

Missing and Murdered First Nations women and children Inquiry

Victorian Aboriginal Child Care Agency

December 2022



VACCA

Connected by culture

VICTORIAN ABORIGINAL
CHILD CARE AGENCY

VACCA

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About VACCA

Established in December 1976, the Victorian Aboriginal Child Care Agency (VACCA) is the lead Aboriginal child and family support organisation in Australia and the largest provider of Aboriginal family violence, justice support and homelessness services in Victoria. We work holistically with children, young people, women, men, and families to ensure they have the necessary supports to heal and thrive. We do this by advocating for the rights of children and providing everyone who walks through our doors with services premised on human rights, self-determination, cultural respect and safety.

We provide support services to over 4,500 children and young people, and their families and carers each year. VACCA provides support services for Stolen Generations through Link-Up Victoria which has been in operation since 1990. Link-Up Victoria provides family research, family tracing and reunion services to the Stolen Generations survivors to reunite them with their families, communities, traditional country and culture.

VACCA shows respect for observance of and compliance with Aboriginal cultural protocols, practice and ceremony. VACCA was established in the 1976 and emerged from a long and determined Aboriginal Civil Rights movement in Victoria. Today, we continue to act, serve and lobby for the rights of Aboriginal Victorians, especially children, women and families.

While VACCA is a Statewide service provider, we operate primarily in metropolitan Melbourne, Inner Gippsland and the ovens Murray regions. Across our six regions, we deliver over 80 programs tailored to the needs of the communities we serve including child and family services, child protection, family violence and sexual assault supports, youth and adult justice supports, [redacted] services for Stolen Generations. We employ over 1000 staff, making it one of Victoria's biggest employers of Aboriginal people. Our Aboriginality distinguishes us from mainstream services and enables us to deliver the positive outcomes we achieve for our people.

VACCA is guided by Cultural Therapeutic Ways, our whole of agency approach to our practice of healing for Aboriginal children, young people, families, Community members and Carers who use our services, and to ensure that VACCA is a safe and supportive workplace for staff. It works at the intersection of cultural practice with trauma and self-determination theories. The aim of Cultural Therapeutic Ways is to integrate Aboriginal culture and healing practices across the organisation and guide our service delivery approach to be healing, protective and connective.

Acknowledgment

We acknowledge the Traditional Owners of the lands across Victoria that we work on, and pay our respects to their Elders, both past and present and to their children and young people, who are our future Elders and caretakers of this great land. We acknowledge the Stolen Generations, those who we have lost; those who generously share their stories with us; and those we are yet to bring home.

Disclaimers

Note on Language

- We use the term Aboriginal to describe the many Aboriginal and Torres Strait Islander Peoples, Clans and Traditional Owner Groups whose traditional lands comprise what is now called Australia.
- We use the term Indigenous as it relates to Indigenous peoples globally as well as in the human rights context.
- The terms First Peoples and First Nations are employed in the Australian context, by recognising that Aboriginal and Torres Strait Islander peoples are the First Peoples/First Nations of this land, it directly relates to their inherent un-ceded sovereignty.

Note on case stories shared

All case stories included in the confidential submission to the Inquiry have been removed/redacted so that we could share this 'public version'. This is due to the high-profile nature of some of these cases, and the relatively small and connected Aboriginal community in Victoria. VACCA did not want to cause further harm to families that are already suffering, nor impact any current proceedings.



Key Points and Recommendations

VACCA calls on the Senate Standing Committee on Legal and Constitutional Affairs consider the following recommendations:

Committee Inquiry Process

1. That the Committee seek/call evidence on the sentencing and bail practices for Aboriginal women and children from each jurisdiction.

Advocacy and Leadership

2. That the Committee call for the creation of a National Aboriginal and Torres Strait Islander peak for the primary prevention of Aboriginal family violence; and
 - a. That the peak support and be aligned to the National Aboriginal and Torres Strait Islander Family Violence Plan; and that
 - b. The new Aboriginal-led peak be legislated to oversee the introduction and implementation of state and territory family violence death review mechanisms with formal reporting functions.
3. That the Committee recommend the resourcing of the National Family Violence workforce to build consistent capacity and practice specifically the ability to identify, support and refer onto specialist services (family violence, housing support etc.) depending on the needs of each individual or family.
4. That the Committee recommend that, in line with its commitments under Closing the Gap, that the Commonwealth Government increase investments in ACCOs to deliver Aboriginal-led early help and prevention approaches across both the children and families and family violence sectors (targets 12 & 13).

Legislative Reform and Accountability Mechanisms

5. That the Committee recommend that for all new legislative and policy reform at the Commonwealth level to align with the UNDRIP principles, including the right of Indigenous peoples to be self-determining in issues related to child and family wellbeing; and
 - a. For all Australian governments to take immediate action to ensure that the right to self-determination is recognised in Australian law and aligned with the UNDRIP
 - b. For the Victorian Government this means amending the Charter of Human Rights and Responsibilities to recognise the right to self-determination.
6. That the Committee recommend that the Commonwealth Government develop a national Bill of Rights, which includes the right to self-determination for Aboriginal and Torres Strait Islander Peoples.

7. That the Committee recommend that:
 - a. That each year when Federal Parliament mark the anniversary of the Apology to the Stolen Generations, that the incumbent Government also table a report to parliament documenting progress towards implementing the intent of the Bringing Them Home report; and
 - b. That each year when Federal Parliament table the Annual Closing the Gap report to Parliament, that that that the incumbent Government also table a report to parliament documenting progress towards implementing the Recommendations of the Royal Commission into Aboriginal Deaths in Custody.
8. That the Committee recommends that the Sentencing Act 1991 (Vic) is amended so that judicial decision-makers are required to consider the impacts that parental imprisonment has on Aboriginal children in sentencing in all cases not just in exceptional circumstances.
9. That the Committee recommends that the Bail Act 1997 (Vic) is amended so that the reverse onus provisions of the Bail Act are repealed and instead a presumption in favour of bail for all offences to be inserted.

Data

10. That the Committee recommends that a national database be created which speaks to the number of cases of lost, missing or murdered First Nations women and children.
11. That the Committee recommends that the Australian governments immediately undertake the data development commitments outlined under Target 13 of the National Agreement on Closing the Gap to ensure nationally consistent data on the prevalence of family violence.

Practice

12. That the Committee recommends that each jurisdiction create and implement a system response within both the child protection and family violence systems to create an alert to care workers and Police where there are high risk cases or an escalation of behaviour that is known to be a common feature in family violence homicides e.g. coercive control, strangulation, increased frequency of hospital visits etc.
13. That the Committee recommends the expansion of all Aboriginal-led Sexual Assault Therapeutic Services so that Aboriginal Community Controlled Organisations (ACCOs) can better support women, children and young people who have experienced sexual harm (current and historical).

14. That the Committee recommends that ACCOs be resourced to develop and deliver Aboriginal-led early intervention and prevention approaches across both the children and families and family violence sectors.
15. That the Committee recommends that further support and training is developed nationally across all sectors to better identify risks associated with violence and harm towards Aboriginal women and children.

Police

16. That the Committee recommends that all jurisdictions' Police must consistently follow up on missing reports in timely manner and not make assumptions about where the Aboriginal child, young person or woman may be, but act as if they know they are in imminent danger.
17. That the Committee review police reports across jurisdictions for these matters to identify patterns of decision making and policing.
18. That the Committee recommends that all jurisdictions' Police undertake annual training and regular supervision to ensure better practice, given the risk of further harm to Aboriginal women and children where the mother is mis-identified as 'perpetrator of FV' and the impact of this can e.g. murdered.

Justice

19. That the Committee looks at the sentencing patterns in murders of First Peoples and in particular where Aboriginal women at the center of violence.

For further consideration

20. That the Committee give extra attention to develop a better understanding of the intersectional experiences of LGBTIQ+ Aboriginal children, young people, women and trans women and men when it comes to experiences of violence and harm.

Introduction

VACCA welcomes the opportunity to provide evidence for consideration as part of the landmark parliamentary inquiry into missing and murdered First Nation women and children, we hope this can help bring justice to the many Aboriginal women and children who have been murdered or gone missing and have not received adequate responses and support from the justice and coronial systems. This submission builds on testimony provided by VACCA's CEO, Muriel Bamblett AO to the Inquiry.

VACCA's feedback is based on our unique position as a Victorian ACCO providing a suite of services across the state supporting children, young people, families and community members. We have protected and promoted the rights of Aboriginal children and families for over 40 years. VACCA believes that all children have a right to feel and be safe and live in an environment that is free from abuse, neglect and violence.

We are committed to promoting and upholding the rights of Aboriginal children to maintain and celebrate their identity and culture, recognising that connection to culture is critical for children's emotional, physical and spiritual wellbeing.

