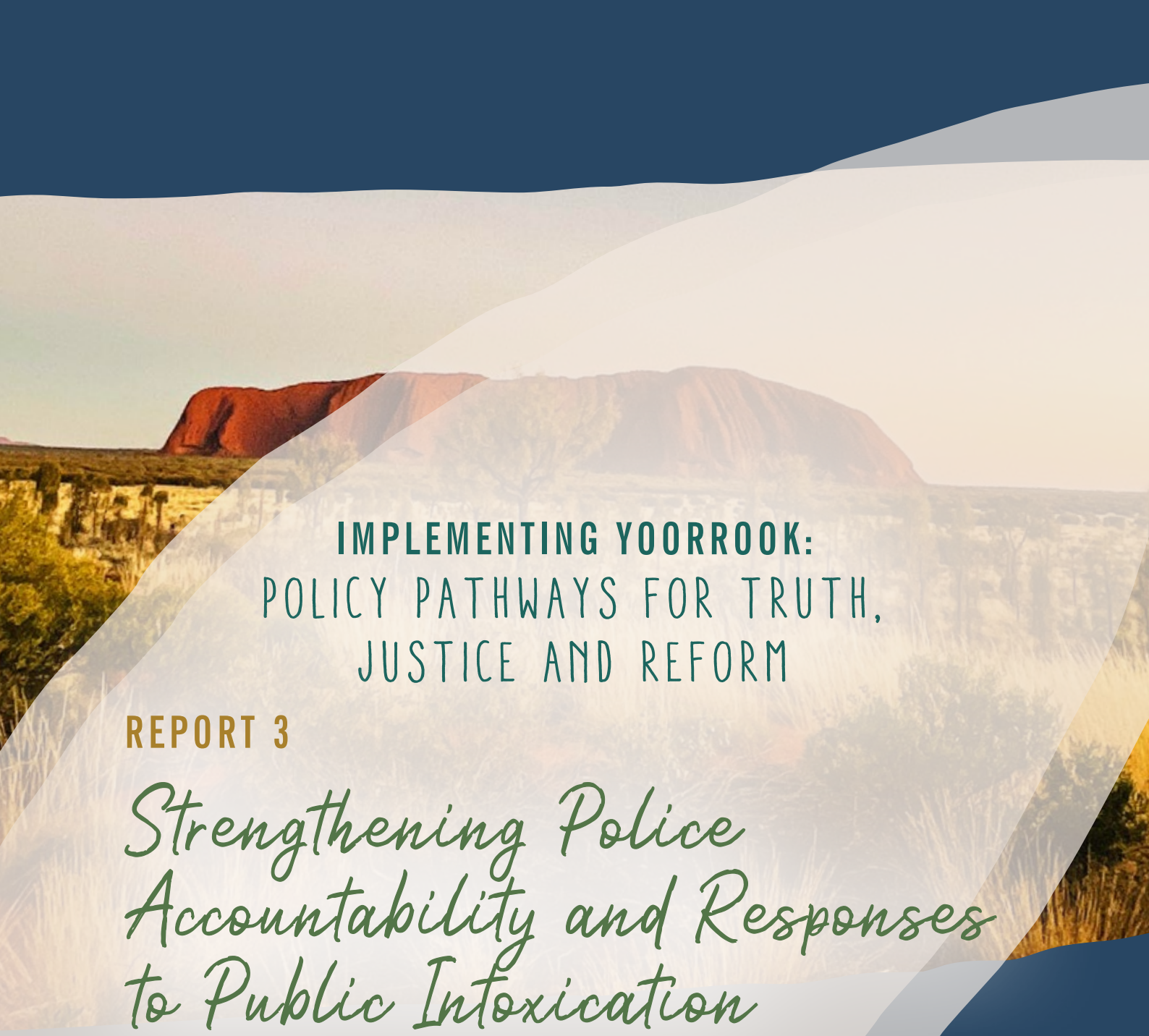

IMPLEMENTING YOORROOK:
POLICY PATHWAYS FOR TRUTH, JUSTICE AND REFORM

REPORT 3

Strengthening Police Accountability and Responses to Public Intoxication

RMIT UNIVERSITY,
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Context Warning:

Readers should be advised that this report contains references to Aboriginal and Torres Strait Islander persons who have passed away.

