



Victorian Aboriginal Legal Service Nuther-mooyoop to
the Yoorrook Justice Commission: Economic Prosperity

April 2024



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Acknowledgement

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

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

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

Note on Language

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



EXECUTIVE SUMMARY

Improving the economic prosperity of our people is essential to Treaty making. Colonialism impoverished our people by taking our land, committing acts of genocide against our people, enslaving us, and denying us access to the colonial economy.

Colonialism has maintained the impoverishment of our people. At VALS, we see every day how the criminal legal system criminalises Aboriginal and Torres Strait Islander people and how that criminalisation strips them of opportunities to get employment, build wealth, and pass on that wealth to their family and community.

Many royal commissions and inquiries have recommended a range of supports to address the continued impoverishment of our people. The 1997 Bringing Them Home Report recommended social justice packages for our children and families. But these types of recommendations have either been ignored or implemented too little and too late to have the intended impact. Stolen Generations Reparations Packages took 20 years or more to be implemented by most states (including Victoria), and many of our people died before receiving compensation. Those who have lived long enough to access these funds have found that the compensation is not proportional to the damage that was done to them.

Our people have persisted despite the colonial systems that have impoverished them. Our people created community-controlled organisations to provide healthcare and childcare supports, to offer food and clothing, and to provide legal services. We are a self-reliant people that have survived even when the deck is stacked against us – and we will thrive once again when the colonial boot is taken off our neck.

Through this submission, we will highlight the importance of reparations, how VALS supports economic prosperity for our people, and how colonial systems tax Aboriginal people. We hope that these considerations are useful for the Yoorrook Justice Commission (**Yoorrook**).

Based on the current timeline afforded to Yoorrook, it is likely that this will be the last substantive submission that VALS makes to the Commission. We hope that our work has been useful and that the voice of our clients and communities has rung true throughout. VALS commits to continuing the work to ensure the Victorian Government takes Treaty negotiations seriously and that the work of everyone who has contributed to Yoorrook is valued and respected by the Victorian Government through their actions to enact the transformational change our people have demanded through the Commission.



SUMMARY OF RECOMMENDATIONS

Recommendation 1. Reparations must be part of Treaty.

Recommendation 2. Reparations must include greater access to, and authority over, traditional lands.

Recommendation 3. Reparations should reflect the real cost of the impacts of colonisation on Aboriginal people, including calculations for inflation, opportunity cost, and non-economic losses must form part of the calculation of reparations.

Recommendation 4. Reparations should include the expansion of programs that increase Aboriginal home ownership.

Recommendation 5. Aboriginal people should have greater rights to public and social housing while Aboriginal home ownership rates remain lower than the general population.

Recommendations 6. ACCO's that provide housing should receive funding to purchase more properties

Recommendation 7. The Victorian Government should pay reparations to the descendants or Traditional Owner groups of Aboriginal people who were enslaved, in slavery-like conditions, or had wages stolen from them.

Recommendation 8. The Victorian Government should fund social justice packages for Aboriginal children and their families, to be designed through a self-determined model, as recommended in the Bringing Them Home report.

Recommendation 9. Treaty should include non-financial forms of reparations.

Recommendation 10. The Victorian Government should extend Yoorrook so that it has more time to hear from community members.

Recommendation 11. Yoorrook should seek public commitments from the Victorian Government that Treaty signing will not be delayed due to budget constraints.

Recommendation 12. For the Victorian Government to remove vehicle impoundment fees for Aboriginal people, or at a minimum flexible payment options for retrieval of vehicles must be introduced immediately.

Recommendation 13. The Working With Children Check system should be reformed so that any person can apply to VCAT for a review if they are barred from applying for a Check due to past offending.

Recommendation 14. The Yoorrook Justice Commission should adopt the recommendation of VALS' nuther-mooyoop on family violence.

Recommendation 15. The entire spent convictions scheme should be automatic.

Recommendation 16. VALS' Victims Legal Service to receive sustainable funding and be expanded to better meet community need.



Recommendation 17. Yoorrook must seek evidence from DJCS regarding the uptake of the Stolen Generations Reparations Package, including numbers of eligible applications, and whether they have taken up all or some of the reparations offered including an apology, family reunion and counselling.

Recommendation 18. The Victorian government to strengthen access to supports and aged care for Aboriginal people over 50 years of age.

Recommendation 19. The Victorian Government should advocate for the Federal Government to lower the age at which Aboriginal people can access the age pension.

Recommendation 20. The Victorian Government must resource the development and implementation of culturally safe and Aboriginal led financial literacy resources and training packages that can be delivered at schools and through ACCOs.

Recommendation 21. The Commission to review reports previously published by CALC and VALS relating to consumer issues for Aboriginal people in Victoria, as well as the report that will be published in the near future.

Recommendation 22. Superannuation access needs to be adjusted to account for the life, health and socio-economic differences between Aboriginal people and non-Indigenous people.

Recommendation 23. The Yoorrook Justice Commission should adopt the recommendation of VALS' nuther-mooyoop on housing and homelessness.

Recommendation 24. The Victorian Government should ensure that any Enterprise Agreement that it is a signatory to includes compensation for the cultural load that Aboriginal people carry in the workplace.

Recommendation 25. The Victorian Government should ensure that its policies that are designed to support Black businesses.

Recommendation 26. The Victorian Government should reconsider the Yoorrook for Justice Report and support in full all of its recommendations.

Recommendation 27. The Victorian Government must expand the financial support and services available to parents and kinship carers, to reduce the disparity with the resources made available to foster carers.

Recommendation 28. The Federal and Victorian Governments must commit to ongoing, needs-based funding for the Victorian Aboriginal Legal Service.



DETAILED SUBMISSIONS

Reparations

Treaty must include reparations.

We must not be afraid to demand reparations, the Victorian Government must not dismiss a genuine discussion of reparations, and all Victorians must accept that the damage that has been done over the last 236 years cannot be healed without reparations.

Along with genocide and assimilation policies, the oppression of our people through policies and practices that forced our people into poverty has been a defining feature of the colonisation of this land since the British invaded. By making us poor, and then criminalising poverty, so many opportunities for development and improvement are closed off to our people. Treaty must alleviate these circumstances through reparations that give our people the resources and authority to live as self-determining peoples.

The goal is prosperity, not necessarily in monetary terms or in the capitalist sense, but defined by Gugu Badhun measures of social, cultural, environmental, and economic success. – Janine Gertz, Gugu Badhun¹

The clearest demand for reparations by our people has been the call for land back.² We have rallied around the call “Always was, always will be, Aboriginal land” as a simple statement that our connection to land is a core part of our sovereignty.³ Connection to land is an essential part of our culture and our strength as a peoples.

Treaty must lead to our people having a much stronger connection to the traditional lands of their people. There are differing views within community about exactly what this looks like,⁴ and for that reason each Traditional Owner group must have the opportunity to negotiate the access to their lands that they want without any preconditions placed on those negotiations. All options must be available for discussion – including the full return of land to Traditional Owner groups.

The government knows that the system is racially discriminatory. There is nowhere for us to go. There is no court we can go to, because the Native Title Act has an exclusion for racial discrimination. – Tony McAvoy SC, Wangan and Jagalingou traditional owner⁵

The current Treaty process, which Yoorrook is part of, is based in land reparations. The *Native Title Act 1993*, failed to provide access to land for many traditional owners in Victoria given the high bars that our people needed to jump to win in court. In 1994, the Yorta Yorta people were the one of the first Traditional Owner groups to make a claim under the Native Title Act, but had their case denied in 2002. As a result, the Bracks Government announced a co-operative agreement with the Yorta Yorta

¹ Janine Gertz, Gugu Badhun Sovereignty, Self-Determination, and Nationhood

² Common Ground, [Land Back](#)

³ Australia Museum, [Always Will Be Aboriginal Land](#)

⁴ Ronald Gamblin, [LAND BACK! What do we mean?](#); and Nat Cromb, [It's time to understand the difference between Native Title and Land Rights](#).

⁵ The Guardian, [Native title system 'embeds racism', Australia's first Indigenous silk says](#)



people in 2004 that gave them many of the rights that a successful Native Title claim would have provided.⁶ State Labor Government's continued to make similar deals with other Traditional Owners and the Andrews Government came to power in 2014 looking to further more "non-litigated outcomes"⁷ of land settlements for Traditional owners and a party platform commitment to a national Treaty.⁸ These two commitments became the basis for proceeding with the current Treaty process in Victoria.

Our mob knew we were taking a chance trusting the system of the white man...but this is like an annihilation of our culture. - Monica Morgan, Yorta Yorta group coordinator⁹

Given the history of this Treaty process, land back must be a key focus of reparations and Treaty more broadly. We are the oldest continuous cultures on earth because of our connection to this land. That is a strength for us and it is something this country should celebrate and enable.

Connection to traditional lands and authority over their use is an essential part of economic prosperity for all Aboriginal peoples.¹⁰ It can also benefit the broader community living on these lands given the economic value of distinct cultures, the sustainable management of land, and the potential reduction of economic inequality.