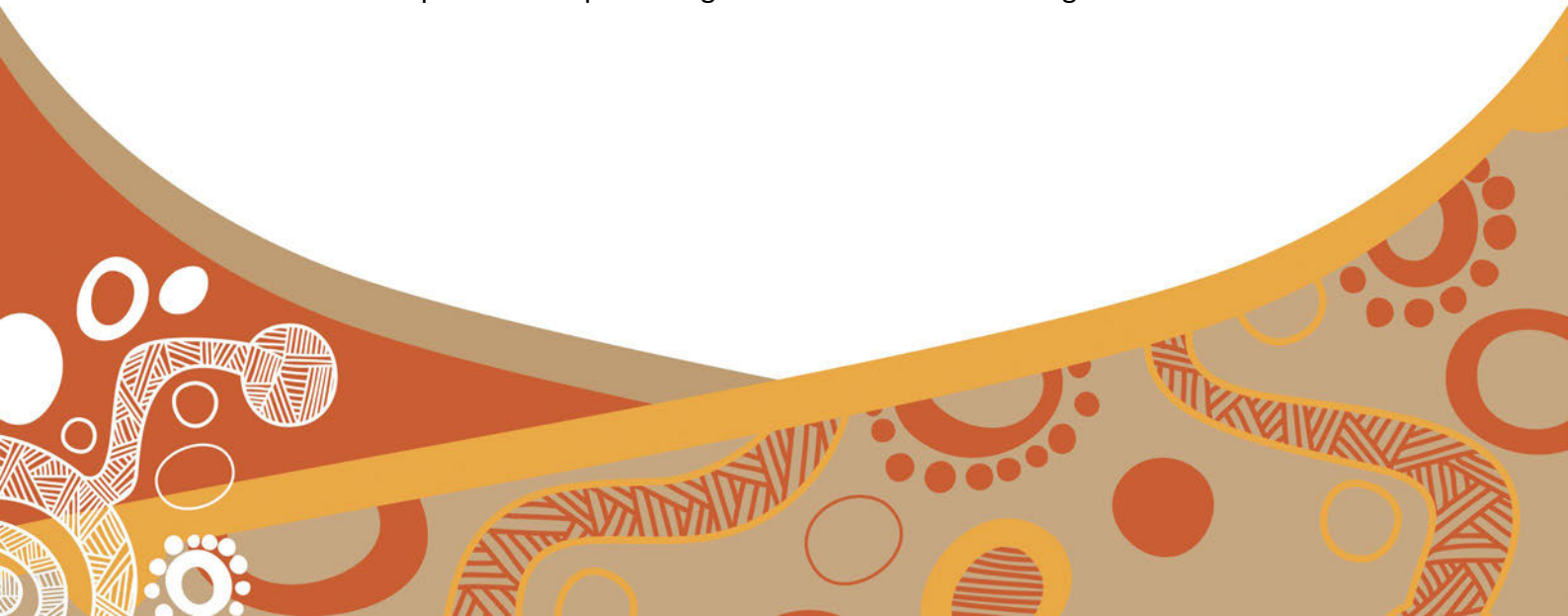
Background

Aboriginal women and children continue to experience horrific violence, abuse, oppression, coercive control, grooming and exploitation, it is an injustice and a national emergency, yet their plight is largely ignored. It is a legacy of colonial oppression and invasion, of state sanctioned structural inequity –the system is not changing, there is racial inertia and no accountability.

The deliberate and systemic violent human rights abuses against Aboriginal women and children is compounded by racism, sexism, ableism, homophobia and transphobia is not a just a historic issue, but rather an ongoing and enduring issue of human rights abuses and violations. Aboriginal peoples have been treated as possessions, our bodies, living or dead have been controlled and stolen, our ancestors skulls sit in museums as evidence of Darwinian theory; upholding insidious notion of racial superiority. Aboriginal peoples are still seeking repatriation to facilitate reunions, reburials and collective healing.

There must be a national truth-telling process that will finally uncover the unpack the prevalence of systemic racism and unconscious bias that has filtered through to a society that is violently racism towards Aboriginal peoples. As Rachel Cargle articulates, the "roots and fruits" of racism and violence as experienced by those being born into white privilege that benefit off the stolen lands of our ancestors.

VACCA's submission will detail three core themes: **Justice, Healing and Upholding of Rights** and what can be done to prevent and protect against further harm of Aboriginal women and children.



Feedback on the Inquiries' Terms of Reference

a. the number of First Nations women and children who are missing and murdered

There is no national data which speaks to the number of cases of lost or murdered Aboriginal women and children, this is a serious issue which must be addressed if we are to curb the disproportionate rates of violence experienced by Aboriginal women and their children. Whilst, specific data on the number of Aboriginal women and children is not available, the statistics we do have shown that our women and children are experiencing violence at higher rates:

- Aboriginal and Torres Strait Islander women make up 16% of all female murder victims in Australia and also make up 10% of unsolved missing persons cases¹.
- Aboriginal and Torres Strait Islander women are 11 times more likely to die due to an assault and are 32 times more likely to be hospitalised due to family violence than non-Indigenous women.²
- Aboriginal and/or Torres Strait Islander women were overrepresented as victims of Intimate Partner Homicide, representing 24 per cent, while only making up three per cent of the general population of Australia³
- When looking at early mortality from external causes in Aboriginal mothers⁴, Homicide had the highest relative risk for Aboriginal mothers (17.5 times higher than non-Aboriginal mothers)
- While Aboriginal young people make up less than 6 per cent of the Australian population under the age of 18, they comprise around 20% of missing children⁵
- Between 2008 and 2015, children and young people aged 13 to 17 accounted for approximately half of all missing person reports across Australia⁶.
- In 2015, the rate of children and young people aged 13 to 17 who were reported missing was 6.5 times the overall reported missing [6](#)

¹ Wiyi Yani U Thangani: Securing Our Rights, Securing Our Future Report - 2020

² <https://www.theguardian.com/australia-news/2022/aug/04/horrific-first-nations-missing-and-murdered-cases-to-be-focus-of-australia-wide-inquiry>

³ ANROWS Pathways to Intimate Partner Homicide Report – 2022 <https://www.anrows.org.au/publication/the-pathways-to-intimate-partner-homicide-project-key-stages-and-events-in-male-perpetrated-intimate-partner-homicide-in-australia/>

⁴ Early mortality from external causes in Aboriginal mothers: a retrospective cohort study – 2016, <https://bmcpublichealth.biomedcentral.com/track/pdf/10.1186/s12889-016-3101-2.pdf>

⁵ The Conversation: First Nations kids make up about 20% of missing children, but get a fraction of the media coverage: <https://theconversation.com/first-nations-kids-make-up-about-20-of-missing-children-but-get-a-fraction-of-the-media-coverage-171666>

⁶ <https://ccyp.vic.gov.au/assets/Publications-inquiries/Out-of-sight-inquiry-report-Web.pdf>

b. the current and historical practices, including resources, to investigating the deaths and missing person reports of First Nations women and children in each jurisdiction compared to non-First Nations women and children

Historical practices

Throughout history Aboriginal peoples have always fought against our subjugation and as such we exercised our rights as human beings to dignity and self-expression and with an innate sense of our connection to our land, the source of our being.

Due to limited capacity, VACCA is focussing on the contemporary practices, as the historical practices are outside the scope of knowledge. We encourage the Committee to look into the findings of the Royal Commission into Aboriginal and Torres Strait Islander Deaths in Custody and the Bringing Them Home Report to gain that historical understanding.

Contemporary practices

There are a number of ways in which VACCA may uncover historic family stories which detail missing and murdered Aboriginal women and children, this may be through our support of Stolen Generations through Link-Up Victoria, as we are still bringing Stolen Generations home, facilitating family reunions, many of which are now graveside reunions. Or via our Finding Family Program, where we look for archival records in Births Deaths and Marriages and uncover sealed adoptions, or perhaps through the work of developing a Cultural Support Plan. VACCA also supports former clients access their records, and this may be the first time they find out aspects of their family history. This can be a very painful process, with many barriers to accessing their story, and where historically we may have had to go back three generations to confirm Aboriginality, we are now having to go back five or six.

Given the nature of forced removals there is also cross-jurisdictional complexity, as an example of the 1000 Cultural Support Plans our CEO has reviewed in the last 3 years only 37 per cent have Victorian Aboriginal connections, 41 per cent have interstates peoples connections, 4 per cent have both Victoria and interstate where a concerning 18 per cent have had State unknown. This is a significant resource intensive process, as we must hold each client with a trauma informed understanding, through this process of discovery.

The following case studies include the voices of the women and children that we must never forget, their stories clearly evidence how systems and governments have failed to keep Aboriginal women and their children safe from harm.



Child death Inquiries

In reviewing child death reports for this inquiry, where VACCA had some sort of involvement with the family it has provided an opportunity to reflect. These are harrowing reading, of where protective concerns have not been properly addressed, where Victorian Departments have not followed protocol and engaged Aboriginal services like VACCA as soon as the Aboriginal identity of a child is confirmed, where not enough supports have been provided for vulnerable families who are dealing with trauma, substance abuse, unstable housing and family violence issues.

We at VACCA haven't been delivering dedicated family violence services for as long as we have been delivering child protection services, but VACCA still has stories of murdered women, murders of mothers of Aboriginal children, women experiencing family violence who go missing and child deaths where family violence is a prominent feature in the household.

Case Study – Grace - Redacted

This case dates back to 2015, prior to the Royal Commission into Family Violence and the significant reforms that have followed, where family violence was not addressed adequately across systems.

There are other child death inquiries where VACCA wasn't informed the child was Aboriginal until well into child protection involvement, which goes against the legislated responsibility of DFFH to engage VACCA at the point of identification from the outset of a notification. It is not possible to know if there would have been a different outcome, but there are systemic issues that must be addressed alongside the individuals who harmed those children.

Case Study – Charles - Redacted

More recently we had an incident where through various child protection reports, family violence concerns were not adequately addressed, [REDACTED] here was no referral to our family violence services, a MARAM (multi-agency risk assessment and management) was not conducted, despite there being two Victorian Police Risk Assessment and Risk Management Report 'L17s (L17s).

The system is failing – VACCA contends that there must be family violence death reviews similar to what is undertaken when a child dies where there has been some involvement with child protection.

Young people in out-of-home-care

For our young people leaving care, they can be some of the most vulnerable. Without adequate planning and support during the transition period, care leavers face poorer outcomes in terms of access to education, risk of homelessness, mental and physical health concerns, exploitation, disconnect from family and culture, contact with the justice system and development of life skills required for independent living.

To address the transitional needs of young people leaving care, the Better Futures program was rolled out statewide in 2019 after a two-year DHHS pilot in VACCA Southern Metro region and Gippsland.

The program engages with young people, their case managers, care teams and broader support networks early to ensure young people are well prepared for independent living across five key areas: Housing and living skills; education; employment; health and wellbeing; and community connections. Young people in out of home care are eligible for referral to Better Futures from the age of fifteen years and nine months, until they are 21 years old.

Case Study – Sophie - Redacted

In response to this case, VACCA has implemented Better Futures Risk Panels with specialists across family violence, our Aboriginal Children's Healing Team and child protection practice leads so that high risk clients like Sophie, while considered an adult, but whom are really still a child, receive more coordinated interventions and intensive supports.

