues such as the disproportionate impact of family violence on Aboriginal women will be considered. In line with the emphasis on the need for self-determination and cultural safety in this submission, a gendered approach highlights the need for Aboriginal and Torres Strait Islander women's organisations to be empowered to drive change through their unique understanding of the complex factors related to the rising rate of Aboriginal women in prison and their ability to identify, develop and deliver solutions.

In order to achieve this headline target we recommend the adoption of the five sub-targets outlined below and the development and implementation of a national plan to address the incarceration and violence crisis.

- 1.1 Close the gap in the proportion of Aboriginal and Torres Strait Islander men under justice supervision in prison and community corrections by at least 40% by 2031 (2023 for Victoria)
- 1.2 Close the gap in the proportion of Aboriginal and Torres Strait Islander women under justice supervision in prison and community corrections order by at least 40% by 2031 (2023 for Victoria)
- 1.3 Close the gap in the proportion of Aboriginal and Torres Strait Islander children (10-17 years old) under justice supervision in detention and community corrections order by at least 40% by 2031 (2023 for Victoria)
- 1.4 Close the gap in the proportion of Aboriginal and Torres Strait Islander people held on remand without charge by 2040 (2031 for Victoria)

- 1.5 Close the gap in the disproportionate rates of violence against Aboriginal and Torres Strait Islander people by 2040 (2031 for Victoria)
- 1.6 All Aboriginal and Torres Strait Islander men, women and children have access to prevention, diversion and rehabilitation programs designed and managed by ACCOs by 2040 (2031 for Victoria)
- 1.7 The proportion of government funds allocated to prevention, diversion and rehabilitation to be greater than the amount allocated to detention by 2023 (2023 for Victoria)

Headline Target 2:

Close the gap in the proportion of Aboriginal and Torres Strait Islander people without access to safe and affordable housing by 2040

The lack of access to safe and affordable housing has a significant flow on effect to all focus areas of the Closing the Gap strategy and therefore should be a priority area with its own targets and reporting mechanisms. Housing shortages and access issues entrench inequalities in the justice system, specifically in the areas of bail, parole and family violence. Housing issues can also be directly linked to child removal and disadvantage in health, education and employment. The establishment of housing targets in a refreshed Closing the Gap can play an important role in driving housing reform, holding all levels of government to account and bettering cultural understanding regarding living arrangements.

Housing and current Closing the Gap targets

Housing circumstances including overcrowding, tenure type and homelessness have numerous negative impacts on health, education and employment, housing status is therefore a major influence on achieving existing Closing the Gap targets. The health impacts of housing issues were clearly recognised by the Department of Premier and Cabinet in the *Health Performance Framework 2014 Report*:

‘The effects of overcrowding occur in combination with other environmental health factors such as poor water quality and sanitation, which are associated with increased risk of transferring infectious diseases, recurrence of chronic infections, and exposure to hazards such as smoking indoors, as well as increased risk of injury within the home. Overcrowding and insecure housing tenure is also associated with stress and adverse educational opportunities for students such as educational continuity, school attendance and attainment.’¹⁷

And by Senator Pat Dodson in 2017:

“Unless the problem of homelessness and housing is addressed, the many other social predicaments affecting Indigenous people will also not be addressed”¹⁸

Housing and incarceration

A lack of stable accommodation renders individuals more likely to breach community based orders, parole and bail, and to therefore spend more time in prison.¹⁹ The lack of housing is also a substantial risk factor for reoffending and given the lack of emergency and transitional housing available to the Victorian community this situation will only worsen unless there is increased investment. A research study found that previous offenders were twice as likely to return to prison within nine months if they were homeless.²⁰ Secure and stable housing is also critical to breaking the cycle of Aboriginal and Torres Strait Islander women’s over-imprisonment. Without safe and secure housing, women are more likely to offend or breach the conditions of bail, community sentencing orders and parole.²¹

¹⁷ Department of Prime Minister and Cabinet, ‘Health Performance Framework 2014’, available at: <https://www.pmc.gov.au/sites/default/files/publications/indigenous/Health-Performance-Framework-2014/tier-2-determinants-health/201-housing.html>

¹⁸ Senator Pat Dodson, 14 December 2017, available at <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F5689467%22>

²⁰ Blady et al, ‘Ex-Prisoners, Homelessness and the State in Australia’, *The Australian and New Zealand Journal of Criminology* (2006)

²¹ HRLC, *Overrepresented and Overlooked: the crisis of Aboriginal and Torres Strait Islander women’s growing over-imprisonment* (May 2017), p 18.