Former Senator Patrick Dodson has regularly spoken throughout his life about non-economic loss or solatium, which is now considered in Native Title compensation.¹¹ While colonial systems have a very capitalist understanding of the value of land, our people have a much more deep and complex connection to the land and it has an important role in so many aspects of our lives. The Courts have been developing tools to quantify these non-economic losses and this should be considered in reparations.¹² Treaty should consider developing similar tools to calculate reparations.

A separate and distinct element of the compensation related to the non-economic loss of cultural, spiritual and ceremonial attachment to the land which all parties accepted should be accounted for as "solatium". – Patrick Dodson¹³

Home ownership, real estate investment and the production of wealth are important factors in the economic inequality that our people face. In the US, "red-lining" and other economic policies locked Black people out of the housing market.¹⁴ In Australia, our people have been locked out of the housing market through similar structural disadvantage and prejudice.¹⁵

42% of Aboriginal people owned a home in 2021 (28% with a mortgage and 14% outright)¹⁶, compared to 67% of the total population (32% with a mortgage and 35% outright)¹⁷. Housing contributes

⁶ The Age, [Yorta Yorta win historic deal](#)

⁷ Parliament of Victoria Hansard, [Aboriginal Land Rights Amendment Bill 2013](#)

⁸ Victorian Labor, [Platform 2014](#)

⁹ State Library of Victoria, [Native title & the Yorta Yorta](#)

¹⁰ Janine Gertz, Gugu Badhun Sovereignty, Self-Determination, and Nationhood

¹¹ Patrick Dodson, [No one can take your land away](#)

¹² Herbert Smith Freehills, [A methodology for the calculation of native title compensation](#)

¹³ Patrick Dodson, [No one can take your land away](#)

¹⁴ NY Times, [What is red lining?](#)

¹⁵ Swinburne University, [Think private renting is hard? First Nations people can be excluded from the start](#)

¹⁶ Australian Institute of Health and Welfare, [Housing circumstances of First Nations people](#)

¹⁷ Australian Institute of Health and Welfare, [Home ownership and housing tenure](#)



significantly to inequality in Australia and the rising cost of housing is increasing the income gap between the bottom fifth of household and the top fifth of households.¹⁸ As noted by Yoorrook in their discussion paper calling for submissions on economic prosperity, there is a significant wage gap that means our people are overrepresented in the bottom fifth of household incomes and underrepresented in the top fifth.

The ownership of a home can often be a significant part of an individual's wealth and any inheritance they leave behind for family, friends or community.¹⁹ By being locked out of homeownership, our people are unable to leave the same financial legacy for their loved ones and community as non-Indigenous people can. This contributes to the entrenchment of inequality across generations.

Reparations as part of Treaty should include an expansion of programs that increase Aboriginal homeownership so that homeownership rates amongst our people are equal to the rest of the population within a defined timeframe. While our people continue to live with lower homeownership rates, they should have greater rights to access public and social housing. Aboriginal Community Controlled Organisations that provide housing – including emergency, transitional, and long term forms of housing, should be funded to buy new properties and expand the number of housing places they can provide for our people.

Reparations should include restitution for slavery. Colonial Australia has developed a mythology that there has never been slavery in this country – a myth repeated by a recent Prime Minister.²⁰ Some Australians believe that while there were slave-like conditions in some instances, it was not like chattel slavery in the US. However, anti-slavery campaigners in the 1860s certainly saw the practices in Australia at the time as being chattel bondage and slavery was sanctioned by law – which authorised the forced recruitment of Aboriginal workers and legalised the non-payment of wages.²¹

Slavery was smoothed over in the colonial mind by these tricks of forced recruitment and non-payment – and control of – wages, which allowed the colonies of Australia to pretend that it was different from the US. In 2002, the Queensland Government set aside \$56.6 million to pay reparations.²² A second reparations scheme was established in 2016. These schemes acknowledged that the protectorate board, that oversaw the affairs of Aboriginal people, had stolen wages from the accounts of Aboriginal people.²³

In Victoria, similar practices took place where our people were forced to do certain types of work and money was withheld. The Victorian Government contracted the Coranderrk mission to produce beer for the colony due to shortages, but after production they refused to pay Aboriginal workers.²⁴

¹⁸ The Conversation, [How housing made rich Australians 50% richer, leaving renters and the young behind – and how to fix it](#)

¹⁹ City Futures, [Housing Wealth and the Economy: All that Glitters is not Gold](#)

²⁰ The Guardian, [Scott Morrison sorry for 'no slavery in Australia' claim and acknowledges 'hideous practices'](#)

²¹ SBS Online, [Was there slavery in Australia? Yes. It shouldn't even be up for debate](#)

²² AIATSIS, [Introduction to the stolen wages issue](#)

²³ Stolen Wages Taskforce, [Reconciling Past Injustices](#)

²⁴ First Australians – [Episode 3, Freedom For Our Lifetime](#)



Members of the Stolen Generations were forced into domestic slavery.²⁵ Aboriginal people working on stations were not always paid and the quality of food, clothing and other provisions was variable.²⁶

Intimately connected with the question of self-reliance is the mode of remunerating them for the labour which they now perform. The present system works unequally; payments are made only on some, not on all stations; all are fed and clothed, although not alike - Report of the Commissioners, Royal Commission on the Aborigines (1877)²⁷

As highlight by VACCA in a previous nuther-mooyoop, Victoria has never made reparations for slavery or stolen wages, as other jurisdictions have.²⁸

Reparations through Treaty should include payments for the descendants or relevant Traditional Owner groups, that provide restitution for slavery and stolen wages. Slavery and stolen wages did not only impact the individuals that were subjected to these practices, but it also impacted their kin and community, for generations. The economic disadvantage that large numbers of our people continue to live with is, in part, a direct result of slavery and stolen wages.

The social and economic disadvantages faced by our people was identified in the *Bringing Them Home* report in 1997, which recommended that social justice packages should be developed to support our children and families.²⁹ This recommendation has never been properly implemented and it should be part of reparations that are delivered through Treaty as it will help our most vulnerable community members.

When calculating reparations, it is important to factor in inflation and opportunity costs. Reparations schemes for the Stolen Generations have been criticised for being too little.³⁰ Compensation should cover the full impact of the action or treatment that is being redressed. Similarly to tools for solatium, there should be an agreed tool to calculate the true cost of the things that need to be compensated.

Reparations are not just financial compensation. Truth-telling itself is a form of reparations. The truth of our lives and the way we have been treated has been denied and developing a definitive source of truth of our experiences is a valuable form of reparations.

VALS has consistently advocated for time extensions for Yoorrook so that more community members have the opportunity to contribute to truth-telling. We again call on the Victorian Government to extend Yoorrook so that it has more time to hear from our people and record their truths.

Implementing true self-determination and self-sufficiency is also an important form of reparations. Our people successfully governed ourselves for over 60,000 years prior to invasion and colonisation. We are still capable of and excel at self-determination, but we do not get given the chance. As we

²⁵ NITV Online, [10 things you should know about slavery in Australia](#)

²⁶ Royal Commission on the Aborigines (1877), [Report of the Commissioners](#)

²⁷ Ibid

²⁸ Victorian Aboriginal Child Care Agency, [Yoorrook - Nuther-mooyoop on Systemic Injustice in the Child Protection and the Criminal Justice Systems](#)

²⁹ National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, [Bringing Them Home](#)

³⁰ The Conversation, [The government's Stolen Generations redress scheme is piecemeal and unrealistic](#); and NITV Online, ['Mean-spirited' reparations program putting off Stolen Generations survivors from applying](#)



have argued previously, self-determination needs to be implemented through Treaty agreements and through legislating the United Nations Declaration on the Rights of Indigenous Peoples and similar frameworks.

Governments have been too scared to engage in discussions about reparations. Prime Minister, Anthony Albanese, said “I don’t support reparations”.³¹ Liberal MP, David Davis, has raised his parties concerns about reparations being a part of Treaty.³² The Victorian Government has already waived on implementing a range of recommendations from the *Yoorrook for Justice* report due to financial concerns. It has been a common element of political discourse that non-Indigenous Australia shuts down any discussion of reparations or implementing recommendation that would significantly improve the lives of Aboriginal people because of apparent financial concerns – yet billions can be found for sport, transport, infrastructure and other electoral incentives.

This must end. If anyone is not committed to funding reparations, then they are not committed to Treaty.

The Victorian Government must start doing the work that is needed to pay reparations that will be negotiated through Treaty. It will not be acceptable to delay signing Treaties due to finances or to delay the payment of reparations.

Reparations are essential to ensure the economic prosperity of our people. So many of our people have been forced into poverty by colonial systems and the colonial system – and those who have benefitted from it – owe reparations.

RECOMMENDATIONS

Recommendation 1. Reparations must be part of Treaty.

Recommendation 2. Reparations must include greater access to, and authority over, traditional lands.

Recommendation 3. Reparations should reflect the real cost of the impacts of colonisation on Aboriginal people, including calculations for inflation, opportunity cost, and non-economic losses must form part of the calculation of reparations.