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IMPLEMENTING YOORROOK: POLICY PATHWAYS FOR TRUTH, JUSTICE AND REFORM FOREWORD

The origins of this project can be traced to conversations with Yoorrook Commissioner Professor Sue-Anne Hunter, who emphasised the importance of ensuring that Yoorrook's findings were not confined to the pages of a final report, but translated into meaningful institutional and community engagement.[1] Those discussions shaped an approach grounded not only in implementation, but in responsibility: how universities, legal institutions, and mainstream organisations might contribute constructively and ethically to the ongoing process of truth-telling, repair, and structural reform.[2] As Commissioner Hunter observed, the challenge was to ensure that Yoorrook's work did not simply 'sit on a shelf'. It was from this shared commitment that these reports emerged. They proceed from the belief that the recommendations of the Yoorrook Justice Commission should not remain solely the concern of Indigenous Victorians, governments, lawyers or policy specialists, but can also provide a foundation for broader engagement across Victorian institutions and civil society.

From its inception, the project sought to proceed in a manner consistent with principles of Indigenous self-determination and ethical collaboration.

Indigenous partnership and guidance were therefore embedded at the centre of the work. At RMIT University, the project was undertaken in close collaboration with Gheran-Yarraman Steel, whose leadership and expertise were integral to the framing and direction of the research.

The project was led and co-authored by Dr Jeremie M Bracka (RMIT University School of Law) and supported through the Malcolm Moore Industry Research Grant. The research was further strengthened by the contribution of Associate Professor Amanda Porter (University of Melbourne), whose expertise in criminal law and criminology informed key aspects of the project. The work was further strengthened through partnership with the Jumbunna Institute for Indigenous Education and Research at the University of Technology Sydney, an Indigenous-led research institute with longstanding expertise in community-led and justice-oriented research. The authors also gratefully acknowledge the contribution of industry partners Simon Thomas and Jennifer Keene-McCann of the International Commission of Jurists (Victoria), and Steven Castan, Ariane Dozer, Naomi Lai and Jacinta Wright of the National Justice Project, whose research and engagement helped shape the

[1] Conversation with Professor Sue-Anne Hunter, Commissioner, Yoorrook Justice Commission, prior to the commencement of the project, concerning the importance of broader institutional and community engagement with the implementation of the Yoorrook Justice Commission's work.

[2] Australian Institute of Aboriginal and Torres Strait Islander Studies, AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research (2020).

development of the project. The authors are further grateful to Stan Winford and the Centre for Innovative Justice for their encouragement and support. The project also benefited from consultation and review by Barry Firebrace-Briggs of the First Peoples' Assembly of Victoria, whose guidance and feedback informed the development of all three reports.

The methodology underpinning the project was informed by the principles articulated in the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research, including integrity, reciprocity, accountability, impact, and Indigenous self-determination.[3] Particular care was taken to ensure that the project complemented, rather than displaced, Indigenous-led processes already underway. Extensive consultation occurred through follow-up discussions involving practitioners, academics, community advocates, and representatives connected to the First Peoples' Assembly of Victoria and broader Aboriginal community-controlled sectors.

A major project roundtable convened in September 2025 in partnership with the Jumbunna Institute for Indigenous Education and Research, National Justice Project, and the International Commission of Jurists (Victoria), bringing together Indigenous leaders, legal practitioners, researchers, and policy stakeholders to discuss implementation pathways for the Yoorrook Justice Commission's recommendations. More than twenty participants contributed to the discussion, including representatives of the First Peoples' Assembly of Victoria, Aboriginal legal organisations such as the Victorian Aboriginal Legal Service and First Nations Legal and Research Services, members of the judiciary and legal profession, and representatives from the Coroners Court of Victoria. The roundtable helped inform the priorities and recommendations explored throughout this report series.