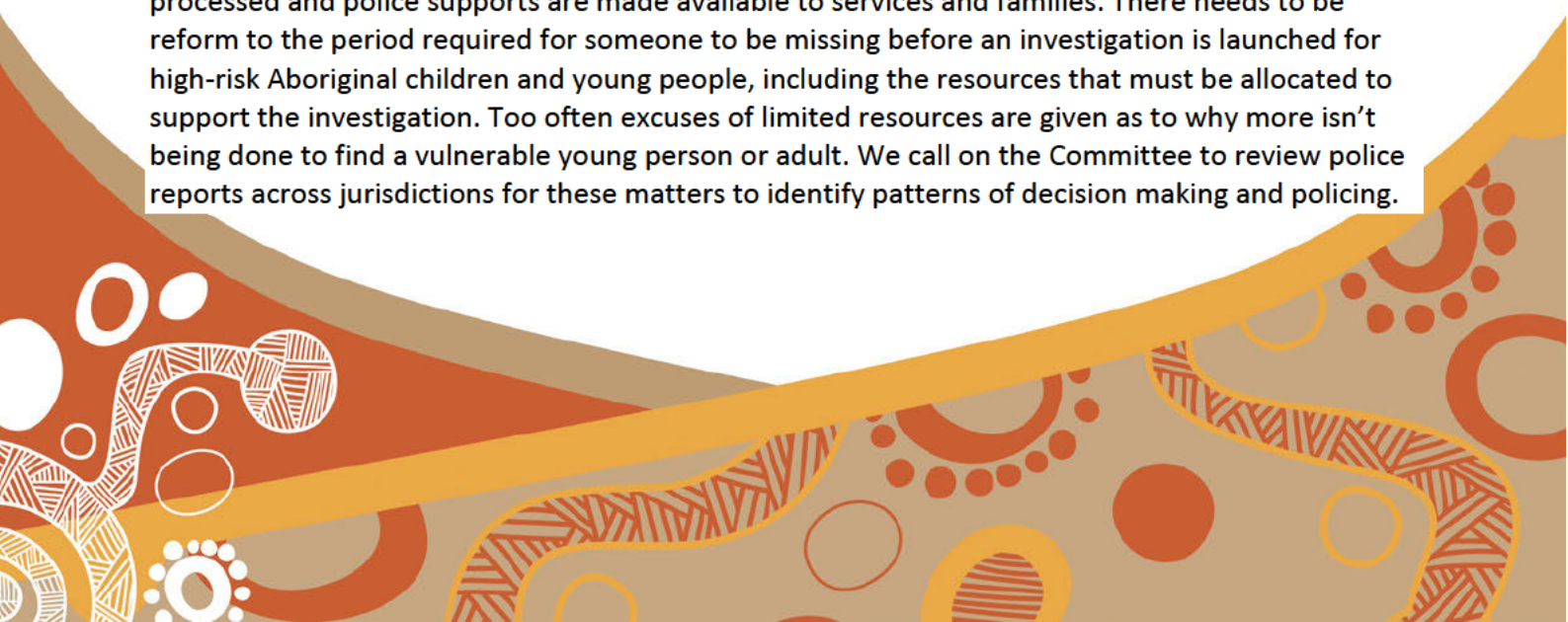
Case Story – Kylie - Redacted

Role of Aboriginal sector and community

Any approach to missing and at risk First Nations women and young girls needs to consider the role of the Aboriginal sector and Aboriginal community. From VACCA's experience particularly in locating young people is in our use of our extensive networks. We currently have agreements with police and child protection when a young person absconds where VACCA's CEO is notified prior to a missing person's report lodged. VACCA uses our social networks to look for family, but this does not extend to family violence. As we detail in 'section d', all levels of government have a responsibility to transfer resources to ACCOs as per the National Agreement on Closing the Gap, the evidence is clear that Aboriginal led programs and interventions get better results for community.

Police Practices

As evidenced in a number of the case stories above, VACCA has some concerns about police practices. Specifically around the inconsistent manner in which missing person reports are processed and police supports are made available to services and families. There needs to be reform to the period required for someone to be missing before an investigation is launched for high-risk Aboriginal children and young people, including the resources that must be allocated to support the investigation. Too often excuses of limited resources are given as to why more isn't being done to find a vulnerable young person or adult. We call on the Committee to review police reports across jurisdictions for these matters to identify patterns of decision making and policing.



VACCA sees it as a critical issue that police must follow up on missing reports in timely manner and not make assumptions about where the Aboriginal child, young person or woman may be, but act as if they know they are in imminent danger. When a child or young person goes missing from care, staff make every effort to look for the young person in known locations. The majority of the time the young person is in a known location, typically with their family or unfortunately at premises known as illicit drug suppliers. For many young people who visit family, they ring staff to come and get them when the situation becomes unsafe. Police are rarely utilised in these situations.

Unfortunately, in the cases of drug use or absences out of the ordinary Police are the only option. In discussion with child protection, a Police warrant and media release are requested/issued. Between 2018 and 2021 Victoria's Commission for Children and Young people found that an average of 388 warrants for missing children were granted per month, or 0.9 warrants per child or young person in residential care on average per month.

As detailed later in the submission VACCA is also alarmed at the rates of misidentification of Aboriginal women as the perpetrator of family violence. The impact this can have on women and their children is significant and traumatic. Victoria Police have acknowledged this and doing further training but more needs to be done. Further and ongoing police training needs to be implemented across jurisdictions about family violence, how to understand the patterns of behaviours and the signs of abuse.

Absent not missing

In 2021, Victoria's Commission for Children and Young people undertook a Systemic inquiry into children and young people who are absent or missing from residential care titled ["Out of sight"](#). The inquiry looked into how often children and young people are absent or missing from residential care, why they are absent or missing, what happens when they are, and what can be done to better respond to this issue. VACCA contents that in our experience the report should have been entitled "absent not missing" due to the fact that as a general rule we know where our young people are when they are absent from their care placement.

The recommendations of this report though are relevant for this inquiry as they are relevant as they related to the:

- Language used to describe Aboriginal people and their behaviours from a deficit lens
- Lack of recognition of how statutory systems diminish relationships and connections to community and culture
- Models of care need to change to improve improves safe and supported connections to friends, family and the broader community
- Need for practice improvements especially where family violence and coercive control is present especially through effective planning, information sharing and risk assessment tools that care teams, Police, hospital staff etc are trained and supported to apply.

We also support the more general recommendations relating to reform not just for children and young people but women in general:

- funding for coordinated statewide approaches to addressing child sexual exploitation and a new approach to tackling criminal exploitation that prevents abuse and holds perpetrators accountable
- reduced reliance on police and other measures that are experienced as punitive or stigmatising by children, young people and women who report abuse
- streamlined processes and roles for missing person reports and warrants
- improvement to return to care conversations to encourage continuous improvement in how care is provided and to ensure any disclosures of harm can be acted upon for children and young people; for women better safety planning
- increased monitoring and reporting of information relating to Aboriginal people in tertiary or mental health care services who are frequently absent or missing
- improvements to information management and data collection to allow for more meaningful oversight and accountability especially for perpetrators of violence

c. the institutional legislation, policies and practices implemented in response to all forms of violence experienced by First Nations women and children

Critical incidents & Reportable conduct

Victoria's child protection system, like other jurisdictions, have a critical incident and mandatory reportable conduct scheme. It is highly manualised and requires that "*child protection practitioners are expected to know the whereabouts of a child with whom they were involved and be satisfied that the child is safe, and the living circumstances are adequate for the child's safety, stability, and healthy development.*"

It stipulates that where the whereabouts of a child with whom child protection is involved are unknown, child protection need to ensure that a missing person's report (MPR) is made to police. A concurrent Children's Court search warrant may also be required, if it is assessed that police intervention will be required to ensure the security of the child, once the child's whereabouts are established. However, there are no timelines associated with either establishing the safety and whereabouts of the child or when a report to Police/Court should be made. This is the same for missing children and young people.

However, in the situation where an Aboriginal child or young person is missing, child protection are recommended to consult with the relevant ACCO before issuing a warrant or media release. This happens most times. However, our staff report regularly enough that they become aware of a media release or warrant after the case to indicate that child protection are not as collaborative as they could be. This is compounded by the Departments' failure to comply with the Aboriginal and Torres Strait Islander Child placement principle (ACPP) or Aboriginal Children in Aboriginal Care.

To respond to less than best practice of child protection staff, VACCA have established our own internal on-going fortnightly High Risk Panel meetings in each of our regions. This way we

maintain clear line of sight of each child and young person, and any behaviours that may place them at risk of harm.

Human Rights

Australia, including all levels of government, must do better to **uphold the rights** of Aboriginal peoples, particularly the rights of Aboriginal women and children. We raise later in the submission the need to implement and adhere to international covenants.

Victoria has invested heavily in family violence reforms since its Royal Commission in 2016, which the Victorian Government agreed to implement all recommendations. We have seen MARAM implemented across the sector, which is a risk assessment framework to guide practice, Orange Door Safety hubs open up, but unfortunately the rates of family violence against Aboriginal women continue to increase, in part because there are more safety options, so women reach out for help, but also because we are seeing more escalations, more repeated episodes of violence, more breaches and more new occurrences. COVID-19 made this exponentially worse, and the rates have remained steady. Before COVID-19 VACCA supported around 250 women each month, now we support over 360 women each month, during the peak of COVID-19 infections and lockdowns in Victoria, consistently over 400 women each month.

This shows that when only four of nine Aboriginal specific recommendations of the Royal Commission have been implemented to date, Aboriginal women and children continue to suffer as we are not prioritised over non-Aboriginal women. While ACCOs have received significant investment to develop and deliver family violence services, it is nothing compared to mainstream and in 2023 a majority of this short term funding, for primarily early intervention and prevention support services, is due to end and not be renewed, placing ACCOs and the Aboriginal community, at an even greater disadvantage. The scourge of family violence cannot be addressed with short term funding.

Upholding and implementing international human rights

Reflecting on the gaps in the Australian context of upholding and implementing international human rights, it's important to see examples of how this can be done.

In Canada, at the federal level, the *United Nations Declaration on the Rights of Indigenous Peoples Act* became law in 2021. Under the Act, the Canadian Government is required to ensure that the laws of Canada are consistent with the UNDRIP, develop and implement an action plan to achieve compliance, and prepare an annual report to Parliament on its progress in implementing the UNDRIP principles.

Currently the Government of Canada is in the process of consulting with First Nations, Inuit and Métis communities to develop a draft action plan and initial implementation measures.