Recommendation 4. Reparations should include the expansion of programs that increase Aboriginal home ownership.

Recommendation 5. Aboriginal people should have greater rights to public and social housing while Aboriginal home ownership rates remain lower than the general population.

Recommendations 6. ACCO’s that provide housing should receive funding to purchase more properties

³¹ The Age, [Anthony Albanese opposes reparations for Indigenous Australians](#)

³² Parliament of Victoria Hansard, [Treaty Authority and other Treaty Elements Bill 2022](#)



Recommendation 7. The Victorian Government should pay reparations to the descendants or Traditional Owner groups of Aboriginal people who were enslaved, in slavery-like conditions, or had wages stolen from them.

Recommendation 8. The Victorian Government should fund social justice packages for Aboriginal children and their families, to be designed through a self-determined model, as recommended in the Bringing Them Home report.

Recommendation 9. Treaty should include non-financial forms of reparations.

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Recommendation 11. Yoorrook should seek public commitments from the Victorian Government that Treaty signing will not be delayed due to budget constraints.

How VALS supports Economic Prosperity for our people

VALS serves as a critical resource for helping to alleviate economic disadvantage and fostering economic prosperity within Aboriginal communities. The Civil and Human Rights Practice conducts casework in many areas of law, including tenancy, victims of crime compensation, discrimination, employment, coronial matters, mental health tribunal, working with children check matters, the Yoorrook Justice Commission, disaster relief, infringements and consumer, credit, and debt. Our aim is to never turn a client away: even if we can't act, we will give advice, referrals, information and seek out assistance of colleagues in the sector to ensure clients are helped with their civil justice issues. By addressing these legal issues, VALS ensures equitable access to justice and protection of rights for Aboriginal people, actively contributing to the economic prosperity of Aboriginal communities across Victoria.

Infringement clinic and hardship applications

Aboriginal people face significant economic disadvantages, exacerbated by systemic inequalities and discriminatory practices. Fines, which are levied without consideration for individual circumstances, perpetuate financial hardship. They can also push individuals towards expensive pay day loans or unregulated credit like buy now pay later. The existing flat rate fine structure disproportionately affects Aboriginal people due to the persistent pay gap between Aboriginal and non-Indigenous populations. Aboriginal people are proportionally over-represented in lower income bands. In 2021, 35% of Indigenous adults were living in households in the bottom 20% of the household income distribution (compared with 20% of non-Indigenous adults). Looking at personal weekly income, 43% of Indigenous adults had a gross weekly income of under \$500, compared with 31% of non-Indigenous adults.³³ VALS is able to assist Aboriginal people through our infringements clinic, where

³³ Australian Institute of Health and Welfare, [Aboriginal and Torres Strait Islander Health Performance Framework](#) (Webpage)



we can facilitate the waiver of fines by submitting an application to Fines Victoria where there are "special circumstances". These applications are crucial in cases of extreme hardship or vulnerability, such as when clients are experiencing mental or intellectual disabilities, disorders, diseases, or illnesses, serious addiction to drugs, alcohol, or volatile substances, homelessness, or have been victims of family violence.³⁴ In 2022/23 the Civil and Human Rights Practice successfully secured \$468,501.31 in fines waived.³⁵ VALS also represents clients in the Magistrates' Court when the Sheriff has served an arrest warrant under the Fines Reform Act. These matters are becoming more common and can result in dire consequences including imprisonment. VALS has been successful in having over \$200,000 in fines waived at the Magistrates' Court this year alone for clients who were experiencing homelessness, family violence and/or serious drug addiction at the time the fines were incurred.

Vehicle impoundments also represent a significant challenge for many Aboriginal individuals, particularly those already facing economic hardship. For many, a vehicle isn't just a means of transportation but a vital tool for employment, accessing essential services, and fulfilling family responsibilities. This is particularly the case for the many VALS clients who live regionally. When these vehicles are impounded due to infractions, the consequences are severe. Victoria Police currently do not offer payment plans and require full payment upon collection of an impounded vehicle.³⁶ Without flexible payment options offered by authorities like Victoria Police, individuals are left with limited choices. Unable to afford the lump-sum payment required for release, they often find themselves in a desperate situation. In such dire circumstances, some are forced to turn to predatory loans or other exploitative financial schemes to secure the funds needed to retrieve their vehicles. This not only exacerbates their financial strain but also perpetuates a cycle of debt and vulnerability. Moreover, for many, their car represents their sole asset, and its impoundment can be devastating to their financial standing. VALS notes that women and single mothers are often impacted by these losses, as they frequently find themselves losing their vehicles due to the actions of others. Victoria Police's lack of consideration for payment flexibility directly contributes to the entrenchment of economic disadvantage among Aboriginal communities.


VALS lawyers assist clients with 'hardship' applications' through Magistrates' Court of Victoria, whereby a person can seek to have their vehicle released from impoundment or immobilisation due to exceptional hardship.³⁷ By providing legal assistance through the infringement's clinic and hardship applications, VALS supports Aboriginal people navigating complex legal processes. Funding VALS and other ACCO's to help address this issue is not only essential for promoting economic equity but also for challenging and dismantling systemic racism within law enforcement and broader societal structures.

³⁴ VALS, [Can VALS help me with my fine?](#) (Webpage)

³⁵ VALS, [Annual Report 2022-2023](#) (2024), p 21.

³⁶ Victoria Police, [Vehicle Impounds](#) (Webpage, 2024)

³⁷ Magistrates' Court of Victoria, [Application for Vehicle to be released from impoundment/immobilisation due to hardship](#) (Webpage, 2017)



Case Study – Sarah

Sarah is an Aboriginal woman in her 60s who lives in Melbourne. She previously worked as a full-time manager and owned her own home. However, in the early 90s she was diagnosed with Schizophrenia and since then has been caught in a vicious cycle of police mistreatment, incarceration, and compulsory mental health treatment.

VALS have supported Sarah to have thousands of dollars of infringements waived due to mental health and to get her car back on hardship grounds when police impounded it.

RECOMMENDATIONS

Recommendation 12. For the Victorian Government to remove vehicle impoundment fees for Aboriginal people, or at a minimum flexible payment options for retrieval of vehicles must be introduced immediately.

Wills Days

VALS, in conjunction with the Gilbert + Tobin law firm, is committed to supporting economic prosperity within Aboriginal communities through our 'Will's days'. During these events, VALS offers valuable assistance to individuals in crafting essential legal documents such as wills, Power Of Attorney (POA), and medical decision maker documents. These documents play a vital role in safeguarding individuals' interests and ensuring that their wishes are respected in matters of finance and healthcare. By providing support in the creation of these documents, VALS empowers Aboriginal individuals to safeguard their assets and make informed decisions about their future.

The process of drafting wills not only serves as a proactive measure to mitigate the risk of family disputes, which can have significant emotional and financial repercussions, but also enables individuals to assert control over their estates.

In VALS' submission on achieving greater consistency in laws for enduring powers of attorney, it is detailed how in instances of elder abuse and family violence, individuals may be manipulated or coerced into making financial decisions against their best interests.³⁸ Having a properly executed POA document is highlighted as a protective measure in such circumstances. By designating a trusted representative to manage their affairs, individuals can mitigate the risk of financial exploitation. This proactive step ensures that their assets are utilised for their benefit rather than being misappropriated, thereby safeguarding their financial well-being and autonomy.

³⁸ VALS, [Achieving greater consistency in laws for enduring powers of attorney](#), 2023



Due to the complex nature of EPOAs, the Office of the Public Advocate recommends individuals seek legal advice³⁹ which poses significant financial burden, VALS sees an identified need in funding and resources to be allocated to Community Legal Centres (CLCs) and Aboriginal and Torres Strait Islander Legal Services (ATSILS) to support the community in undertaking issues relating to wills, probate and EPOAs, thereby promoting equitable access to protective legal measures.

Working with Children's Check

The requirement of a Working with Children Check (WWCC) poses a significant barrier for Aboriginal people seeking employment, who face systemic challenges within the legal and social systems. In VALS' experience, more and more employers and educational institutions are insisting that employees and students obtain WWCCs, including when the relevant employment or study will not involve any direct interaction with children. This can create significant issues for people with criminal history, by preventing them from moving forward with their education or employment, due to the shame and difficulty of re-visiting past offending and the traumatic circumstances that often surround this offending.⁴⁰

VALS plays a crucial role in supporting Aboriginal clients who encounter difficulties obtaining or retaining WWCC due to past offenses, mostly falling under category B, with criminal offenses and conduct classified into three categories: Categories A, B, and C, with A being the most serious category of offending.⁴¹

Aboriginal people have historically been disproportionately targeted by colonial legal systems and subjected to over policing, leading to unjust criminalisation.⁴² As a result, Aboriginal people are over criminalised, and disproportionately affected by Working with Children Check processes, particularly concerning Category B offenses and historical offenses.