The project was conceived not as an attempt to speak for Indigenous communities, but as a modest contribution to supporting and amplifying the work already being undertaken by First Peoples and the Yoorrook process itself.[4] Intellectually, the project was also informed by Professor Martin Nakata's conception of the 'cultural interface': the complex and often contested space in which Indigenous and Western knowledge systems, institutions, and modes of governance intersect.[5]

These reports are situated consciously within that interface. They seek to engage mainstream legal, governmental, and educational institutions while remaining attentive to the limits, responsibilities, and power imbalances inherent in that engagement. In this respect, the reports do not claim neutrality. Rather, they proceed from the position that ethically grounded partnerships, reflexivity, and Indigenous leadership are essential preconditions for any meaningful implementation agenda.

Ultimately, these reports are offered as a practical contribution to ongoing processes of truth-telling, institutional accountability, and historical repair in Victoria. They recognise that the work of truth-telling and historical repair is necessarily long-term, incomplete, and at times uncomfortable. Yet they also proceed from the belief that the implementation of Yoorrook's recommendations presents a rare and important opportunity: not only for legal and policy reform, but for deeper forms of institutional listening, accountability, and transformation across Victorian society.

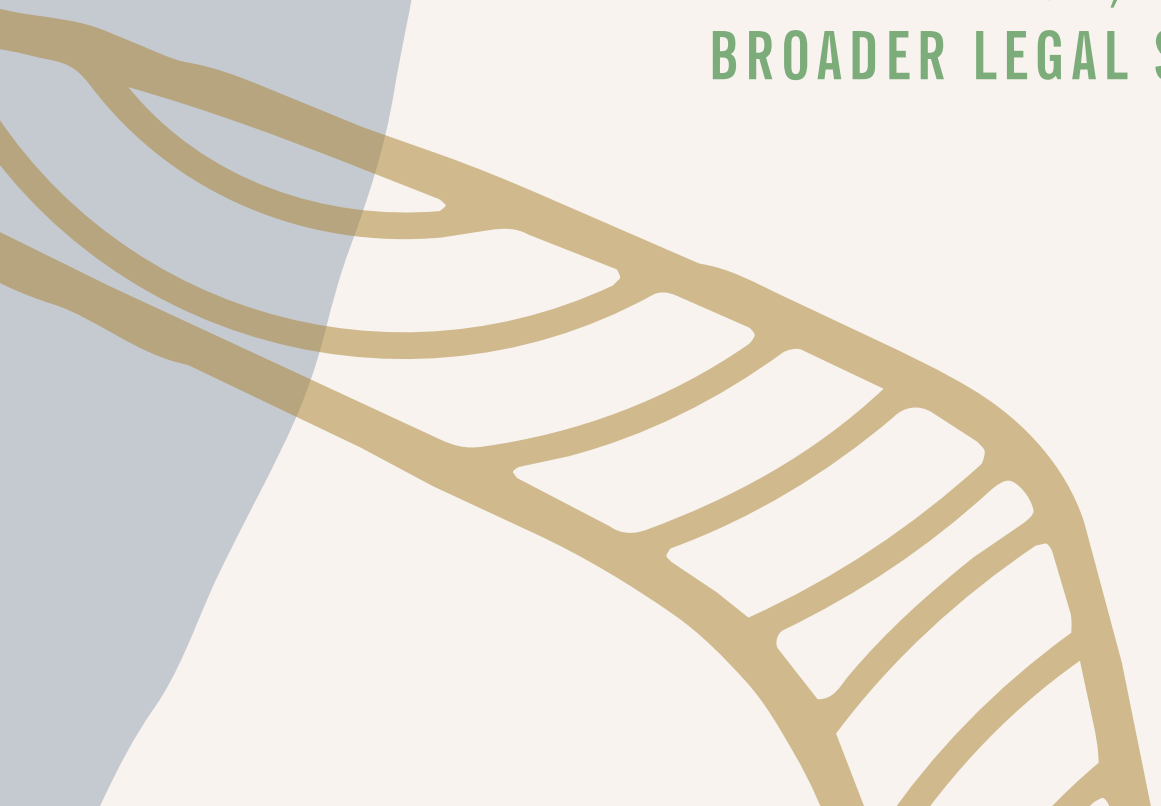
THE REPORTS DO NOT CLAIM NEUTRALITY. RATHER, THEY PROCEED FROM THE POSITION THAT ETHICALLY GROUNDED PARTNERSHIPS, REFLEXIVITY, AND INDIGENOUS LEADERSHIP ARE ESSENTIAL PRECONDITIONS FOR ANY MEANINGFUL IMPLEMENTATION AGENDA.