In British Columbia, the provincial government passed the first legislative framework aimed at implementing the UNDRIP, the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA) and are in the process of developing a plan for implementation.

This is a fundamentally different political environment and appetite to address greater protections on Aboriginal peoples' rights.

To what these kinds of commitments can afford and effect, we note the very similar inquiry that was recently held in Canada - the National Inquiry into Missing and Murdered Indigenous Women and Girls.

There is much we can learn from their inquiry including how they are responding to the recommendations having implemented a National Action Plan and Federal Pathway. What is clear from that inquiry is that its powers were closer to that of a Royal Commission, with independent commissioners, significant funding and support for individuals and communities to share their stories and experiences. We hope that the federal government will receive the final report from this inquiry and be able to adopt and fund the requisite programs, reforms and resources required to address the nature of violence that Aboriginal women and children are experiencing.

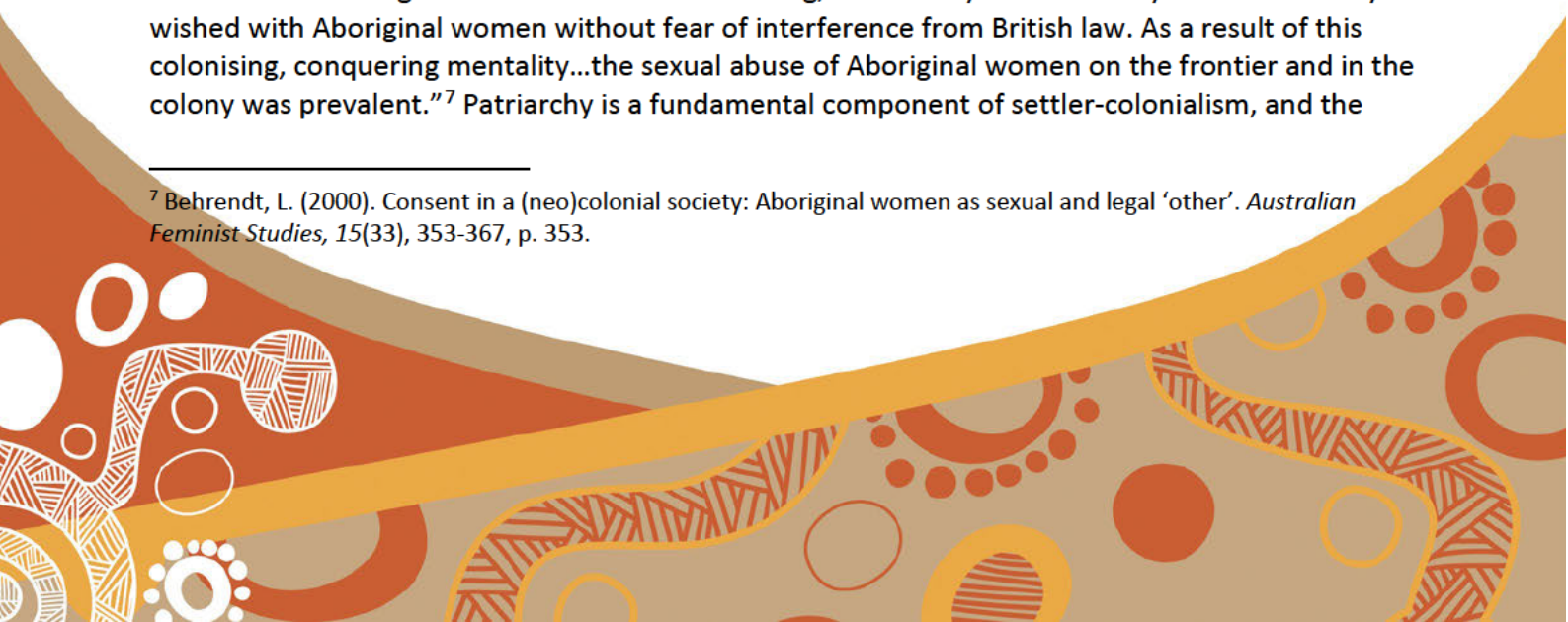
d. the systemic causes of all forms of violence, including sexual violence, against First Nations women and children, including underlying social, economic, cultural, institutional and historical causes contributing to the ongoing violence and particular vulnerabilities of First Nations women and children

The experience of Aboriginal peoples under colonisation has been traumatic and has involved a series of dispossessions – from the land, from ancestors, from culture and from family. Violence against Aboriginal women and their children takes place within the context of significant structural oppression and violation of rights, as well as a societal indifference toward their well-being and safety.

Historical causes contributing to ongoing violence and particular vulnerabilities of First Nations women and their children

Colonial intervention and violence against Aboriginal women and children were central to the process of settler-colonial expansion. Broadly, invasion made Aboriginal women and children vulnerable in two key ways, firstly the invaders actively perpetrated physical, sexual, economic, and spiritual violence, and secondly, settler-colonialism attempted to weaken the roles and autonomy of women within their communities. As Larissa Behrendt writes, “just as the invading colonists saw Aboriginal land as theirs for the taking, so too they assumed they could do as they wished with Aboriginal women without fear of interference from British law. As a result of this colonising, conquering mentality...the sexual abuse of Aboriginal women on the frontier and in the colony was prevalent.”⁷ Patriarchy is a fundamental component of settler-colonialism, and the

⁷ Behrendt, L. (2000). Consent in a (neo)colonial society: Aboriginal women as sexual and legal 'other'. *Australian Feminist Studies*, 15(33), 353-367, p. 353.



imposition of western, Christian gender and parenting roles onto Indigenous communities was used in an attempt to dismantle structures of kinship, nationhood, and economic survival.⁸

We encourage the inquiry to consider the experiences of the Stolen Generations, many of whom never made it home. They are still missing and must be recognised as part of this inquiry. The forcible removal of Aboriginal children from their families is a clear example of how violence against women and children was used as a tactic to erode Aboriginal sovereignty.

The act of removing Aboriginal children began immediately after invasion, with missionaries, colonial agents, and squatters taking children into their homes who they had deemed to be orphans.⁹ This practice would become official colonial policy in 1869 when the Victorian colonial parliament passed the *Aborigines Protection Act* which officially established the *Aborigines Protection Board*. From that point on First Nations peoples began to 'live under the act' where their lives were controlled, and any form of self-determination or cultural agency was denied. Parents who attempted to stop their children from being removed were threatened with expulsion from the mission or denial of rations.¹⁰

It is estimated that between one and three Aboriginal children were forcibly removed from their families and communities in the period from 1910 to 1970.¹¹ The violence experienced by Aboriginal children in state-run and church-based institutions, as well as in adoptive homes, is well-documented. VACCA recommends that the inquiry examine the testimony of Stolen Generations to the Yoorrook Justice Commission to understand the lifelong impacts that removal has had on children into their adulthoods and their families in Victoria.

When we talk about Stolen Generations and the forcible removal of Aboriginal children, we are not only talking about the historical period, this in an ongoing and far-reaching process of colonisation, systemic racism and genocide. VACCA encourages the inquiry to seek out the public records which will show reams of letters from parents sent to [REDACTED] have been [REDACTED]

We refer to our [Yoorrook submission](#) for greater detail on the frontier wars and the authorising environment for forced removals of children, forced movement of Aboriginal peoples onto reserves and missions and the violence perpetrated against Aboriginal women at the hands of

⁸ Arvin, M., Tuck, E., & Morrill, A. (2013). Decolonizing feminism: Challenging connections between settler colonialism and heteropatriarchy. *Feminist Formations*, 25(1), 8-34.

⁹ Atkinson, S., & Swain, S. (1999). A network of support: Mothering across the Koorie community in Victoria, Australia. *Women's History Review*, 8(2), 219-230.

¹⁰ Human Rights & Equal Opportunity Commission. (1997). *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander children from their families*. Available at: <https://humanrights.gov.au/our-work/bringing-them-home-report-1997>

¹¹ Australian Institute of Health and Welfare. (2018). *Aboriginal and Torres Strait Islander Stolen Generations aged 50 and over*. Available at: <https://www.aihw.gov.au/getmedia/32bddc34-2f4a-49d9-8f15-4e32bf2edcc1/aihw-ihw-199.pdf.aspx?inline=true#:~:text=between%20one%20in%20three%20and,from%20approximately%201910%20until%201970.>

settler men the ongoing impact of these forced removal policies on the Stolen Generations and their descendants, many of whom never made it home.

Contemporary causes contributing to ongoing violence and particular vulnerabilities of First Nations women and children

Family violence

Aboriginal peoples and communities continue to be impacted disproportionately by family violence. We know that Aboriginal women and children are all too often the affected family members in family violence situations. Family violence is a leading contributor to Aboriginal child removal, homelessness, poverty, poor physical and mental health, drug and alcohol misuse and incarceration.

The Victorian Health Population Survey found that in 2017, Aboriginal women were 2.5 times more likely to report experiencing family violence than their non-Aboriginal peers.¹² It is important to note, however, that Aboriginal respondents were twice as likely than non-Aboriginal participants to refuse to answer questions about family violence, indicating a potential underreporting in these figures as well. In 2021, there were 4,036 Aboriginal women and children who were identified as an 'affected family member' during family incidents attended by the Victorian Police.¹³ Specifically Aboriginal women are 25 times more likely to be injured or killed as a result of family violence than non-Aboriginal women.¹⁴ This leads Aboriginal children to be vulnerable to the indirect and direct impacts of family violence, including the risk of child protection involvement and potential removal.

It is difficult to accurately determine the prevalence of family violence across society due to underreporting, culturally inappropriate assessment tools, the poor identification of Aboriginal status at the point of police involvement including misidentification of the affected family member, as well as a fear of involving state authorities, such as criminal justice and child protection systems.¹⁵ Due to these factors, some studies have estimated that family violence against Aboriginal women is underreported by as much as 90 per cent.¹⁶

¹² Victorian Agency for Health Information. (2020). *Family violence in Victoria: Findings from the Victorian Population Health Survey*. Melbourne, VIC: Author.