VALS plays a critical role in advocating for Aboriginal clients who face challenges in obtaining or retaining WWCC. When the Department of Justice and Community Safety denies a WWCC or revokes an existing one, VALS provides essential support. One of the primary ways VALS assists its clients is through applying for a Victorian Civil and Administrative Tribunal review (VCAT) by crafting "please explain" letters. These letters serve as a means to articulate the circumstances surrounding the offense that led to the denial or revocation of the WWCC. VALS emphasises the historical nature of the offense, particularly when it occurred during the individual's childhood. By addressing the historical or circumstantial nature of the offense and providing context, VALS endeavours to secure a fair assessment of the client's suitability for a WWCC.

Recent changes in the legal landscape have further compounded obstacles for Aboriginal people seeking WWCC. Since 2019, a person convicted or found guilty of a 'Category A' criminal offense committed as an adult is automatically denied a WWCC without recourse to appeal to VCAT.

³⁹ Office of the Public Advocate, ['Making an enduring power of attorney'](#) (Webpage)

⁴⁰ VALS, [Submission to the legal and social issues committee inquiry into a legislated spent convictions scheme](#), 2019, p 21.

⁴¹ VCAT, [Worker Screening Act 2020 \(Review and original jurisdiction orders\)](#) (Webpage)

⁴² VALS, [Nuther-mooyoop to the Yoorrook Justice Commission: Criminal Legal System](#) (2022); VALS, [Submission to the inquiry into Victoria's Criminal justice system](#) (2021)



Previously, individuals could seek a VCAT review, enabling VCAT to consider all individual circumstances.⁴³ Between 2015 and 2019, before the VCAT review route was abolished, 51 individuals were issued a WWC Check by VCAT following automatic denials due to Category A offending.⁴⁴ This alteration in the appeals process has significantly impacted individuals' ability to challenge automatic denials based on Category A offenses, further exacerbating the hurdles faced Aboriginal people obtaining a WWCC.

If a WWC is failed, the Department of Justice and Community Safety issue a 'WWWC exclusion', preventing individuals from engaging in any child-related work for five years.⁴⁵ Lawyers at VALS have observed that once an application is submitted for the check, withdrawal is not an option after an interim exclusion is given. If the application is rejected, it leads to a five-year exclusion period. This outcome often translates into reduced employment opportunities and economic disadvantage for Aboriginal people affected by the rejection. Consequently, it may be advisable to wait a few years before applying to create more distance between any past offenses and the application. Seeking legal advice, which VALS assists with, before applying is crucial for understanding rights and potential consequences which may affect employment opportunities.

Addressing barriers to obtaining a WWCC is essential for breaking the cycle of economic disadvantage faced by many Aboriginal individuals. By supporting clients in securing or retaining their WWCC, VALS contributes to their ability to access employment opportunities, which in turn leads to improved economic prosperity.

Case Study – Jessica

Jessica is an Aboriginal woman from Gippsland area of Victoria. Through her childhood Jessica experienced many difficulties including witnessing and being subjected to significant family violence. She moved schools several times and eventually left school aged 16.

When Jessica was 17 she was diagnosed with depression. She began abusing drugs, including smoking marijuana, sniffing glue, and drinking alcohol heavily. With her group of friends, Jessica engaged in some immature behaviour and they got into minor trouble with police. Jessica received a fine with no conviction.


When she was 18, Jessica began a relationship with a young man who suffered from schizophrenia. On one occasion, Jessica's boyfriend got into a fight and injured someone on public transport. Jessica was not directly involved, but nevertheless she was charged. She was not convicted, and was given a good behaviour bond, which she complied with.

Not long after this incident, Jessica's boyfriend took his own life. Jessica was deeply traumatised and began to drink heavily. Shortly after her boyfriend's death, she was taken to hospital due to

⁴³ VALS, [Nuther-mooyoop to the Yoorrook Justice Commission: Child Protection](#) (2022), p 43.

⁴⁴ Information released by the Department of Justice and Community Safety under the Freedom of Information Act; VALS, [Nuther-mooyoop to the Yoorrook Justice Commission: Child Protection](#) (2022), p 43.

⁴⁵ VCAT, [Appealing a Working with Children exclusion](#) (Webpage, 2022)



intoxication, and whilst there became aggressive and injured a hospital staff member. Jessica was charged. She pleaded guilty and received an undertaking by the Court with no conviction, which she complied with and the matter was dismissed.

Several years have now passed since these incidents took place. Jessica has completely moved past this period of her life. She is now the mother to a young family and is studying for an aged care and nursing qualification. Jessica acknowledges that her behaviour was illegal and immature at times. She also recognises that her circumstances, including childhood trauma, mental illness, the use of drugs and alcohol, and personal tragedy, contributed to this behaviour. Jessica does not think that these circumstances excuse her behaviour, but she does believe they help explain how she ended up in such situations during her life.

Jessica came to VALS seeking assistance to obtain a WWCC, a requirement of the practical training in her course. Given her criminal history, Jessica was required to explain the circumstances of her offending and why she should be granted a WWCC. Jessica's offences did not involve children. They also occurred when she was a young person. She is now a mature adult who has established a healthy and productive life. She does not, and has never, engaged in conduct that make her a risk to children.

With VALS' assistance, she was able to obtain a WWCC, but the process of re-visiting her previous misconduct in detail was both shameful and upsetting for Jessica. She felt as though she was being re-punished for something that happened years ago that she had well and truly moved on from.

RECOMMENDATIONS


Recommendation 13. The Working With Children Check system should be reformed so that any person can apply to VCAT for a review if they are barred from applying for a Check due to past offending.

Family Violence

VALS lawyers play a crucial role in assisting clients facing situations of family violence, particularly those involving economic coercive control or financial abuse. The rates of family violence experienced by Aboriginal women and children only continue to escalate, with Aboriginal women being 45 times more likely to experience family violence than non-Aboriginal women.⁴⁶ In such cases, Aboriginal people may find themselves burdened with debts or financial obligations unfairly imposed upon them.

The Fines Victoria Family Violence Scheme enables affected family members to have their infringement fines withdrawn if there is a direct link between the family violence they experienced and their inability to control the conduct leading to the fine or to identify the offender, thereby

⁴⁶ State of Victoria, [Family violence reform rolling action plan 2020–2023: Aboriginal self-determination](#) (2020)



offering relief to victims of family violence.⁴⁷ VALS lawyers provide legal support and advocacy to help these clients navigate their financial situations effectively, such as by helping them waive debts or negotiate reduced debt payments. By working closely with their clients and understanding the complexities of their situations, VALS lawyers aim to empower affected family members to regain control over their finances and rebuild their lives free from economic exploitation and abuse, thus contributing to fostering economic prosperity within Aboriginal communities.

RECOMMENDATIONS

Recommendation 14. The Yoorrook Justice Commission should adopt the recommendation of VALS' nuther-mooyoop on family violence.

Unfair dismissal cases

Data reveals that 59% of Aboriginal and/or Torres Strait Islander employees encountered discrimination and/or harassment in their workplace.⁴⁸ This alarming trend not only perpetuates a hostile work environment but also translates into heightened instances of unfair dismissal among Aboriginal people, exacerbating their economic marginalisation and perpetuating systemic disadvantage.

In cases of unfair dismissal, VALS assists Aboriginal people through various stages of the legal process. This process typically begins with the lodgment of an application with the Fair Work Ombudsman. Subsequently, VALS supports its clients through the conciliation session facilitated by the Ombudsman. During this session, both parties come together with a conciliator to seek a settlement. VALS has shown effectiveness in achieving positive outcomes at this stage, with the Civil and Human Rights Practice being instrumental in securing compensation for Aboriginal people, notably \$188,333.98 in damages, predominantly in cases of discrimination, consumer rights, and unfair dismissal during 2022/2023.⁴⁹

However, despite successes at the conciliation stage, VALS faces constraints in providing further support beyond this point. If unresolved at conciliation, the case proceeds to a Commission conference or formal hearing where a Commission Member renders a decision.⁵⁰


Resource limitations and a lack of specialisation at VALS pose significant challenges in extending assistance beyond the fair work conciliation process. This limitation highlights the urgent need for

⁴⁷ Fines Victoria, [Family Violence Scheme](#) (Webpage)

⁴⁸ Diversity Council Australia, [Inclusion@Work index](#) (2024)

⁴⁹ VALS, [Annual Report 2022-23](#) (2024), p 24.

⁵⁰ Fair Work Commission, [The process for unfair dismissal claims](#) (Webpage)



increased funding and resources to enable organizations like VALS to offer comprehensive support throughout the entirety of legal proceedings.