[3] Ibid

[4] Martin Nakata, 'The Cultural Interface' (2007) 36(Supplement) The Australian Journal of Indigenous Education 7.

[5] National Justice Project and Jumbunna Institute for Indigenous Education and Research, Letter of Support for the 'Implementing Truth-Telling: Yoorrook Justice Commission Final Report' Malcolm Moore Industry Research Grant (17 March 2025).

“GUIDED BY THE VOICES OF ELDERS AND COMMUNITY MEMBERS WHO PARTICIPATED IN YARNING CIRCLES ACROSS VICTORIA IN EARLY 2022, YOORROOK WAS TASKED WITH INVESTIGATING SYSTEMIC INJUSTICE ACROSS POLICING, YOUTH AND ADULT CRIMINAL JUSTICE, INCARCERATION, DETENTION, AND THE BROADER LEGAL SYSTEM.



EXECUTIVE SUMMARY

More than thirty years after the Royal Commission into Aboriginal Deaths in Custody, and despite numerous subsequent inquiries, Victoria's criminal justice system continues to fail First Peoples. The **Yoorrook Justice Commission** (*'Yoorrook'*) was established to investigate these injustices and to examine both their historical origins and their ongoing impacts.

Guided by the voices of Elders and community members who participated in yarning circles across Victoria in early 2022, Yoorrook was tasked with investigating systemic injustice across policing, youth and adult criminal justice, incarceration, detention, and the broader legal system. Its findings are clear: many of the harms experienced by First Peoples in their interactions with police continue today, often without meaningful accountability or reform.

This report focuses on three priority areas identified in the Yoorrook for Justice Report (2023):

1. Police Accountability:

Yoorrook heard evidence about the lack of transparency and accountability in relation to police actions and misconduct. Despite operational reforms, there has been a lack of practical implementation in addressing police misconduct and ensuring accountability.

2. Independent Oversight:

Yoorrook heard evidence of First Peoples mistrust in the current complaint systems, the Independent Broad-based Anti-Corruption Commission and Victoria Police's Professional Standards Command. The evidence described these systems as inadequate in investigating or responding to police misconduct. Yoorrook recommends replacing internal police investigations with a fully independent properly resourced oversight body.

3. Public Intoxication:

Despite recent statutory reform, police frequently remain the default first responders to public intoxication. Yoorrook heard ongoing concerns that existing police powers continue to be used to detain individuals under alternative offences. The Commission recommends a full transition to health-led, culturally safe responses delivered by Aboriginal and community-controlled organisations.

IMMEDIATE PRIORITIES FOR REFORM

This report identifies the following immediate priorities for Victoria Police and the Victorian Government:

OVERARCHING REFORM

- Acknowledge and act upon truth-telling
- Commit to cultural and structural transformation
- Implement Yoorrook's recommendations transparently
- Respect and partner with First Peoples' leadership
- Seize the opportunity for systemic reform

Police accountability

- Embed anti-discrimination obligations in policing operations
- Strengthen leadership accountability
- Enhance data transparency and public reporting
- Reform police misconduct frameworks

Independent oversight

- Establish a new, fully independent oversight body
- Ensure accountability and transparency throughout the transition

Public intoxication

- Strengthen oversight of discretionary police powers
- Prioritise health- and community-based responses
- Clarify and limit police involvement
- Ensure transparency through robust data collection and publication

SUMMARY OF KEY RECOMMENDATIONS

This report advances targeted recommendations for both Victoria Police and the Victorian Government.