The lack of housing and cultural needs related to housing are major drivers of Aboriginal people being placed on police bail. Aboriginal people are regularly placed on bail at the first instance due to a lack of housing, transience and/or criminal history. In Victoria police often choose to initiate proceedings by way of bail, as opposed to summons, due to the requirement of a summons having to be personally served on the accused pursuant to s 16 of the *Criminal Procedure Act 2009* (CPA). If there are any doubts about the accused person's residency, police will ordinarily adopt bailing the accused on his or her own undertaking whilst the accused is at the police station.²² Once placed on bail the accused are more susceptible to being charged with bail offences, such as the offences in the *Victorian Bail Amendment Act 2013*, which carry significant imprisonment sentences.²³ Upon release, Aboriginal and Torres Strait Islander women are the least likely of all groups of prisoners to find appropriate housing and support services, particularly when they have dependent children.²⁴ For example, a study in NSW and Victoria found that 68% of Aboriginal and Torres Strait Islander women surveyed between 2001 and 2003 returned to prison within 9 months of release. None lived in stable family housing post-release and half of those still out of prison were homeless at 9 months post-release.²⁵

The lack of safe and affordable housing is also a driver of bail refusal, and housing shortages have been a considerable contributor to increases in the remand population. Disadvantage securing stable and suitable accommodation has been identified as significantly contributing to the number of Aboriginal and Torres Strait Islander women denied the opportunity of diversion through bail and instead placed into prison on remand.²⁶ In 2012, one in three Koori women in Victorian prisons were on remand. Many Koori women are refused bail because there is a chronic under-supply of accommodation that they can be bailed to.²⁷

²² VALS Bail Reform submission p 9-10

²³ VALS Bail Reform submission p 9-10

²⁴ HRLC, *Overrepresented and Overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment* (May 2017), p 18 (Eileen Baldry, 'Home Safely: Aboriginal Women Post-Prison and their Children' (2009) 7(15) *Indigenous Law Bulletin* 14).

²⁵ HRLC, *Overrepresented and Overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment* (May 2017), p 18 (Eileen Baldry et al, 'Ex-Prisoners, Homelessness and the State in Australia' (2006) 39(1) *Australian and New Zealand Journal of Criminology* 20, 25-6).

²⁶ HRLC, *Overrepresented and Overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment* (May 2017), p 37 (VEOHRC, above n 6, 50. Similar findings have emerged in studies examining the rise in youth detention numbers: Australian Institute of Criminology, *Drivers of Custodial Remand for Young People* (24 April 2015)).

²⁷ Victorian Equal Opportunity and Human Rights Commission, *Unfinished Business: Koori Women and the Justice System* (2013), p 4.

Housing issues also play a considerable role in Aboriginal and Torres Strait Islander people breaching bail and parole conditions and increasing recidivism rates. A lack of appropriate housing heightens the challenges of complying with bail conditions (similar concerns arise in the context of community sentencing orders and parole conditions). ‘Tough on crime’ criminal justice reforms have seen breach of bail conditions increasingly become a criminal offence and growing numbers of women being charged with justice procedure offences.²⁸

Housing and Family Violence

The lack of safe and affordable housing also has a major impact on family violence. Homelessness and housing insecurity see women and their children lead insecure lives and forces some women to remain dependent on violent partners or family members. Housing insecurity also impacts perpetrators of family violence who are more likely to breach restraining orders and bail and parole conditions when they are without access to secure housing.