Spent Convictions

A spent conviction, as defined by the Spent Convictions Act 2021, refers to a past criminal conviction that no longer needs to be disclosed, particularly on most police checks, if the individual does not reoffend for a specified period.⁵¹ The overrepresentation of Aboriginal peoples in the criminal justice system leads to disproportionate stigma and discrimination associated with criminal records, with VALS clients reporting they do not apply for jobs due to the shame of disclosing their criminal record to prospective employers.⁵² This underscores the significance of spent conviction provisions in reducing stigma and discrimination associated with criminal records, thereby enhancing employment and educational opportunities and ultimately bolstering economic prosperity for Aboriginal communities. Nerita Waight, CEO of VALS aptly captured the importance of the spent conviction scheme stating:

“Aboriginal and Torres Strait Islander peoples are overrepresented in the criminal legal system and are disproportionately impacted by the stigma and discrimination associated with having a criminal record. It is crucial for people who have been involved in the criminal legal system to be afforded the opportunity to gain access to employment and housing. Consigning people to a life of poverty and exclusion due to a criminal record perpetuates cycles of offending, entrenches disadvantage and will only contribute to the shameful overincarceration of Aboriginal people.”

VALS is able to assist Aboriginal people in applying for a spent conviction order to the Magistrates’ Court for convictions related to serious violence offences, sexual offences, or other eligible offences, provided they meet the specified criteria. VALS recommends that spent convictions should be automatically spent after the relevant waiting period to avoid bureaucratic and unnecessary hurdles for Aboriginal people.⁵³ Despite many attempts to promote our service, we have only had one client ask for help to make a spent convictions application. We understand that only one Aboriginal person made an application during the first year of the scheme.

In VALS’ experience, many people are unaware of the existence and benefits of the spent convictions scheme. This lack of awareness poses a significant challenge for Aboriginal people seeking to access its advantages. To address this issue, VALS advocates for increased funding for community legal education initiatives. By enhancing understanding of the scheme’s availability and eligibility criteria among Aboriginal communities, individuals can better navigate the process, facilitating greater opportunities for employment and education, leading to increased economic prosperity within Aboriginal communities.

The spending of a conviction means that a person will pass a police check and therefore have better employment opportunities.

⁵¹ Victoria State Government, [Spent Convictions](#) (Webpage)

⁵² VALS, [Submission to the legal and social inquiry into a legislated spent convictions scheme](#) (2019)

⁵³ VALS, [Submission to the legal and social inquiry into a legislated spent convictions scheme](#) (2019), p 11.



RECOMMENDATIONS

Recommendation 15. The entire spent convictions scheme should be automatic.

Victims legal support services

According to the Victims of Crime Commissioner, the “lack of access to legal advice and assistance has consistently been raised by victims of crime as one of the single most significant barriers to them participating meaningfully in the justice system”.⁵⁴ In November last year it was reported that Aboriginal victims of crime applications through the Koori List “were up 50 per cent year on year”.⁵⁵ This shows significant and growing demand for this critical service. In May last year, a new Victim’s Legal Service was established to assist victims of crime in receiving financial assistance, this service is in partnership with Victoria Legal Aid, community legal services, Djirra and VALS. VALS has employed one dedicated lawyer to support his program, as of January this year can report that 25% of clients accessing this program had experienced family violence and these clients often get the maximum amount for compensation and access to counselling supports. These clients also have access to Aboriginal client support officers (CSOs) as part of providing a culturally safe service. VALS CEO Nerita Waight, shares that “The service will minimise trauma and improve the process of seeking compensation by addressing each individual’s unique needs in a culturally safe way”⁵⁶. VALS would like to see funding for the service expanded to better meet community needs as a matter of priority.

VALS notes the Victims of Crime Commissioner’s Report ‘Silenced and sidelined: Systemic inquiry into victim participation in the justice system’ that was released in November last year which included 56 recommendations. We encourage the Commission to review this inquiry to inform their understanding regarding victims of crime, particularly with a focus on Aboriginal victims of crime and the need for a culturally safe approach to reporting. We support the recommendation for a dedicated Aboriginal Victims of Crime Strategy which we understand is underway and the appointment of an Aboriginal Social Justice Commissioner.⁵⁷

RECOMMENDATIONS

Recommendation 16. VALS’ Victims Legal Service to receive sustainable funding and be expanded to better meet community need.

⁵⁴ [vocc-annual-report-2022-2023-pdf-5mb.pdf \(victimsofcrimecommissioner.vic.gov.au\)](#) p. 42.

⁵⁵ Annika Smethurst, Boaeade Carmody, “Record \$74 million payout for victims of crime after rise in First Nations applications’ (The Age, November 6, 2023_

⁵⁶ Victoria Legal Aid, ‘[New partnership delivering support to victims of crime](#)’, (Media Release, 10 May, 2023)

⁵⁷ Victims of Crime Commissioner, ‘[Silenced and sidelined: systemic inquiry into victim participation](#)’, November 2023, Recommendation 11.



Stolen Generations Reparations Package

The Victorian Government opened the Stolen Generations Redress Package in March 2022. VALS welcomed the establishment of this scheme as an important acknowledgement of the genocide committed against our people and a step on a journey towards justice. Many members of the Stolen Generations and their families continue to face inequalities caused by governments and organisations that took them from their families, Country and culture. That trauma can never be erased, but the Stolen Generations Redress Scheme is a necessary step towards addressing the inequality it caused.

The Stolen Generations Redress Scheme is an important step that will go some way to addressing the individual and generational inequality that was caused by governments and organisations that took our children from us.⁵⁸

The scheme came too late for many Stolen Generations, many of whom never found their way home.

VALS Civil and Human Rights Practice has assisted over 100 clients to engage with the scheme since it was established. Yoorrook should seek evidence from the Department of Justice and Community Services to understand the numbers of Stolen Generations who have been deemed eligible and how many have chosen to receive an apology, or being able to undertake a family reunion and access counselling as part of the reparations package.

VALS notes the announcement of the commitment to establish a historical care leavers redress scheme and the advance redress payments that is already available. We seek assurances from government that they will engage with ACCOs to ensure this scheme is culturally safe and trauma informed.

RECOMMENDATIONS

Recommendation 17. Yoorrook must seek evidence from DJCS regarding the uptake of the Stolen Generations Reparations Package, including numbers of eligible applications, and whether they have taken up all or some of the reparations offered including an apology, family reunion and counselling.

Age Pension test case

VALS Civil and Human Rights Practice has supported Uncle Dennis Fisher, a Wakka Wakka Elder in the Age Pension Test Case in the Federal Court. The case argued that the *Racial Discrimination Act* requires the Government to give Aboriginal and Torres Strait Islander people the same right to the pension as other people. The case, over ten years in the making, said that Aboriginal and Torres Strait Islander people should be able to access the pension at least three years earlier, to account for lower life expectancy and health inequalities. While the Federal Court dismissed the challenge, we will continue to fight alongside Uncle Dennis to ensure our Aboriginal Elders have a dignified life in their later years.

⁵⁸ VALS, '[Victoria's Stolen Generations Scheme is a step on a journey towards justice](#)', Media Release, March 3, 2022.



This is a small but meaningful change that the Federal Government can make to improve the lives of our people.

My people have a lower life expectancy, we are yet to close that gap. Government need to not just pay lip service, but actually ensure the safety net of the pension is made available earlier for Aboriginal peoples. Failure to do this only entrenches discrimination further. I'm fighting not just for me, but for my community. Uncle Dennis

With the help of DLA Piper and Human Rights Law Centre, we instructed Ron Merkel KC, Rachel Amamoo and Tim Farhall from the Victorian Bar, who argued the case before the Full Court. Our hope was that if we were successful, the pension age would be lowered for Aboriginal and Torres Strait Islander people by at least three years.

In July 2023, we received judgment from the Full Federal Court. The Full Federal Court disagreed with our characterisation of the right to social security, which meant that our argument as to how the right should be amended to reflect the gap in life expectancy didn't take hold. After receiving advice from counsel, we sought special leave to appeal the Federal Court decision to the High Court. In March 2024 the High Court denied Special Leave. VALS will keep lobbying government and supporting Uncle Des on this issue. As VALS CEO, Nerita Waight articulates:

Increasing access to the age pension for Aboriginal and Torres Strait Islander people would be a small but meaningful reform that the Government could implement to make Australia fairer. It would be a concrete way to respond to a gap in life expectancy that keeps getting worse. This action is Uncle Dennis and our community raising their voices, and we hope that the Government listens and takes action.

This case is an example of how systemic discrimination directly impacts the economic prosperity and wellbeing of Aboriginal peoples. Whilst we acknowledge that the issue of pensions is a Commonwealth jurisdiction, the Victorian government could strengthen access to supports and aged care for Aboriginal people over 50 years of age.

RECOMMENDATIONS

Recommendation 18. The Victorian government to strengthen access to supports and aged care for Aboriginal people over 50 years of age.

Recommendation 19. The Victorian Government should advocate for the Federal Government to lower the age at which Aboriginal people can access the age pension.