Victoria Police should:

1. Formally acknowledge the findings of Yoorrook and commit to implementing its recommendations
2. Work in genuine partnership with the First Peoples' Assembly and other Aboriginal organisations on all policing and accountability reforms
3. Strengthen the collection, analysis and public reporting of data on interactions involving First Peoples
4. Cooperate fully and transparently in the transition to a new independent oversight body
5. Support the full implementation of a health-led public intoxication model by limiting police involvement to genuine safety risks
6. Ensure that police interactions with intoxicated individuals are monitored and evaluated through a First Peoples-led process

The Victorian Government should:

1. Establish and resource a fully independent police oversight body
2. Legislate and support a complete transition to a health-led public intoxication framework
3. Ensure that all reforms are developed and implemented in partnership with First Peoples

Yoorrook's findings and recommendations offer a clear pathway forward. Real reform requires more than incremental change. It demands structural transformation grounded in truth-telling, accountability, and self-determination. Only through such an approach can Victoria begin to address the enduring injustices experienced by First Peoples and build a criminal justice system that is both fair and legitimate. A full list of the relevant Yoorrook recommendations is included in Appendix A.

INTRODUCTION

The Yoorrook Justice Commission ('*Yoorrook*') is the first formal truth-telling body in Victoria.[1] Established in 2021, its mandate is to uncover and confront systemic injustices experienced by First Peoples across multiple areas, including policing.[2] In December 2022 and throughout March,[3] April, and May of 2023,[4] Yoorrook held hearings, received testimonies, and reviewed submissions related to the criminal justice system. Through community engagement, evidence gathering, and consultations, Yoorrook heard powerful and distressing stories of police misconduct, systemic racial discrimination, and a lack of justice and accountability. These are not isolated incidents; they reflect structural problems that continue to harm First Peoples today. Yoorrook presented its findings and recommendations in the *Yoorrook for Justice Report* ('*Yoorrook for Justice*'), delivered in September 2023.[5]

This report focuses on three areas of urgent reform identified by Yoorrook in 2023: the lack of police accountability, the need for independent oversight (Recommendation 27), and the criminalisation of public intoxication (Recommendation 30). Each of these areas will be examined through an analysis of key issues identified through evidence, the recommended mechanisms for their resolution, and the practical measures required to implement the Yoorrook recommendations.

SUMMARY OF RECOMMENDATIONS

A. Recommendation 27

The Victorian Government must establish a fully independent, well-resourced police oversight authority, led by a statutory officer with no policing background. This body would handle complaints, investigate deaths and serious incidents involving police, monitor police custody and use of powers, and conduct public interest investigations. It must have powers to arrest, search, and compel evidence and include a dedicated, First Peoples-led division to handle complaints from First Peoples communities.[6]

B. Recommendation 30

The Chief Commissioner of Police must ensure that Victoria Police conduct is closely monitored to ensure officers do not misuse existing powers to unnecessarily take intoxicated people into custody. The Victorian Government's independent evaluation of police conduct must be led by First Peoples, include appropriate First Peoples governance, cover the first 12 months and three years of implementation, and have its findings publicly released.[7]

[1] Yoorrook Justice Commission, *The True Path Forward Starts Here* (Web Page).
[2] Victoria, *Victoria Government Gazette*, No S 217, 14 May 2021.
[3] Yoorrook Justice Commission, *Public Hearings: 12 to 16 December 2022* (Web Page).
[4] Yoorrook Justice Commission, *Public Hearings: 27 April to 15 May 2023* (Web Page).
[5] Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems* (Report, December 2023) pt E ('*Yoorrook for Justice*').
[6] Ibid 34-5.
[7] Ibid 35.

I. POLICE ACCOUNTABILITY AND SYSTEMIC RACISM

For decades, Victoria's criminal justice system has failed to establish consistent and effective mechanisms for police accountability.[8] Despite numerous inquiries, recommendations, and public commitments,[9] Yoorrook heard evidence that accountability processes remain fragmented and structurally inadequate. Over 30 years ago, the *Royal Commission into Aboriginal Deaths in Custody ('RCIADIC')* exposed the deep links between systemic racism and the over-representation of First Peoples in the criminal justice system.[10] The *RCIADIC* concluded that police intervention in the lives of First Peoples has often been arbitrary, violent, discriminatory, and racist.