¹³ Crime Statistics Agency. (2021). *Family incidents by Aboriginal and Torres Strait Islander status*. Available at: <https://www.crimestatistics.vic.gov.au/crime-statistics/latest-aboriginal-crime-data/family-incidents-by-aboriginal-and-torres-strait>

¹⁴ State of Victoria. (2017). *Balit Marrup: Aboriginal social and emotional wellbeing framework 2017-2027*. Available at: <https://www.dhhs.vic.gov.au/sites/default/files/documents/201710/Balit-Murrup-Aboriginal-social-and-emotional-wellbeing-framework-2017-2027.pdf>

¹⁵ Australian Institute of Family Studies. (2016). *Family violence prevention programs in Indigenous communities*. Available at: <https://www.aihw.gov.au/getmedia/c0e5bdde-e9c4-4a1f-808e-256191835cde/ctgc-rs37.Download%20PDF.aspx>

¹⁶ Willis, M. (2011). *Non-disclosure of family violence in Australian Indigenous communities*. Canberra, ACT: Australian Institute of Criminology. Available at: <https://www.aic.gov.au/publications/tandi/tandi405>

The exact rate of misidentification of women as the primary aggressor is unknown, however data from Victoria Police indicates that 12 percent of female respondents on family violence reports relating to intimate partner violence are misidentified¹⁷, and this number has been increasing substantially over the years.

Aboriginal women in particular are at greater risk of identification as a perpetrator and VACCA has seen a number of cases where police have responded to a client as the aggressor, rather than as an affected family member. The Family Violence Reform Implementation Monitor research indicates that police are not adequately trained to understand the signs of trauma and abuse (including the prevalence of acquired brain injuries) and self-defence, that they do not adequately look at the history of family violence incidents for the parties involved, nor their history of prior offending, and instead treat the incident at 'face value'.¹⁸ This indicates a level of misunderstanding about what family violence looks like for Aboriginal women and their children and we believe this directly attributes to the high number of Aboriginal women in prison and by extension the high number of children being removed from their families unnecessarily. Not only this, but the experience of misidentification causes significant harm and trauma, particularly to women and children.

Often, responses to Aboriginal women affected by family violence reveal an apathy and normalisation of violence toward Aboriginal women and children. Media rarely centres their stories of violence, and when doing so often de-humanise Aboriginal women, by examining women's behaviour, rather than that of the perpetrator, and framing them as partly responsible for their own deaths by focusing on past criminal justice involvement, for example.¹⁹ Another persistent stereotype seen throughout colonial representations of Aboriginal family life is that violence is inherent to Aboriginal culture, whilst both historical and contemporary violence against Aboriginal women and children by non-Aboriginal men remains invisible.²⁰ Indeed, research has found that the vast majority of Aboriginal women in Victoria have non-Indigenous partners – 85 per cent of Aboriginal women in Melbourne ██████████ in ██████████ violence

¹⁷ <https://www.fvrim.vic.gov.au/monitoring-victorias-family-violence-reforms-accurate-identification-predominant-aggressor-4>

¹⁸ Family Violence Reform Information Monitor, 'Acknowledging the complexity of the family violence incidents police attend, police practice and processes are contributing to misidentification'. Accessed on 7/12/22 via: <https://www.fvrim.vic.gov.au/monitoring-victorias-family-violence-reforms-accurate-identification-predominant-aggressor-5>

¹⁹ McQuire, A. (2021, October 11). Silencing Aboriginal women on issues of violence: On dehumanisation and silencing. *Presence*. <https://amymcquire.substack.com/p/silencing-aboriginal-women-on-issues>

²⁰ Watson, I. (2009). Aboriginality and the violence of colonialism. *Borderlands*, 8(1),

²¹ Brown, Lily. (2019, November 25). Why we need to educate journalists about Aboriginal women's experience of family violence. *The Conversation*. Available at: <https://theconversation.com/why-we-need-to-educate-journalists-about-aboriginal-womens-experience-of-family-violence-65789>

experienced by Aboriginal women, it is likely that the person responsible is non-Indigenous²². VACCA Family Violence workers indicate that this data is reflective of their experience too.

When violence against Aboriginal women and children becomes normalised and their lives devalued, it means they are no longer viewed as victims by authorities and receive a negligent response. Because of this disclosure of family violence remains particularly challenging for Aboriginal women as many are hesitant of utilising mainstream services due to a well-founded fear that their children may be removed. The families VACCA works with have also reported poor experiences in mainstream crisis accommodation suggesting the need for more culturally safe programs and refuges such as our Orana Gunyah program.

With mainstream institutions failing to take seriously violence against Aboriginal women and children, access to Aboriginal-led, culturally appropriate, and wrap-around responses are essential. Despite the significant level of need for family violence services within the Aboriginal community in Victoria, under resourcing and a lack of ongoing investment in infrastructure and service delivery is a chronic and structural problem. This under resourcing can be directly linked to the process of settler-colonialism wherein mainstream CSOs accrued unparalleled access to infrastructure, whether it be a bequeath from a church or a benefactor, through the dispossession of land from Aboriginal peoples. This has resulted in systemic advantage amongst mainstream CSOs across all sectors and is an injustice which must be acknowledged and substantively addressed by governments and CSOs through the transfer of resources.

Furthermore, this under resourcing of the ACCO sector occurs despite the fact that the Aboriginal population is growing at a significantly faster rate than the non-Aboriginal population. Social Ventures Australia (SVA) was contracted to prepare a report on demand across the ACCO sector which found that the Aboriginal population is projected to rise by 48% by 2028.²³ Demand for family violence services is projected to increase significantly over the next decade, at current growth rates, we anticipate that over 6,300 Aboriginal people (mainly women) will require family violence supports by 2028.²⁴

The below case study demonstrates how Aboriginal women and children continue to be denied an appropriate response from police despite well-documented histories of violence, and the tragic consequences that such failures can have. It also illustrates how the under-resourcing of ACCOs leads to gaps and delays in service provision due to an inability to respond to demand. VACCA has since implemented stronger reporting systems and measures to ensure that we respond to all referrals received through intake.

²²Dr Nicholas Biddle, CAEPR Indigenous Population Project: 2011 Census Papers, Paper 15 Indigenous and Non-Indigenous Marriage Partnerships. (Australian National University, Canberra) P4; Lilly Brown, Why we need to educate journalists about Aboriginal women's experience of family violence, (The Conversation, Nov 25, 2016) <https://theconversation.com/why-we-need-to-educate-journalists-about-aboriginal-womens-experience-of-family-violence-65789>

²³ SVA. (2019). *Demand for services for Aboriginal and Torres Strait Islander peoples in Victoria*. Unpublished report prepared for the Aboriginal Executive Council.

²⁴²⁴ Ibid.

Case Study- Family Violence - Redacted

When families are unable to access the supports they need to address immediate safety concerns, promote accountability and behaviour change amongst men who use violence, and enable healing, there are significant risks that violence will escalate and result in the removal of children. In many cases VACCA believes these removals could be prevented if women and children had access to the supports they needed.

A 2016 inquiry by the Commission for Children and Young People '*Always was, Always will be Aboriginal children*' involved a case file review of the almost 1,000 Aboriginal children in care at that time. The inquiry found that family violence was an identified driver of child protection involvement and entry into out-of-home care for 89% of children.²⁵ From VACCA's experience, police responses to family violence indicate a level of misunderstanding about what family violence looks like for Aboriginal women and their children and often we are seeing Aboriginal women labelled as perpetrators than affected family member. We believe this directly attributes to the number of Aboriginal children in out-of-home care because high numbers of Aboriginal women are in Victorian prisons, whether the majority are separated from their children, rather than receiving the material and therapeutic supports that affected family members have a right to.

In addition, we know that the child protection system often penalises women who are found to have been in contact with their partner who uses violence, by suggesting that women have failed to keep their children safe. However, this places the onus of responsibility on the person affected by family violence rather than the person who [REDACTED] face [REDACTED], culturally-safe supports, and the potential for isolation from family and community.²⁶

Exploitation and sexual harm of Aboriginal women and children

The relationship between child protection and the sexual assault system needs to be urgently improved as both the justice system, family violence and child protection have a duty of care to

²⁵ Commission for Children and Young People. (2016). *Always was, always will be Koori children: Investigations into the circumstance of Aboriginal children and young people in out-of-home care in Victoria*. Available at: <https://ccyp.vic.gov.au/inquiries/systemic-inquiries/always-was-always-will-be-koori-children/#:~:text=Always%20was%2C%20always%20will%20be%20Koori%20children%20is%20the%20report,of%2Dhome%20care%20in%20Victoria>.

²⁶ Langton, M., Smith, K., Eastman, T., O'Neill, L., Cheesman, E., & Rose, M. (2020). *Improving family violence legal and support services for Aboriginal and Torres Strait Islander women (ANROWS research report, 25/2020)*. Available at: <https://www.anrows.org.au/publication/improving-family-violence-legal-and-support-services-for-aboriginal-and-torres-strait-islander-women/>

protect children from sexual abuse and exploitation. In 2015, a stand-alone statutory duty of care was implemented following the Betrayal of Trust: Inquiry into the handling of child abuse by religious and other non-government organisations²⁷ under the Wrongs Amendment (Organisational Child Abuse) Act 2017. This must be upheld by the justice and child protection systems. The justice system should take care to ensure that any organisation, including the Government and child protection, that is responsible for the care, supervision or authority of children take all “reasonable precautions’ to prevent abuse’²⁸.

With the recent separation of the Child, Youth and Families Act (2005) (CYFA), there is great concern around how the new Youth Justice Act will respond to children using sexually abusive behaviours. Currently child protection are working on a Memorandum of Understanding (MOU) with Youth Justice, though it is yet to be revealed as to what this will look like. This work must progress with urgency.

There is an urgent need for adequate resourcing and investment in ACCOs to respond to the needs of Aboriginal children and families who have experienced sexual abuse or are at risk of sexual exploitation; and to build our capacity and responses²⁹. While VACCA has recently launched our own sexual assault service in the South with a second service in the west in implementation stage (further detail on p 29), these services need to be available across the state. There needs to be policy responses that focus on culturally specific prevention and therapeutic support with a holistic understanding of the drivers of sexual abuse and violence amongst Aboriginal communities.

Social media and technology have fundamentally changed the way in which children and young people are learning about norms and behaviours regarding sex and consent. Technology is providing unprecedented access by children and young people to sexualised content. There are a wide range of social media platforms and apps used by children and young people with varying degrees of security and exposure, placing children at risk of sexual exploitation and breaking laws governing child pornography protections. It is very clear that the justice system cannot keep up with appropriate provisions of regulation, oversight, control and protection, particularly given that many of these platforms are based overseas.