Consumer Compensation

The current cost of living crisis is affecting many of our community members. VALS lawyers and Community Legal Education workers have shared that many community members are under financial pressure, we know this exacerbates issues around family violence and can lead to engaging in offending behaviour. Interest rates have gone up thirteen times since May 2022, this has seen a significant increase in rents as well as mortgage payments. In times of financial stress, we seek out



solutions to the best of our abilities, many people and families are juggling debts and overdue bills, alongside having to pay for essentials, which further entrench them in the cycle of poverty. The Consumer Action Law Centre (**CALC**) has released a variety of reports that speak to the complexity of these circumstances and the risk of exploitation many people face, including a report, jointly produced with VALS, on the consumer issues experienced by the Aboriginal community.⁵⁹ CALC, jointly with VALS, is currently writing a further report regarding the experiences of consumer issues by Aboriginal people in Victoria. VALS has provided a number of relevant case stories that would help inform the Commission's understanding of the interplay of these consumer leases, pay day loans, car loans, utility debt and funeral insurance, and how this impacts building economic prosperity. We encourage the Commission consider this report once it has been published.

There needs to be greater resources around building financial literacy, this should be done through schools and through ACCOs. Financial literacy is also tied to digital literacy, and we know, especially for older community members and Elders that their capacity to navigate online banking and online payment portals can lead to being vulnerable to scams and exploitation. Within community there is still a level of shame around financial circumstances, especially where they have been scammed so we know there is an underreporting.

In 2019, CALC and VALS established an Integrated Practice Project as a means of addressing some of the unmet consumer credit and debt issues being faced by Aboriginal community members. In 2022/23, the Civil and Human Rights Practice secured \$829,469.05 of debts waived, compensation awarded, and infringements revoked for Aboriginal and/or Torres Strait Islander clients, including:


- \$172,660.77 in debts waived;
- \$468,501.31 in fines waived;
- \$188,333.98 damages or compensation mainly in discrimination, consumer and unfair dismissal matters.

Below are two case studies that exemplify the kinds of issues that many community members are facing relating to dodgy car sales and expensive Pay to Rent schemes.

Case Study – Lemon Cars

Sarah is a proud Aboriginal woman from a small regional town in Victoria. She is a single parent, lives in community housing, and her sole source of income is Centrelink benefits. She saved up over a long period of time to buy a car. She wanted a reliable car and because of this, decided to purchase a car from a car dealership as she thought she could trust that the car she would buy from a dealership would work well. She went ahead with the purchase of a car for about \$9,000. However, within only a couple of weeks of purchase, she noticed significant issues with the car. She took the car to a local mechanic who advised her not to drive the car until the issues were fixed.

⁵⁹ Consumer Action Law Centre and VALS, 'Consumer Issues in Victorian Aboriginal Communities During 2020: Integrated Practice Project Report', June 2021. See also



Sarah contacted the car dealership on numerous occasions and asked them to either fix the issues or provide her with a refund. They refused to do either and not being able to afford the cost of repairs herself, felt she was left with no option but to file with VCAT. It took over a year for her matter to be heard, during this period Sarah hasn't had access to a car which has greatly impacted her and her child's life and access to services and supports. With VALS support she was able to get an expert report and VCAT made a determination that included for the car dealership being ordered to repair certain defects, but not all, as there wasn't sufficient evidence for all of the issues.

The car dealership was also ordered to cover costs incurred by the client i.e. cost of the expert report and cost of having had the car inspected by another mechanic prior to the hearing.

Case Study – Consumer Lease

Norman is an Aboriginal man in his forties who lives with intellectual disability and mental illness, is on Centrelink payments and lives in social housing.

VALS received a referral from Norman's disability support worker who noted that a consumer lease company had been "ripping him off royally". VALS identified that over a period of six years, Norman had entered 7 consumer lease agreements for household electronics and appliances totalling nearly \$20,000. The products had a recommended retail price of only about \$5,000-\$6,000 in total. Some of the contracts had signatures that weren't even his. When signing Norman up to the contracts, the company did not take adequate steps to explain the terms and conditions and/or check to make sure Norman understood, and in many instances, the company actively misled him in relation to the terms and conditions. In that six-year period, unknown to Norman, a total of approximately \$16,000 had been deducted automatically from his Centrelink account and paid to the company.

VALS assisted Norman in relation to breaches of consumer and credit law. VALS escalated the case to the Australian Financial Complaints Authority and obtained a significant refund for the client as well as cancellation of all the contracts.

RECOMMENDATIONS

Recommendation 20. The Victorian Government must resource the development and implementation of culturally safe and Aboriginal led financial literacy resources and training packages that can be delivered at schools and through ACCOs.

Recommendation 21. The Commission to review reports previously published by CALC and VALS relating to consumer issues for Aboriginal people in Victoria, as well as the report that will be published in the near future.



How colonial systems tax Aboriginal People

Youpla Targeting

Aboriginal and Torres Strait Islander communities have been disproportionately harmed by funeral policies, particularly those offered by the Aboriginal Community Benefit Fund now known as Youpla, which misleadingly presented itself as a community-controlled organisation. Around 15,000 Aboriginal policyholders and their families were left unable to pay for their funerals and Sorry Business after three of Youpla's four funds were placed in liquidation on 11 March 2022.⁶⁰ VALS has supported over 80 clients who had policies with Youpla.

“Youpla preyed on the community's financial vulnerability around sorry business and used fear and misinformation to sell their poor value products,” – Nerita Waight, CEO of VALS

Aggressively selling poor-value funeral plans to Aboriginal and Torres Strait Islander individuals reflects patterns of systemic exploitation within colonial systems, where economic vulnerability is often exploited for profit. Moreover, the failure of government regulators to oversee and regulate companies like Youpla underscores systemic failures that perpetuate economic disparities.

“The Australian Government need to cover the losses suffered by Aboriginal and Torres Strait Islander people who had a Youpla policy. The Government have responsibility for regulating the industry and enforcing the rules. The Government failed in their responsibility, and they should make it right. VALS is working hard to ensure sure that happens.” – Nerita Waight, CEO of VALS


The deceptive actions of Youpla, presenting itself as community-controlled while preying on vulnerable Aboriginal policyholders, exemplify how colonial legacies continue to perpetuate economic injustices. The lack of meaningful compensation for those affected by Youpla's collapse underscores the ongoing marginalisation of Aboriginal communities within the legal and financial systems. Thus, addressing economic disadvantage for Aboriginal people requires not only accountability for corporate wrongdoing, but also dismantling colonial structures that perpetuate inequality and exploitation.

VALS had been warning about the Youpla/ACBF products for over 20 years, along with many Aboriginal and financial organisations. Successive governments ignored those warnings and allowed our people to be exploited by the deceptive products.

Superannuation fees

The colonial legacy continues to impose economic disadvantages on Aboriginal people through colonial systems taxing Aboriginal people unfairly. One example of this is the restriction on accessing

⁶⁰ VALS, [Failure in Government policy sees First Nations peoples lose millions in funeral fund collapse](#), 2022



superannuation funds until individuals reach 'preservation age', typically between 55 and 60.⁶¹ However, due to the enduring effects of colonisation and racial discrimination, Aboriginal men have a life expectancy on average 8.6 years lower than non-Aboriginal men, while Aboriginal women's life expectancy is 7.8 years shorter than non-Aboriginal women.⁶² The persistent failure to close this life expectancy gap, as evidenced by the Closing the Gap Annual Data, highlights the ongoing inequities faced by Aboriginal people.⁶³ Adjusting access to superannuation to reflect these discrepancies in life expectancy is imperative to address the economic disparities stemming from colonial systems such as accessing superannuation.

RECOMMENDATIONS

Recommendation 22. Superannuation access needs to be adjusted to account for the life, health and socio-economic differences between Aboriginal people and non-Indigenous people.

Public and Social Housing

The dispossession of traditional lands, and forced movements have directly resulted in homelessness, through the loss of “any form of secure tenure.”⁶⁴ Whilst generations of non-Indigenous Australians and corporations have profited off the transfer of capital growth of land assets and tax incentives, this luxury has largely not been afforded to Aboriginal peoples. As further explored in VALS Nuthermooyoop on housing and homelessness, the lack of affordable and stable housing for Aboriginal peoples has directly impacted on their economic prosperity and in turn led to generational cycles of poverty.⁶⁵

The issue of housing affordability and accessibility, particularly concerning public and social housing, is deeply intertwined with the historical injustices inflicted upon Aboriginal peoples by colonial systems. Despite being aware of the pressing need for increased public housing stock to address the current housing and homelessness crisis, governments are failing in their duty to provide safe, secure, and affordable housing. This neglect echoes the systemic injustices and violent dispossession experienced by Aboriginal communities during colonial invasion, as highlighted in our Nuthermooyoop on Land Injustice.⁶⁶ Aboriginal Australians are disproportionately affected by the lack of affordable housing, with 51.3 percent renting compared to non-Indigenous Victorians, and significantly lower rates of home ownership.⁶⁷ To counteract this disparity, various government schemes aim to increase Aboriginal home ownership, such as the Victorian Homebuyer Fund, which

⁶¹ ServicesAustralia, [Who can access their super early](#) (Webpage, 2024)

⁶² VALS, [Case challenging age pension discrimination for Aboriginal and Torres Strait Islander people returns to court](#) (Webpage, 2022)


⁶³ Productivity Commission, [Closing the gap Information Repository](#) (2024)

⁶⁴ Royal Commission into Aboriginal Deaths in Custody Final Report, [18.2.1].