Yoorrook found that little has changed, with hearings, submissions and supporting materials underscoring that systemic failures and the lack of accountability for police misconduct continue to harm First Peoples across Victoria.[11]

A. Legal Standards and Racial Profiling

Victorian legal and policy frameworks establish strong formal standards grounded in the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('*Charter of Human Rights*'),[12] which outlines clear obligations for Victoria Police to respect and protect the human and cultural rights of First Peoples. The *Victoria Police Manual* also explicitly states that 'discrimination is unlawful, and racial profiling is not tolerated'.[13] However, evidence presented to Yoorrook reveals serious gaps between those obligations and the practical exercise of police powers.

Dr Tamar Hopkins, founding lawyer of the Police Accountability Project,[14] described in her testimony 'a dual system of policing in Victoria', asserting that existing policies prohibiting racial profiling are 'absolutely ineffective'.[15] Public survey research conducted by Dr Hopkins in 2018-2019 substantiates the view that racial profiling persists, and that meaningful change requires 'operational changes to the way the police do their business'.[16]

Minister for Police, Hon Anthony Carbines MP, accepts that racial profiling of First Peoples in Victoria continues today, and that many police are abusive to First Peoples.[17] However, Yoorrook heard that there is no consistent or transparent accountability when rights are violated which fuels a culture of mistrust. The effects of this structural failure are illustrated in the testimony of Aunty Doreen Lovett, who described her son Tommy's violent arrest by Victoria Police at age 18. Aunty Doreen Lovett described to Yoorrook the excessive use of force, stating:

> "They slammed him into the ground, handcuffed him, stood on his wrists, his ankles, his arms. They threw him into a fence. They tightened the handcuffs so that his wrist was fractured...They used capsicum spray, he was bleeding everywhere. They tried to wash his face with a dog's water bowl. What they did to him was so degrading.[18]"

The Minister for Police acknowledged this case is harrowing.[19] Despite evidence of excessive use of force, the family encountered a lack of transparency and accountability. Victoria Police informed Mr Lovett that officers had acted in accordance with law and policy, even though no formal investigation had been undertaken.[20] However, in 2019 following media reports, a review of the Professional Standards Command file for Mr Lovett's case found several deficiencies.[21]

[8] Ibid 270.
[9] 'Chief Commissioner's Statement of Commitment', *Victoria Police* (Web Page, 11 March 2024).
[10] *Royal Commission into Aboriginal Deaths in Custody* (Final Report, April 1991) vol 1 ('*RCIADIC*').
[11] Yoorrook Justice Commission, *Truth Archive* (Web Page).
[12] *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('*Charter of Human Rights*').
[13] Victoria Police, 'Victoria Police Manual', *Policies, procedures and legislation* (Web Page, 16 September 2025).
[14] Police Accountability Project, *Police Accountability Project* (Web Page, 2026).
[15] Evidence to Yoorrook Justice Commission, Melbourne, 2 May 2023, 326 [4]-[30] (Tamar Hopkins).
[16] Ibid 325–326 [43]–[2].
[17] Evidence to Yoorrook Justice Commission, Melbourne, 8 May 2023, 527 [43]–[45], 528 [1]–[4] (Anthony Carbines) ('*Anthony Carbines Evidence to Yoorrook*').
[18] Aunty Doreen Lovett, Outline of Evidence Statement to Yoorrook Justice Commission (6 March 2023).
[19] Evidence to Yoorrook Justice Commission, Melbourne, 8 May 2023, 550 [13]-[14] (Shane Patton) ('*Shane Patton Evidence to Yoorrook*').
[20] *Aunty Doreen Lovett* (n 18) 4-5 [47]-[50]; *Yoorrook for Justice* (n 5) 264-6.
[21] *Shane Patton Evidence to Yoorrook* (n 19) 581 [30]–[46], 582–583 [39]–[14].