The normalisation of porn and the age of exposure years before any sexual activity sets unrealistic

²⁷ Family and Community Development Committee. (2013). Betrayal of Trust: Inquiry into the handling of child abuse by religious and other non-government organisations, Melbourne, Victoria: Parliament of Victoria.

²⁸ Ibid

²⁹ Davis, M. (2019). Family is culture: Final report- Independent review into Aboriginal out-of-home care in NSW, Sydney: Family is Culture.

expectations about sex, consent and respectful relationships. The normalisation of the violence portrayed in pornography and the negative treatment of women it glamorises is incredibly damaging and dangerous. We may have limited success in curtailing the consumption of porn; however with appropriate education, young people can learn what is normal, respectful and safe in the real world.

The nature of consent also needs to be addressed. For children and young people who have experienced trauma and past sexual abuse, consent will look and feel very different. Whether they are cognitively able to understand and give consent due to the trauma they have experienced is of significant concern and has broad implications in society and the justice system. How consent is given within an Aboriginal cultural understanding also needs to be considered.

An integral part of any sexual education program about health and respectful relationships needs to support Aboriginal children and young people who identify as part of the LGBTIQ + community. Part of this education model needs to also include a clear understanding of the rights, responsibilities and consequences if children and young people engage in behaviour that is not only damaging, but illegal.

Sexual exploitation and abuse through social media and the internet is of great concern for those most vulnerable in our community. Young people need to be informed and educated about what grooming behaviours look like, and what support services are available if they are concerned or affected. Police and taskforces need to be effectively resourced to monitor, and act on offending behaviours and materials, alongside healing models of care for the young people and families affected by this abuse.

[REDACTED]

[REDACTED]

Gender specific programs that are culturally based and informed would need to be created. VACCA and other ACCOs are uniquely placed to deliver these programs with a cultural and trauma informed approach. The eSafety Commissioner has developed a 'Be Deadly Online' resource for Aboriginal and Torres Strait Islander peoples which explores cyberbullying, digital reputation and respect for others, through short videos and posters, this resource could be integrated into educational program.

We also call to the attention the experiences of LGBTIQA+ Aboriginal community members who we are not at even greater risk of violence and abuse.

Aboriginal women are the fastest growing prison population, with a rapidly increasing number being held on remand. This is reflective of the intersectional discrimination and disadvantage they experience in Australian society. At 30 June 2021, Aboriginal women were 16 times more likely to

be imprisoned than non-Indigenous women.³⁰ We know that Aboriginal women in prison are generally younger, have children whom they have been separated from, and are more likely to have experienced family violence and be suffering from mental ill health.³¹ Imprisonment only serves to increase the vulnerability of imprisoned women, particularly in the absence of the appropriate pre and post release supports.

When women are placed in prison, they are often separated from children and the intrinsic link between this act and child protection is invisible within service delivery and policy makers. The lack of awareness and understanding of what is needed to keep women connected with their children leads to a greater risk of recidivism due to trauma and weakened family and community ties. This, in turn, makes women and their children more vulnerable. Concurrently contributing to the growing number of Aboriginal children in OOH. VACCA is also deeply concerned about Aboriginal women who are incarcerated when they are pregnant, knowing the vital need for the social and emotional development and connection between mother and baby.

While we acknowledge the Living with Mum (LVM) program in Dame Phyllis Frost Centre and Tarrengower Prison, there is limited capacity. In VACCA's experience, it is very challenging to support mums to access the LVM program, and we have not seen many cases in which clients have been successful in being accepted into it. Often being blocked by child protection due to being considered too high risk for the child. We are very concerned by the report we hear from pregnant women having their newborns immediately after birth, or not seeing their young infants for months at a time, with no clear idea of when they will see them again. We must ensure that pre and post release mum and baby (and any other dependent children) are provided with support and linked in with services to ensure any risk of further contact with child protection or justice is reduced.

Bail and remand

VACCA strongly believes that there needs to be stronger recognition of a child's best interests in judicial decision-making processes, and throughout all aspects of the criminal justice system. As detailed in VACCA's Submission to the [Inquiry into Children Affected by Parental Incarceration](#)³² and our [Yoorrook Submission](#).

³⁰ Productivity Commission. (2022). Closing the Gap Data Dashboard: Socioeconomic Outcome Area 10. Available at <https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area10>

³¹ Victorian Equal Opportunity and Human Rights Commission. (2013). *Unfinished business: Koori women and the justice system*. Available at <https://www.humanrights.vic.gov.au/resources/unfinished-business-koori-women-and-the-justice-system/>

³² Legislative Council, Legal and Social Issues Committee, Inquiry into Children Affected by Parental Incarceration, VACCA, submission 29.

In sentencing, all Australian jurisdictions allow magistrates to consider the potential hardship to an individual's family and dependents. However, in Victoria, the *Sentencing Act 1991* (Vic) does not explicitly acknowledge the effects that imprisonment has on children or other dependants, as is the case in the Australian Capital Territory and South Australia.³³ Instead, these impacts can theoretically be considered under section 5 of the Act which requires courts to consider mitigating factors or other relevant circumstances, but courts have deemed that these must be considered exceptional.³⁴

We call on the Victorian Government to amend the *Sentencing Act 1991* (Vic) so that judicial decision-makers are required to consider the impacts that parental imprisonment has on children in all cases, not just in exceptional circumstances. We contend that legislative reform including to the *Bail Act* and sentencing legislation, must require consideration of the impact of systemic racism, intergenerational trauma and disadvantage.

The Aboriginal Justice Caucus, the self-determining body that provides Aboriginal representation and leadership on justice matters and of which VACCA is a member, has noted its particular concern over the impact that bail laws have on Aboriginal women, with many of these women "...on remand for low level, non-violent offences that do not carry a custodial sentence."³⁵ The Aboriginal Justice Caucus has called upon the Victorian Government to reform the *Bail Act* in order to reduce the number of Aboriginal people on remand in Victoria.

We know that unsentenced women make up over 60 per cent of Aboriginal women in prison, if bail reform was undertaken, this would have a significant positive impact on women and children given that 80 per cent of Aboriginal women in prison are mothers³⁶. Any period of time held on remand has significant consequences on Aboriginal people, particularly where they have children and are attempting to acquire housing and employment, all before a conviction is even recorded. Given the inherent presumption of innocence, bail legislation should better support maintaining connections with family and community.

³³ Lewis, N., et al. (2019). The family matters report 2019: Measuring trends to turn the tide on the over-representation of Aboriginal

³⁴ Walsh, T., & Douglas, H. (2016). Sentencing parents: The consideration of dependent children. *Adelaide Law Review*, 37, 135-161.

³⁵ Aboriginal Justice Caucus. (2021). *Aboriginal Justice Caucus submission on the Legislative Council Legal and Social Issues Committee Inquiry into Victoria's Justice System*, p. 10.

³⁶ 2020-21 Corrections and Justice Services Data Report to the Aboriginal Justice Forum, November 2021; Senate Standing Committees on Legal and Constitutional Affairs, Parliament of Australia, Value of a Justice Reinvestment Approach to Criminal Justice in Australia (2013) 21.

VACCA supports the call of the Aboriginal Justice Caucus, and contends that the *Bail Act 1977* (Vic) must be amended to repeal the reverse onus provisions, in particular the requirement for compelling reasons and exceptional circumstances (as detailed in ss4AA, 4A, 4C, d4 and Schedules 1 and 2 of the Act). Instead, a presumption in favour of bail for all offences should be inserted with provisions to ensure protections against further harm being caused to the individual or others. Alongside bail reform, additional Aboriginal led support services must also be funded to offer bail support, including provision of suitable accommodation options for Aboriginal people, particularly women and children so they can meet conditions of bail. Where there are breaches of bail conditions, including technical breaches or low-level offending, VACCA contends consideration must be given to the circumstances in which these occurred with alternatives to a punitive response available³⁷.

It is VACCA's contention that without these reforms, Aboriginal women and young people are put at greater risk of harm and exploitation.

e. the policies, practices and support services that have been effective in reducing violence and increasing safety of First Nations women and children, including self-determined strategies and initiatives

Aboriginal-led Family Violence services

As detailed throughout this submission, what is painfully obvious is the inequitable access to resources, supports and information available to Aboriginal women, compared with non-Indigenous women. It is VACCA's contention that there remains a lack of understanding and respect to the complexity and level of need ACCOs are facing in responding to and working with Aboriginal children, young people, families and adults who are at-risk of experiencing family violence. Access to Aboriginal-specific, culturally appropriate, and holistic responses are essential to support Aboriginal women and children, at risk of or being affected by family violence to seek necessary supports, without the child being removed. This is because ACCO-led services have a strong understanding of the dynamics of family violence in the Aboriginal community, and work in a trauma informed, therapeutic approach with all members of the family with age appropriate interventions and supports.

³⁷ These recommendations are broadly reflective of the recommendations put forward by the Aboriginal Justice Caucus. (2021). *Aboriginal Justice Caucus submission on the Legislative Council Legal and Social Issues Committee Inquiry into Victoria's Justice System*, p. 10 and the NSW Aboriginal Legal Service, the NSW Coalition of Aboriginal Regional Alliances, and Deadly Connections Community Justice Services for the equivalent inquiry in NSW. These submissions can be accessed via the NSW Parliament's Committee on Children and Young People's Inquiry for the Support for Children of Imprisoned Parents in New South Wales: <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2572#tab-submissions>

As the largest provider of Aboriginal family violence services in the state, VACCA adopts a holistic approach to working with affected family members, users of violence (including sexual harm) and incorporating therapeutic practices to promote healing as a family and community. Our expertise and success in the delivery of therapeutic interventions is informed by our understanding of intergenerational trauma and underpinned by culture, connection and healing. Transgenerational trauma and the long-term impacts of abuse and neglect, including the historic and ongoing impact of forced removal policies on the Stolen Generations and their families, have profoundly impacted Aboriginal community. Many have not been able to break the cycle of abuse. Our family violence support services help Aboriginal, men, women, adolescents, and children to heal, be present and to move forward. Our preventative programs based on consent and healthy relationships for young people are designed to break the cycle of abuse. We understand how vulnerable to exploitation and abuse that children and young people in out of home care are, especially those with disability.