⁶⁵ VALS, [Nuthermooyoop housing and homelessness](#) (2024)

⁶⁶ VALS, [Nuthermooyoop on Land Injustice](#), November 2023, 14.

⁶⁷ Victorian Government, The Legislative Council, Legal and Social Issues Committee, [‘The rental and housing affordability crisis in Victoria’ Final Report](#) [2.7.1]. Rates for Indigenous Australians home ownership were consistently around 20 percentage points



facilitates shared equity models. The Victorian Government has reported that this scheme has supported more than 7,300 Victorians to secure a home.⁶⁸ Despite these efforts, the underlying issue persists, and a concerted effort to address historical injustices and systemic barriers is necessary to ensure equitable access to housing for Aboriginal and Torres Strait Islander peoples. The Commission should call the State Revenue Office to provide evidence regarding the number of applicants for schemes like the Victorian Homebuyer Fund who identify as Aboriginal. This data would inform whether a quota should be established to ensure equitable access to such initiatives for Aboriginal peoples. VALS asserts that awareness of these schemes is lacking within the community, highlighting the need for increased investment in awareness-raising efforts, coupled with dedicated financial and legal advice to empower community members to make informed decisions about their housing options. Furthermore, the Commission should explore international rent-to-buy/own models, with a specific focus on developing a dedicated Aboriginal model. However, caution must be exercised, as such agreements may contain pitfalls that result in consumers paying more than the home's value over the agreement's duration.⁶⁹

RECOMMENDATIONS

Recommendation 23. The Yoorrook Justice Commission should adopt the recommendation of VALS' *nuther-mooyoop* on housing and homelessness.

Predatory targeting by corporations

Colonial systems perpetuate economic disparities by exploiting Aboriginal communities through predatory targeting by corporations. Telstra, for instance, admitted to breaching the Australian Consumer Law and acting unconscionably by signing up 108 Indigenous consumers to multiple post-paid mobile contracts between January 2016 and August 2018. These consumers, often facing social, language, literacy, and cultural vulnerabilities, were manipulated into contracts they did not understand nor could afford.⁷⁰ Such predatory practices extend beyond Telstra, with other companies like the Australian Community Benefit Fund, also known as Youpla, also preying on Aboriginal people, as discussed in earlier section. Telstra's recent fine of \$50 million for unconscionable conduct in selling post-paid mobile products to Aboriginal consumers in remote communities highlights a broader issue of telecommunications companies exploiting Aboriginal families.⁷¹ These practices not only deepen economic inequality but also exacerbate social and cultural marginalisation within Aboriginal communities, demonstrating the ongoing impact of colonial systems on Aboriginal people.

Productivity Commission report

⁶⁸ Premier of Victoria, '[Shared Equity Fund Helps More Victorians Own a Home](#)' (Media Release, 28 January 2024)

⁶⁹ VALS, [Nuther-Mooyoop Housing and homelessness](#) (2024), p 16.

⁷⁰ ACCC, [Telstra to pay \\$50m penalty for unconscionable sales to Indigenous consumers](#) (Webpage, 2021)

⁷¹ VALS, [Submission on Victoria's Anti-Racism Strategy](#) (2021), p xiv.



Colonial systems perpetuate economic disadvantage among Aboriginal people through the chronic underfunding of the ACCO sector. It is well-known by Government and Aboriginal communities that our services are underfunded, understaffed, under resourced and unable to achieve their purposes on a state-wide scale. Issues concerning the funding and resourcing of Aboriginal organisations and institutions have been highlighted by United Nations human rights bodies in criticisms of the Commonwealth Government,⁷² and the issue has also been repeatedly identified by VALS in numerous submissions to the Victorian Government.⁷³ As well as the latest Productivity Commission report underscoring how Aboriginal peak bodies risk burning out due to demands, which they are underfunded for.⁷⁴ These challenges, rooted in underfunding, further perpetuate the economic disparity imposed by colonial systems on Aboriginal people.

Means test

Currently, VALS has a means test where clients must be receiving Centrelink payments or earning approximately \$52,000 per annum. This is to ensure our resources are directed to the community members who would have the most difficulty accessing alternative legal services. We do apply some discretion to the means test on a case-by-case basis. However, the effect of the means test is to dampen demand and, as expressed previously, we believe that we should be funded to provide culturally safe legal services to any Aboriginal or Torres Strait Islander person in Victoria who wants to use our services. Our people do not become impervious to the systemic racism of the legal system once they reach a certain income level. We are a long way from being able to reach this goal based on current funding levels, but the Federal Government should consider pathways to making this possible.

The current means test repercussions are profound. ACCOs and community members have reported individuals find themselves unable to access crucial legal assistance, forcing them into dire situations. Some are compelled to liquidate assets like their homes or vehicles simply to afford legal representation, while others are left with no choice but to navigate complex legal matters unaided or withdraw altogether. The ramifications are severe, extending beyond immediate legal concerns to profoundly impact mental health and perpetuate strained familial relationships, particularly in cases of family law.

VALS should be able to cater to all Aboriginal people without restriction based on financial status. Funding should be sufficient to accommodate everyone in need, free from the constraints of a means

⁷² United Nations Committee on the Elimination of Racial Discrimination. 'Concluding observations on the eighteenth to twentieth periodic reports of Australia' (2017). UN Doc. CERD/C/AUS/CO/18-20, at 17-18; United Nations Committee on the Elimination of Racial Discrimination. 'Concluding observations of the Committee on the Elimination of Racial Discrimination: Australia' (2010). UN Doc. CERD/C/AUS/CO/15-17 at 15; United Nations Committee on Economic, Social and Cultural Rights. 'Concluding Observations on the fifth periodic report of Australia' (2017). UN Doc. E/C.12/AUS/CO/5, at 15-16; United Nations Human Rights Committee. 'Concluding observations on the sixth periodic report of Australia.' (2017) UN Doc. CCPR/C/AUS/CO/6, at 39-40 and 49-50, United Nations Human Rights Committee. 'Concluding observations of the Human Rights Committee: Australia. (2009) UN Doc. CCPR/C/AUS/CO/5, at 13 and 25

⁷³ See, for example Recommendations 7- 10 of VALS. 'Submission to the Royal Commission into Victoria's Mental Health System (July 2019); Recommendations 1 and 3 of VALS. 'Submission to the Victorian Law Reform Commission Project: Improving the Response of the Justice System to Sexual Offences.' (March 2021); Recommendations 1 and 5-11 of VALS. 'Building Back Better: Victorian Aboriginal Legal Service COVID-19 Recovery Plan.' (February 2021).

⁷⁴ Productivity Commission, [Review of the National Agreement on Closing the Gap](#) (2024), p 59.



test, thereby ensuring equitable access to essential legal support for all members of the community. The imposition of a means test perpetuates economic disadvantage for Aboriginal people by denying essential legal support to those who cannot meet its stringent criteria.

It is because of this, that over the next three years VALS has made the decision to increase our Means Test threshold.

The increase to our Means Test threshold means that we will be able to provide high-quality legal assistance to more Aboriginal people in Victoria. Increasing the Means Test threshold means that we are increasing the income cap for service eligibility. This means that in 2024 people with an income up to \$65,000 will be able to access legal assistance from VALS, provided they meet our other eligibility requirements. The income cap will increase annually over the next three years, until we reach alignment with the base tier of the Medicare levy surcharge.

Our decision to increase our Means Test threshold is reflective of our organisational position; that all Aboriginal people should be able to access culturally safe legal services. Experiences of racism are not limited by income brackets, and it is imperative that all Aboriginal people are able to access legal assistance regardless of their income.

Although our Means Test will still be capped at a particular income level for the foreseeable future, we hope that we will one day be in a position where we are able to remove the Means Test requirement altogether. To ensure we are in a position to do this will require substantial advocacy for increased funding from the Victorian Government.

As of 1st May 2024, we will commence our staged increase to the Means Test threshold for legal assistance. The Means Test threshold will continue to increase by a set amount over the next three years.

In January 2027, our means test will reflect the top rate of the base tier of the Medicare levy surcharge. This means that our Means Test threshold will reflect any increases of the Medicare levy surcharge going forward.

The VALS Means Test will reflect the following:

- Before 1st May 2024: a gross household income of \$52,000 or less per annum
- After 1st May 2024: a gross household income of \$65,000 or less per annum
- After 1st January 2024: a gross household income of \$75,000 or less per annum
- After 1st January 2027: top rate of the base tier for the Medicare levy surcharge

As an organisation we will continue to work hard to advocate for adequate funding for our services, as well as continuing to fight-back against the Government's tough-on-crime and interventionist policies that continue to impact Aboriginal communities.



Unpaid labour - cultural load

The burden of cultural load placed upon Aboriginal people in the workplace often manifests as unpaid labor, contributing to economic disadvantage perpetuated by colonial systems. Cultural load includes the invisible but significant additional workload shouldered by Aboriginal people, particularly when they are among a minority in their workplace. This encompasses Aboriginal-related work demands that non-Indigenous colleagues do not have, expectations to educate non-Indigenous colleagues about Aboriginal people and racism, and expectations to talk on behalf of all Aboriginal and/or Torres Strait Islander people.⁷⁵ Consequently, Aboriginal workers often find themselves performing unpaid labor, educating others about their culture and history, while also fulfilling their job responsibilities. This not only underscores the ongoing effects of colonialism but also reinforces economic disparities faced by Aboriginal people in the workplace.