B. Acknowledging Systemic Failures

In his testimony to Yoorrook, then Police Chief Commissioner Shane Patton made an important apology to First Peoples of Victoria acknowledging that systemic racism and discrimination within Victoria Police has historically gone 'undetected, unchecked, unpunished or without appropriate sanctions', causing significant harm across generations of Aboriginal families.[22] Minister for Police, Hon Anthony Carbines MP, similarly acknowledged that 'limited police accountability fosters continued trauma, anger and mistrust of law enforcement within Aboriginal communities,' adding 'where there's no consequences, behaviour continues. Behaviour gets worse.'[23]

According to Yoorrook, mistrust of police is not only the result of individual misconduct, but a by-product of human and cultural rights violations, systemic racism and discrimination and brutality which the community has endured since invasion and continues to experience.[24] The Commission heard that this issue is compounded by a failing and structurally flawed police complaints and oversight system which routinely denies or justifies police misconduct and fails to hold officers or management to account.[25]

While some operational improvements have been initiated within Victoria Police, such as updates to cautioning policies, these measures do not seem to address the structural conditions that enable systemic rights violations.[26] Without independent oversight, accountability, and a fundamental shift in the relationship between police and First Peoples communities, mistrust will remain entrenched.

C. Racism Within the Institution

In consultation on this report, First Peoples' Assembly member Barry Firebrace-Briggs highlighted that systemic racism within Victoria Police does not only manifest in community interactions, but internally within the organisation itself. Drawing from lived experience shared by Indigenous officers and young Aboriginal men, he observed that racism can be embedded within workplace culture, career progression, and peer dynamics.

This internalised discrimination reflects what Yoorrook described as 'ongoing systemic racism within Victoria Police' in Recommendation 31.[27] It is not confined to external misconduct but can permeate recruitment, promotion, discipline, and everyday professional interactions. If Victoria Police is to address racism in its policing practices, it must also confront racism within its own ranks. Failure to do so risks reproducing harm internally while attempting reform externally.

[22] *Shane Patton Evidence to Yoorrook* (n 19) 496 [40]-[46].
[23] Anthony Carbines, Witness Statement to Yoorrook Justice Commission (31 March 2023) 17 [87] ('*Witness Statement of Anthony Carbines*').
[24] *Yoorrook for Justice* (n 5) 270.
[25] Ibid 270.
[26] Victoria Police, *Victoria Police Annual Plan 2021-2022* (Report, August 2021).
[27] *Yoorrook for Justice* (n 5) 36.

D. Leadership Accountability and Cultural Transformation

Mr Firebrace-Briggs also emphasised that structural reform cannot be achieved through policy revision alone:

> ‘THE ONLY WAY YOU GET CHANGE IS RIGHT AT THE TOP.’

While apologies from senior police leadership mark an important acknowledgment, Yoorrook’s evidence makes clear that meaningful reform requires executive-level responsibility for implementation. Cultural transformation must be led by the Chief Commissioner and Command, not delegated to diversity units or compliance frameworks.

Barry underscored that without sustained leadership commitment, anti-racism training risks becoming procedural rather than transformative. Ongoing education and training must be embedded at recruit, operational, and executive levels and tied to measurable outcomes in promotion, performance reviews, and disciplinary frameworks.

II. INDEPENDENT OVERSIGHT

A. Enduring Problems of Conflict of Interest and Mistrust

The lack of transparency, accountability, and police oversight were key themes in the evidence presented to Yoorrook.[28] At the core of this issue is a structural conflict of interest of police investigating police, hindering accountability, and undermining public trust. The Commission heard from legal advocacy organisations about the profound lack of confidence First Peoples have in existing police oversight mechanisms, and the failure of past reforms to improve police conduct or attitudes.[29]

The problem of conflict of interest, and the mistrust it generates, was raised and acknowledged by numerous individuals and agencies in their evidence to Yoorrook.[30] A submission from the Law and Advocacy Centre for Women noted that clients ‘frequently do not make complaints or choose to discontinue complaints about police because they do not trust police to investigate the matter thoroughly and fairly’.[31]

[28] Ibid 245.
[29] Ibid 271.
[30] Ibid 270.
[31] Law and Advocacy Centre for Women, Yoorrook Justice Commission: Systemic Injustice in the Criminal Justice System (Submission No 29 to the Yoorrook Justice Commission, November 2022) 16-7.