VACCA works with users of violence as part of our holistic response to family violence.

Case Study: Men's Behaviour Change - Redacted

VACCA's Sexual Assault Support Service

VACCA in partnership with Gatehouse Centre and the South East Centre Against Sexual Assault, is running a pilot Aboriginal Sexual Assault Support Service for Aboriginal children, young people and adults in the southern Melbourne area. Called 'Nowunun Murrumbunrunner Yearkun (NMY) - Healing Our Sprit'.

A second pilot in the West is currently at implementation stage. This support service is a unique, therapeutic and healing service responsive to the diverse needs of Aboriginal children, young people, women and men who are victim survivors of sexual assault. The distinctive feature of the pilot is the integration of a specialist sexual assault service within an Aboriginal cultural healing context. This service will support 62 sexual assault survivors (women, children adolescents and men). We know that there is significant complexity that clients are presenting with having multi-faceted issues and complexity across family groups.

VACCA's Healthy and Respectful Relationships Camps

Healthy Respectful Relationships Cultural Camps for young Aboriginal people aged 12–17 years is a two-year project operating in three VACCA regions. The project will focus on preventing family violence and specifically on developing healthy, respectful relationships. This project will enhance and build on the successful work of our Young Fullas camps and offer opportunities to embed camps for Aboriginal young people as part of VACCA's family violence portfolio.

VACCA's Young Fullas Program

Young Fullas Building Safe and Strong Futures Program, supports Aboriginal children and young people who are at risk or have been affected by family violence and are in out-of-home care, involved with child protection or youth justice. It provides early intervention and prevention support for children and young people aged between 10-17 years who are at risk of violence, exposed to violence or in violent relationships and are from out-of-home care, with child protection or youth justice involvement.

VACCA's Cultural Therapeutic Ways (CTW)

Cultural Therapeutic Ways is a whole of agency approach which brings together cultural practice with trauma-informed and self-determination theories to guide our work with families, community and staff. The core premise of this approach is an understanding of the immense strength and resilience of Aboriginal families and communities who in their rightful roles have been and will be caring, protecting and growing up children for generations before and generations to come. We also understand, however, the collective and intergenerational trauma experienced by Aboriginal families and communities as a result of ongoing processes of colonisation. We know that the destructive forces of colonisation, of genocide, of dispossession, of racism, of disadvantage and more have left, and continue to leave, deep wounds in the lives of many families. CTW is different to the ways that mainstream agencies work because it formalises and prioritises Aboriginal cultural wisdom and learning, the development of Aboriginal knowledge and provides staff with tools and resources to support and strengthen their ability to work in a Culturally Therapeutic Way.

VACCA Aboriginal Child Healing Team

VACCA's Healing Team provides specialist therapeutic support for Aboriginal children in care across VACCA's programs. It also provides training and support regarding understanding how to appropriately respond to children's experience of trauma, and their associated developmental, attachment and behavioural needs.

Orana Gunyah Refuge

Our Orana Gunyah program is a promising example of a culturally appropriate crisis service that supports Aboriginal women and children, women with Aboriginal children or carers with Aboriginal children who are escaping family violence state-wide. Orana Gunyah began in December 2013 and currently provides full family violence outreach support for Gippsland, Latrobe Valley, Baw Baw, South Gippsland and Bass Coast. In April 2014, Orana Gunyah opened a crisis accommodation refuge for clients in Morwell. All clients that seek refuge have full case

management provided to them, including administrative support to complete paperwork for DHHS public housing, private rentals and Community Housing Limited.

Since its conception, Orana Gunyah Outreach has supported 370 women and 527 children. The crisis accommodation aspect of the program has housed 139 women with children, and while some have returned to the situation they left, most have moved to other refuges, to stay with kin or acquired public housing or a private rental. The correlation between family violence and homelessness for Aboriginal women and children has in the past remained a hidden issue as Aboriginal women are apprehensive when approaching mainstream services due to fear that if they disclose the presence of family violence, their children may be removed. However, when access to an Aboriginal specific, culturally appropriate, and wrap-around response is available, as the figures above indicate, there is an increase in the number of Aboriginal women and children seeking assistance. A culturally appropriate response has been reported to significantly contribute to women's willingness to come forward, fosters empowerment and allows women to see a positive future for themselves and their children. Orana Gunyah shows to be a promising example of Aboriginal-led service delivery embedded in Aboriginal self-determination and the rights of women and children. Whilst such services are great examples of community-based, culturally strong support, they are unable to manage the extent of the issue due to limited resourcing. Other ACCOs also have the knowledge and services to become an entry and referral point, however, they also do not currently have the capacity and resources to do so.³⁸

Pre and post release supports for Aboriginal women

Greater investment and focus are needed in culturally appropriate, Aboriginal led responses across the spectrum of prevention, early intervention, diversionary, community-based sentencing options and post release supports. Whole of system, holistic programs and support services are needed that incorporate education, health, housing, welfare, education, and justice systems. ACCOs such as VACCA have a key role in this as they have the expertise and connections to children and families to help respond to the needs of community. Including delivering prevention programs such as playgroups, family counselling and parenting programs as well a post release supports such as housing and, trauma informed counselling. We will discuss the specific services required in more detail in the next section of this submission.

VACCA currently operates two of the state's four Koorie Women's Diversion programs. The program has been designed to support women when they exit prison, helping with their transition back into community and back to family. Many of the women who access the service are mothers

³⁸ Aboriginal Housing Victoria. (2019). *The Victorian Aboriginal Housing and Homelessness Summit: Report of findings*. Available at: https://ahvic.org.au/cms_uploads/docs/final-summit-report-in-full-pdf_13_06.pdf

and survivors of family violence and need significant support in navigating the child protection system post release. A strength of the program is that it provides support that is wide-ranging and targeted to needs of each client, spanning from court support to advocacy on child protection matters through to family and cultural strengthening support. Between July and December 2021, the program assisted 23 women, of these cases, 16 women continued to be supported to achieve their goals, four completed the program and three exited at intake. Unfortunately, this program is operating above capacity and unable to meet the needs of all women who seek its support. An additional six enquiries had to be referred elsewhere due to limited capacity. Despite the demonstrated need for the program, VACCA continues to only receive short-term funding and is required to retender at the end of each funding cycle regardless of the program's success.

Aboriginal-led early help

Key to increasing safety for Aboriginal children is addressing the overrepresentation of Aboriginal children in the Victorian child protection system, where Aboriginal children are 22 times more likely to be in out-of-home care than non-Aboriginal children.³⁹ As a priority, there is an urgent need for a self-determination reform strategy in this space that shifts family support services and programs into the control of Aboriginal communities in order to address the rising rates of Aboriginal children entering care in Victoria. As provided in detail in the early help section of [VACCA's Yoorrook Submission](#), VACCA calls for the co-development between the ACCO sector and State Government of an intergenerational Aboriginal Child and Family Wellbeing Strategy to address the intergenerational over-representation of Aboriginal children in the statutory child protection system alongside a commitment towards and commencing work in partnership with the ACCO sector to co-design and develop an Aboriginal-led early help, family support and early intervention system with funding aligned to the level of need in the Aboriginal community and Aboriginal population growth. This should, in alignment with the *Bringing Them Home* report, be built upon a long-term, self-determining vision, approach and investment to address the crisis of contemporary removals.

In relation to early help, services intended to prevent entry into the child protection system, unpublished data from the Department of Families, Fairness and Housing (DFFH) shows that of the \$91 million directed towards early help in 2020-21, only \$2 million was directed to ACCOs working with families. This is equivalent to only 2 per cent of the state's total expenditure on Early Help in 2020-21. However, Aboriginal children account for 16% of children receiving a child protection

³⁹ Productivity Commission. (2022). *Chapter 16: Child Protection, Table 16.A2*. Available at: <https://www.pc.gov.au/ongoing/report-on-government-services/2022/community-services/child-protection>

service and 27.5 per cent of children in OOHC, meaning that funding to ACCOs to deliver Early Help is significantly out of step with the level of need experienced by Aboriginal families.⁴⁰

The unabated growth in the removal of Aboriginal children from their families in Victoria is an intergenerational issue that requires an intergenerational response. A response that must be Aboriginal designed and led with a clear focus on prevention, early help and resourcing Aboriginal families to meet their children's needs. At the heart of an intergenerational response should be an **Aboriginal-led early help, family support and early intervention system** that supports families in addressing issues before they escalate and prior to any statutory child protection intervention. Access to early help and family support through this system should be voluntary, non-stigmatising and provide practical support enabling and empowering vulnerable Aboriginal families to meet their children's needs.

An example of a successful Aboriginal-led early help service was VACCA's *Cradle to Kinder* program, which delivered intensive, targeted in home support for Aboriginal mothers, beginning in pregnancy and continuing until the child was aged 5 years. The key strengths of this program as reported by stakeholders, including clients, were increased parenting skills, opportunity for cultural connection, and comprehensive support. According to VACCA practitioners, one of the reasons the Cradle to Kinder Program worked so well was because it was not perceived as a child protection response by families and had the capacity to provide longer-term support. This meant that strong relationships between practitioner and family evolved over time and naturally, rather than being specifically focused on addressing the immediate concerns of child protection.

Transfer of care and custody of Aboriginal children and young people to ACCOs

In Victoria, there has been significant investment, learnings and a stronger move to Aboriginal self-determination in Aboriginal child and family welfare. There is a growing acknowledgement that Aboriginal families and communities retain the lifelong responsibility of caring for children, children invariably return to family after exiting care; and Aboriginal Community Controlled Organisations have the cultural and kinship expertise to support the most vulnerable children and families in their communities. This knowledge and experience underpins recent reforms in the child and family welfare field and should also drive reforms intended to benefit children of imprisoned parents, some of whom will be placed in OOHC. We note that at the Commonwealth level, all jurisdictions have committed to delegating authority in child protection to families,

⁴⁰ Australian Institute of Health and Welfare. (2022). *Data Tables: Child Protection Australia 2020-21, Table S2.3*. Available at: <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/data>

communities, and ACCOs, through *Safe and Supported: The National Framework for Protecting Australia's Children 2021-2031*.⁴¹

Unquestionably Victoria has been at the forefront in collaboratively securing self-determination reforms in child welfare legislation, policy, programs and practice - including reforms that enable the delegation of statutory powers to an Aboriginal agency. Unfortunately, the lived experiences of many Aboriginal peoples living in Victoria indicate they are not benefiting from this reform in their day to day lives.