RECOMMENDATIONS

Recommendation 24. The Victorian Government should ensure that any Enterprise Agreement that it is a signatory to includes compensation for the cultural load that Aboriginal people carry in the workplace.

Black businesses

Governments have sought to promote economic prosperity for Aboriginal people through supporting Black businesses with many government procurement policies now having minimum requirements.⁷⁶ However, these policies have led to concerns about “black-cladding” where businesses partner with Aboriginal people to qualify as a Black business under government procurement policy guidelines, but the Aboriginal people do not receive a fair portion of the businesses success or equitable decision-making authority in how it is run.⁷⁷

If Black businesses are to be a vehicle to improve the economic prosperity of our people, government policies need to be better designed to ensure the Aboriginal people are genuinely empowered to run businesses.

RECOMMENDATIONS

Recommendation 25. The Victorian Government should ensure that its policies that are designed to support Black businesses.

Seniors Card – Access and Utilisation

⁷⁵ <https://www.dca.org.au/resources/aboriginal-and-torres-strait-islander-peoples/aboriginal-and-torres-strait-islander-peoples-leading-practice>

⁷⁶ The Guardian, [Indigenous entrepreneurs urged to verify their business to weed out 'black-cladding'](#)

⁷⁷ SBS/NITV Online, [Calls for probe into black cladding of businesses](#)



Despite its longstanding presence, the seniors card remains underutilised among many elders and members of the community. The seniors card offers discounted benefits across a range of services, yet its potential is often overlooked. The reasons behind this underutilisation likely encompass factors such as a lack of awareness about available services and discomfort in accessing them. These barriers hinder Aboriginal people from fully capitalising on the benefits intended to enhance their quality of life and support their well-being. Addressing these challenges through increased awareness and tailored support systems could bridge the gap, ensuring that seniors can access the resources and discounts they deserve. The underutilisation of the seniors card therefore exacerbates already existing economic disparities.⁷⁸

Accessing carer support services

As highlighted in our *Nuther-mooyoop on Child Protection*⁷⁹, The intergenerational trauma inflicted by colonisation, continued through generations of unjust government action, has meant that severe social problems – such as family violence, mental illness, disability, homelessness, substance use and educational disadvantage – disproportionately affect Aboriginal people.

Issues of accessing support services for social issues inflicted through colonisation are present, with uncertainty and reluctance among Aboriginal families about how to access services and whether they can do so safely. Some families are unsure of what services are available to them. Many Aboriginal parents are concerned that seeking assistance will be used as evidence of their failures as a parent, in either child protection or family law proceedings. This too often leads to families being unsupported, which can lead to the escalation of contact with the child protection system. VALS recommends an alternative intake and referral pathway that could be conducted in partnership with ACCOs, accompanied by stronger efforts to differentiate between the staff who provide support services and those who conduct investigations. These measures would give Aboriginal families greater confidence to engage with support services and help ensure early interventions are in place to avoid removals wherever possible.

A reluctance to access support services due to fear of being judged or stigmatised can exacerbate economic disadvantage within these communities. When families avoid seeking assistance, they miss out on vital resources and interventions that could help address underlying issues contributing to their economic struggles. Without access to support services, families may find themselves grappling with issues such as unemployment, housing instability, and financial strain, which can further compound economic disadvantage.

RECOMMENDATIONS

Recommendation 26. The Victorian Government should reconsider the Yoorrook for Justice Report and support in full all of its recommendations.

⁷⁸ This insight is drawn from conversations with an Aboriginal staff member, whose firsthand experiences and perspectives provide valuable context

⁷⁹ VALS, [Nuther-mooyoop to the Yoorrook Justice Commission: Child Protection](#) (2022)



Kinship carers

As highlighted in our Nuther-mooyoop on child protection, the colonial legacy continues to exert a profound impact on Aboriginal communities, manifesting in systemic injustices within the child protection system.⁸⁰ Generations of unjust government actions have perpetuated intergenerational trauma, resulting in disproportionately high rates of social issues among Aboriginal people, including family violence, mental illness, homelessness, and substance abuse. Within this context, the child protection system often becomes entangled in the lives of Aboriginal families, reflecting the historical neglect and mistreatment by the State.

When children require removal from their parents, kinship care emerges as a vital means of preserving their connections to family, community, and culture. However, the failure to adequately fund kinship carers perpetuates economic disadvantage, as they typically receive lower allowances compared to foster carers. Despite their deep sense of obligation to support Aboriginal families and avoid the harms of removal and residential care, kinship carers often sacrifice educational and employment opportunities, leading to instability in their own lives. This inadequate financial support further compounds the burdens faced by kinship carers, who often take on responsibilities informally to avoid the disruptive involvement of Child Protection. Thus, the colonial legacy continues to tax Aboriginal people through the systemic underfunding of kinship care, perpetuating economic disadvantage and exacerbating existing social challenges.

RECOMMENDATIONS

Recommendation 27. The Victorian Government must expand the financial support and services available to parents and kinship carers, to reduce the disparity with the resources made available to foster carers.

Overpolicing

Colonial systems continue to tax Aboriginal communities, amplifying economic disparities through mechanisms like over-policing and over-incarceration. Systemic racism in Victoria Police impacts Aboriginal communities on a daily basis and manifests itself in the way that Aboriginal people are over-

⁸⁰ VALS, [nuther mooyoop to the Yoorrook Justice Commission: Child Protection](#) (2022)



policed⁸¹ and over-represented in police custody.⁸² The continuing over-policing of marginalised people leads to shamefully high incarceration rates for Aboriginal people, which were identified more than thirty years ago as the main driver of Aboriginal deaths in custody by the Royal Commission into Aboriginal Deaths in Custody.⁸³

This in turn limits employment opportunities whereby a national police check is requested by employers. Aboriginal communities have highlighted the serious hurdles to employment posed by employers' use of criminal record checks, irrespective of the relevance of the criminal history.⁸⁴ Nerita Waight, CEO of VALS quoted:

“Aboriginal and Torres Strait Islander peoples are overrepresented in the criminal legal system and are disproportionately impacted by the stigma and discrimination associated with having a criminal record. It is crucial for people who have been involved in the criminal legal system to be afforded the opportunity to gain access to employment. Consigning people to a life of poverty and exclusion due to a criminal record perpetuates cycles of offending, entrenches disadvantage and will only contribute to the shameful overincarceration of Aboriginal people.”

This cycle of over-policing and disproportionate incarceration not only perpetuates systemic racism but also perpetuates economic disadvantage within Aboriginal communities, hindering their access to employment opportunities.

RECOMMENDATIONS

Recommendation 28. The Federal and Victorian Governments must commit to ongoing, needs-based funding for the Victorian Aboriginal Legal Service.

⁸¹ Aboriginal people in Victoria are more likely to be apprehended and arrested by police, and they report higher rates of being hassled by police. See H. Blagg, N. Morgan, C. Cunneen, A. Ferrante (2005), [Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Criminal Justice System](#). The recent Inquiry by the Commission for Children and Young People (CCYP) into found that Aboriginal children and young people were substantially over-represented in arrests. See CCYP (2021), [Our Youth Our Way: Inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system](#),

p. 430. Excessive policing of Aboriginal women was also noted in the Tanya Day Inquest. See [Finding into Death with Inquest: Inquest into the Death of Tanya Louise Day](#), 9 April 2020, COR 2017 6424.

⁸² Data from Victorian police attendance registries in 2006 reveals that Aboriginal people are almost six times more likely to be held in a police station. See [Koori Complaints Project 2006- 2008: Final Report](#), p. 17.

⁸³ Royal Commission into Aboriginal Deaths in Custody (1991), Final Report: Volume 1, section 1.3. Available at <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol1/12.html>.

⁸⁴ RMIT, [Reducing barriers to employment for Aboriginal people: rethinking the role of criminal record checks](#)

Background to the Victorian Aboriginal Legal Service

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



In 2023, we were proud to launch the official logo of our 50th anniversary, 'Koori Woman of Justice'.

The artwork was designed by the deadly Natasha Corrigan, a Walabhul, Bundjalung, Dungidau/Dala and Jinibara artist born and living on Wurundjeri land.

In Natasha's words, the design is a representation of VALS' work over the past 50 years towards the Victorian Aboriginal Communities. The colours used are a depiction of our Aboriginal flag. Aboriginal symbolisms are used to showcase the journeys made by community members and VALS

representatives, these symbols tell the story of our journey from one place to another or symbolically from one situation to another. They represent each person, family and organisation that has been and continue to be supported by VALS.

Legal Services

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

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

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

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

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



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

Community Justice Programs

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

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

Policy, Research and Advocacy

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

Contributors

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