The single greatest reason people in Australia present to homelessness accommodation services is family violence,²⁹ with Aboriginal women 15 times more likely to seek assistance from crisis homelessness services than non-Aboriginal people.³⁰ Aboriginal women make up 22% of all clients at specialist homelessness services and Aboriginal children aged up to 14 years make up 32.7%, or one third, of all children in these services.³¹ Aboriginal and Torres Strait Islander women access crisis accommodation at 15 times the rate of non-Indigenous women.³² However, there is rarely accommodation available. For example, in March 2015, there were 9,565 people on the Victorian

²⁸ HRLC, *Overrepresented and Overlooked: the crisis of Aboriginal and Torres Strait Islander women’s growing over-imprisonment* (May 2017), p 37

²⁹ Aboriginal Family Violence Prevention and Legal Service Victoria, *Submission to the Victorian Royal Commission into Family Violence* (June 2015), p 18 (Australian Institute of Health and Welfare, *Specialist Homelessness Services: 2013–2014* ‘Table VIC2.14: Clients, by main reasons for seeking assistance, 2013–14, adjusted for non-response’ (2014). See also Australian Institute of Health and Welfare, *Domestic Violence a major factor in homelessness among women and children* (2008) available at <http://www.dpmc.gov.au/women/publications-articles/safety-women/women-synthesis-report-HTML.cfm>).

³⁰ Aboriginal Family Violence Prevention and Legal Service Victoria, *Submission to the Victorian Royal Commission into Family Violence* (June 2015), p 18 (Australian Institute of Criminology, *The Relevance of Family Violence to Indigenous Women’s Offending* (2010) 28).

³¹ Aboriginal Family Violence Prevention and Legal Service Victoria, *Submission to the Victorian Royal Commission into Family Violence* (June 2015), p 18 (Australian Institute of Health and Welfare, *Specialist Homelessness Services 2012-13, 2014*, page 38 available at <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129545638>).

³² HRLC, *Overrepresented and Overlooked: the crisis of Aboriginal and Torres Strait Islander women’s growing over-imprisonment* (May 2017), p 18 (Bartels, above n 23, 28).

public housing waiting list who were eligible for 'early housing' due to urgent need such as family violence.³³

Challenges in securing stable and appropriate housing can also be a barrier to reunification with children and may mean children remain in the child protection system. As noted below, children in the child protection system are then themselves more likely to enter the justice system as youths or adults, increasing the risks of long term cycles of disadvantage and imprisonment.³⁴

Within Aboriginal and Torres Strait Islander communities, homelessness as a result of family violence can be particularly devastating, as it can also mean dissociation from community, kin and a disconnection to country. Yet culturally safe, Aboriginal and Torres Strait Islander specific crisis housing is very rare.³⁵ In order to achieve this headline target we recommend the adoption of the six sub-targets outlined below:

- 1.1 Close the gap in the proportion of Aboriginal and Torres Strait Islander people living in overcrowding housing by 2031;
- 1.2 Close the gap in the proportion of Aboriginal and Torres Strait Islander people who do not own a home by 2031;
- 1.3 Close the gap in the proportion of Aboriginal and Torres Strait Islander people who are homeless by 2031;
- 1.4 Close the gap in the proportion of Aboriginal and Torres Strait Islander people without access to emergency housing by 2031; and
- 1.5 All Aboriginal and Torres Strait Islander men, women and children have access to culturally safe bail and parole accommodation, designed and managed by ACCOs, by 2031.

³³ Aboriginal Family Violence Prevention and Legal Service Victoria, Submission to the Victorian Royal Commission into Family Violence (June 2015), p 18 (Department of Health and Human Services, Public Housing Waiting and Transfer List March 2015 (2015). As cited in 'Family violence, homelessness and affordable housing – a joint submission from 129 organisations', endorsed by FVPLS Victoria and submitted to the Royal Commission into Family Violence on 29 May 2015. 40 Available at: <http://chp.org.au/wp-content/uploads/2015/06/Joint-submission-affordable-housing-and-familyviolence-May-2015.pdf>).

³⁴ HRLC, Overrepresented and Overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment (May 2017), p 18 (Australian Institute of Health and Welfare, above n 14; Commission for Children and Young People, Always Was, Always Will Be Koori Children: Systemic Inquiry into Services Provided to Aboriginal Children and Young People in Out-of-Home Care in Victoria (State of Victoria, 2016) 96-7).

³⁵ Aboriginal Family Violence Prevention and Legal Service Victoria, Submission to the Victorian Royal Commission into Family Violence (June 2015), p 18.