VACCA's Aboriginal Children in Aboriginal Care (ACAC) program *Nugel* is a good example of building a service response that supports cultural connection for Aboriginal children involved in the child protection system. *Nugel* is a Wurundjeri word meaning 'belong'. Victoria's *Aboriginal Children in Aboriginal Care* program operates with delegated powers and is the first of its kind in Australia. Since launching in 2017, *Nugel* has enabled Aboriginal organisations to take responsibility for Aboriginal and Torres Strait Islander children and young people on Children's Court orders.

Nugel aims to create self-determining families, children and young people, and empower Aboriginal and Torres Strait Islander people to oversee and support our kids in care. We advocate for the importance of keeping our children and young people connected to community, culture and family. We aim to keep siblings connected; commit to finding family and community networks; pursue family reunifications where possible; and involve families in decision making. In May 2022, we successfully expanded the *Nugel* program to Gippsland, where we have been authorised for four clients. This year we worked with 118 children, including case closures and new authorisations, across the North and Gippsland regions. In this time, statutory involvement has ended for 16 children previously authorised to VACCA *Nugel*. 11 of these children no longer have statutory involvement and five were permanent care orders. Three children have returned to the care of their parents.

ACCOs have the cultural and kinship expertise to support the most vulnerable children and families in ways that are reflective of Aboriginal child rearing practices and customs. This is reflected in the success ACCOs, including VACCA, have had in enabling connection to culture, family and community for children and young people through the ACAC program. An evaluation by Inside Policy conducted in 2019 of *Nugel* reported that "based on the actual reunification rates from 2017-2019, from an indicative sample of 100 children, the reunification rate was higher for

⁴¹ Commonwealth of Australia. (2021). *Safe and supported: The national framework for protecting Australia's children 2021-2031*. Available at: https://www.dss.gov.au/sites/default/files/documents/12_2021/dess5016-national-framework-protecting-childrenaccessible.pdf

VACCA (22 per cent) than for [DFFH] (5 per cent).” The evaluation also revealed a significant number of children and young people had increased contact with their parents and the majority saw an increase in their connection to culture and community. Aboriginal Children in Aboriginal Care is part of a broader Aboriginal Child Welfare model that VACCA is delivering where trauma informed, therapeutic healing approaches prioritise family support, preservation, and reunification. The next stage of reforms under this ‘delegation model’ will see VACCA undertake an Aboriginal response to child protection reports, the program will be delivered by VACCA’s Nugel program and will be called Community Protecting Boorais pilot program.

VACCA considers that Aboriginal led decision making from the investigative stage holds the potential to divert significant numbers of children and families from ongoing involvement in child protection, thus enabling them to remain safely at home.

Nugel Case Study - Redacted

VACCA also notes VACCA’s [Yoorrook submission](#) details our concerns and calls for reform around permanency and adoption practices. We know that where Aboriginal children and young people can be with family, and connected with their community, Country and culture they have better life outcomes. It is therefore our contention that without a complete overhaul of the child protection system, including the development of a distinct Aboriginal Children, Youth and Families Act, that Aboriginal children, young people and families will continue to be at greater risk of harm.

Our role in community has given us unique insights into the complex barriers preventing this vulnerable cohort from accessing the justice system. These include:

- a lack of understanding of legal rights and how to access advice and support
- mistrust of mainstream legal, medical, community and other support services
- a lack of cultural safety and experiences of discrimination across the support sector
- cultural or community pressures not to go to the police or to avoid increased criminalisation of Aboriginal men who use violence
- low literacy, poverty, and social isolation.

f. the identification of concrete and effective actions that can be taken to remove systemic causes of violence and to increase the safety of First Nations women and children

Stronger recognition and implementation of the rights of Aboriginal peoples

Australian governments have historically neglected and actively breached the rights of Aboriginal peoples, with numerous intentional strategies suppressing rights and perpetrating cultural

genocide. The impact of historical and ongoing discriminatory and damaging policies and practices has led to the current systemic discrimination and overrepresentation of Aboriginal people in key health and social outcomes, including in violence against women and children.

It is crucial that all Australian governments address the inequality and discrimination experienced by Aboriginal women and children which lead to harm. Australia has signed and ratified many international declarations and treaties that affect and impact the rights and safety of Aboriginal women and girls. To date, Australia has fundamentally failed to meaningfully implement the provisions of these legal instruments, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as well as the United Nations Convention on Rights of the Child, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, Committee on the Elimination of Discrimination against Women and the Convention on the Prevention and Punishment of the Crime of Genocide.

Internationally, there are recent examples of jurisdictions taking initial steps toward or enacting UNDRIP within legislation, including in enabling self-determination over child welfare matters for Indigenous children. To date, no Australian government has formally committed to implementing UNDRIP into law, policy or practice.

Further efforts are needed to enable full implementation of UNDRIP. Existing political and legal structures will continue to limit what might be possible in protecting Aboriginal rights in Australia and will require a transformation of existing power structures resulting in a more equitable power sharing between Aboriginal peoples and the state. Without effective jurisdiction or sovereign control over substantive decision-making, Indigenous peoples find it difficult to exercise their right to self-determination. Self-government that is limited to operational administration, allowing Indigenous peoples to administer services that were once administered by somebody else, is not effective self-determination.

At the state-level, Victoria has the *Charter of Human Rights and Responsibilities* (the 'Charter'), which was established in 2006 and provides a legal context for consideration of the rights of Aboriginal peoples in Victoria. The Charter contains specific references to the rights of Aboriginal peoples, including the preamble which acknowledges that "human rights have a special importance for the Aboriginal people of Victoria, as descendants of Australia's first people, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and waters." Section 19 of the Charter recognises that Aboriginal peoples have "distinct cultural rights and must not be denied the right, with other members of their community –

- To enjoy their identity and culture; and
- To maintain and use their language; and

- To maintain their kinship ties; and
- To maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.”

Currently, the Charter falls far short of the conceptualisation of Indigenous rights contained within the UNDRIP, particularly in affirming the existence of collective rights. In international law, including UNDRIP, Indigenous rights are recognised as collective rights that are derived from the unique legal status of Indigenous peoples as distinct communities.⁴² However, as it currently stands, the Charter is weighted toward a western liberal framework of individual rights. This has served as a barrier to the recognition of the collective rights of Indigenous peoples, including the right to self-determination, within the Charter. Indeed, the Victorian Government’s rationale for omitting the right to self-determination from the Charter was because it is a collective rather an individual right and there is no consensus on what the right to self-determination comprises.

VACCA also notes that Australia is one of the only western liberal democracies without a national Bill of Rights. The Victorian Equal Opportunity and Human Rights Commission has noted “this means that many core human rights and freedoms may not be adequately protected and promoted at a federal level and there is an inconsistent level of protection across Australian states and territories.”⁴³ This is of particular concern for groups who experience disadvantage and discrimination, including Aboriginal peoples. The Commonwealth Government has an important leadership role in championing the rights of Aboriginal peoples, and ensuring that regardless of where they live, all Aboriginal peoples have their collective rights to culture, land, and self-determination protected. VACCA recommends that the Commonwealth Government commit to developing a national Bill of Rights, which includes the right to Aboriginal self-determination.

Implementation of the National Agreement on Closing the Gap

All Australian governments have committed to a nationally coordinated approach to improving the lives of Aboriginal peoples through the National Agreement on Closing the Gap. The National Agreement on Closing the Gap represents a fundamental shift in the approach of governments, one that is built upon genuine and meaningful partnerships with the ACCO sector and the wider Aboriginal community. The original Closing the Gap policy, agreed in 2008 by the Council of Australian Governments (COAG), never had full ownership from Aboriginal peoples and was always considered an initiative of government. The new [National Agreement on Closing the Gap](#),

⁴² Newman, D.G. (2006). Theorizing collective Indigenous rights. *American Indian Law Review*, 31(2), 273-289.

⁴³ Victorian Equal Opportunity and Human Rights Commission. (n.d.) *Australia’s human rights framework*. Available at: <https://www.humanrights.vic.gov.au/legal-and-policy/australias-human-rights-framework/>

signed in July 2020 sets out a different way of Governments working in partnership with Aboriginal peoples to achieve better life outcomes. It includes four priority reform areas:

1. Shared decision making
2. Building the ACCO sector
3. Improving mainstream institutions
4. Ensuring First Nations access to relevant data and information⁴⁴

VACCA strongly contends that ensuring government meet its commitments to both the targets and the priority reform areas this will help to address violence and abuse suffered by Aboriginal women and children.

In addition, the National Agreement on Closing the Gap has a target to reduce the rates of all forms of family violence against Aboriginal women and children by at least 50 per cent by 2031. The National Agreement also includes a commitment to reduce the overrepresentation of Aboriginal children in out-of-home care by 45 per cent by 2031. Achieving both of these targets will require that ACCOs are enabled to deliver the supports needed to support the safety and wellbeing of Aboriginal children and women.

All levels of government have developed implementation plans to support in achievement of these targets, and the Committee's report and recommendations should be informed by the commitments contained with them.

g. the ways in which missing and murdered First Nations women and children and their families can be honoured and commemorated; and

Commemorative markers are important as they provide visibility of murdered women and children but also facilitate healing for those they leave behind. Statues, place names and remembrances are also important.

We do believe that Police need to issue a public apology as well as a direct personal apology to the family for every time a women and/or child is murdered when there is a clear failing on their behalf to keep a woman safe. This could also be addressed through a redress fund for families that have lost a loved one through family violence homicide. A funeral fund would be a starting place as recompense.

h. any other related matters.

Nil

⁴⁴ Australian Governments., & the Coalition of Aboriginal and Torres Strait Islander Peak Organisations. (2020). *National Agreement on Closing the Gap*. Available at: <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap>

VACCA welcomes the opportunity to discuss this submission with the Committee members further.

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