Headline Target 3:

Close the gap in the over-representation of Aboriginal and Torres Strait Islander children placed in Out of Home Care by 2031

It is now more than twenty years since the release of the *Bringing them Home Report*, which detailed the many negative impacts of child removal on health, education and employment prospects, and the rate of removal of Aboriginal and Torres Strait Islander children is at an all-time high. Data analysis by the Australian Institute of Health and Welfare revealed that in Victoria in 2013 Aboriginal children were more than 15 (15.7) times more likely than non-Aboriginal children to be in out of home care (69.5 compared with 4.4 per 1,000).³⁶

Children and young people in OOHC are a highly vulnerable group with increased physical, mental and social health needs and often limited access to services and support. As a consequence of their exposure and experiences prior to entering care, and within the care system, they are more likely to have significant, often unrecognised and unmet health needs, increased rates of developmental difficulties and are less likely to consistently access health services.³⁷

There is a strong relationship between children being placed in OOHC and their likelihood of entering youth justice. It is well documented that Aboriginal and Torres Strait Islander children and young people are greatly overrepresented in OOHC.³⁸ An AIHW report from 2015 found that, nationally, young people in the child protection system were 14 times as likely as the general population to be under youth justice supervision in the same year.³⁹ Importantly, young Indigenous Australians who were involved with the protection system were almost 3 times as likely as their non-Indigenous counterparts to also be under youth justice supervision. In the same period,

³⁶ Australian Institute for Health and Welfare, Child Protection 2014-15, 2016, available at:

<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2014-15/contents/table-of-contents>

³⁷ The Royal Australian and New Zealand College of Psychiatrists, 'The Mental Health Needs of Children in Out of Home Care, 2015, available at: <https://www.ranzcp.org/Files/Resources/Submissions/PS-59-PPC-The-Mental-Health-Care-Needs-of-Children.aspx>

³⁸ In 2016–17, 49,160 Aboriginal and Torres Strait Islander children received child protection services—a rate of 164.3 per 1,000 children, compared with 22.3 per 1,000 for non-Indigenous children, making Indigenous children were 7 times as likely as non-Indigenous children to have received child protection services <https://www.aihw.gov.au/getmedia/66c7c364-592a-458c-9ab0-f90022e25368/aihw-cws-63.pdf.aspx?inline=true>

³⁹ Australian Institute of Health and Welfare (2016) 'Young people in child protection and under youth justice supervision 2014-15', Data Linkage Series No. 22, Canberra, p. 8.

young people under youth justice supervision were 15 times as likely as the general population to be in the child protection system.⁴⁰ Overall, young Indigenous Australians aged 10–16 were 16 times as likely as their non-Indigenous counterparts to have contact with both the child protection system and youth justice supervision during the 2-year period.⁴¹

The same report found that in comparison with other states and territories, young people under youth justice supervision in Victoria were the most likely to have also received a child protection service during the same 2-year period (53%). A Youth Parole Annual Report from 2016 found that 45% of young people in youth justice centres had been subject to a child protection order and 19% of young people in custody were currently clients of child protection and youth justice services.⁴²

In order to achieve this headline target we recommend the adoption of the five sub-targets outlined below:

- 3.1 Close the gap in the proportion of Aboriginal and Torres Strait Islander children removed from their parents or family by 2031
- 3.2 All Aboriginal children in OOHC to be placed in accordance with the ACPP by 2019
- 3.3 All Aboreiginal children in OOHC to have completed Cultural Support Plan by 2019
- 3.3 Case management of all Aboriginal children to be undertaken by ACCOs by 2019
- 3.5 The proportion of government funds allocated to supporting parents to be greater than the amount allocated to removal by 2023

⁴⁰ Australian Institute of Health and Welfare (2016) 'Young people in child protection and under youth justice supervision 2014-15', Data Linkage Series No. 22, Canberra, p. 8.

⁴¹ Australian Institute of Health and Welfare (2016) 'Young people in child protection and under youth justice supervision 2014-15', Data Linkage Series No. 22, Canberra.

⁴² Youth Parole Board, 'Annual Report 2015-2016', p. 14.