B. Findings of the IBAC Audit

A 2022 audit by the Independent Broad-based Anti-corruption Commission ('IBAC') identified serious deficiencies in how Victoria Police handle complaints made by Aboriginal people and serious incidents involving Aboriginal people.[32] The audit examined 41 complaints and 13 serious incidents, revealing deficiencies in how police identified and managed conflicts of interest.[33] In 42% of cases with conflict of interest forms attached, issues were noted, and in 16% of cases, no conflict of interest forms were completed at all.[34]

The IBAC audit also revealed very low substantiation rates and a significant number of files indicating bias or lack of impartiality.[35] Additionally, it found an insufficient understanding and analysis of human rights and obligations under the *Charter of Human Rights*.[36] These findings underscore the persistent compliance gap between legislative and policy requirements and the manner in which police exercise their powers in matters concerning First Peoples.

The IBAC's submission acknowledges that 'there is an inherent risk of conflict of interest where a Victoria Police officer investigates a complaint about another police officer'.[37] The Minister for Police accepted that a conflict of interest rate of this magnitude undermines community confidence. He also accepted that when Professional Standards Command fails to complete conflict of interest forms, the arm of police in charge of investigating misconduct is itself non-compliant.[38]

C. Limits of Current Oversight and Calls for Reform

While the IBAC provides some degree of independent oversight, its effectiveness is constrained by legislative limitations and resourcing constraints. Evidence presented to Yoorrook, including from the 2018 Parliamentary committee Inquiry into Victoria's Criminal Justice System, revealed that the IBAC investigated only approximately 2% of complaints, while the Professional Standards Command investigated just 10%.[39] The vast majority of complaints were referred back to police departments and commands.

To address these systemic shortcomings, legal, advocacy, and policy stakeholders have long advocated for a new, fully independent oversight body.[40] This body should have the authority to investigate complaints and address police-related harm, such as deaths in custody, legal breaches, and violations of human and cultural rights. Recommendation 27 of the Yoorrook for Justice Report outlines essential features for the body's effectiveness, including transparency, complaint-centred, culturally appropriate, gender-responsive, and properly resourced.[41]

Both the Victorian Government and Victoria Police have recognised the need for independent oversight.[42] In his testimony to Yoorrook, the Minister for Police agreed that confidence in police is not likely to be restored unless the complaints system is structurally and operationally independent of police.[43]

[32] Independent Broad-based Anti-corruption Commission, *Victoria Police handling of complaints made by Aboriginal People* (Audit Report, May 2022).
[33] Ibid 7.
[34] Ibid 49.
[35] Ibid 8.
[36] Ibid 10.
[37] Independent Broad-based Anti-corruption Commission, Submission to the Yoorrook Justice Commission into the Criminal Justice System (Submission No 204 to the Yoorrook Justice Commission, May 2023) 7.
[38] *Anthony Carbines Evidence to Yoorrook* (n 17) 544 [12]–[25].
[39] Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Report, March 2018) vol 1, 247.
[40] *Yoorrook for Justice* (n 5) 295-6.
[41] Ibid 34-5.
[42] Ibid 277.
[43] *Witness Statement of Anthony Carbines* (n 23) 6 [30]-[31].

III. PUBLIC INTOXICATION AND TRANSITION TO A HEALTH-LED RESPONSE

A. Historical Failures and the Death of Aunty Tanya Day

Evidence before Yoorrook revealed that laws criminalising public intoxication have failed to protect the community, entrenched racialised policing, and contributed to preventable deaths in custody. The former Attorney-General, Hon Jaclyn Symes MLC, acknowledged during her evidence to Yoorrook that the historic approach to public intoxication is ineffective, and disproportionately impacts and harms First Peoples.[44] The coronial inquest into the death of Aunty Tanya Day brought to public attention the inhumane laws and fatal consequences of criminalising individuals for being intoxicated in public. Ms Day was arrested and locked in a police cell after falling asleep on a train. She passed away after falling and hitting her head in a cell at Castlemaine Police Station.[45]

In her findings, Deputy State Coroner Caitlin English determined that Aunty Tanya Day had not been treated with humanity and respect as required by the *Charter of Human Rights*, and that her death was 'clearly preventable had she not been arrested and taken into custody'.[46] Despite the matter being referred to the Director Public Prosecutions, no criminal charges were brought against the officers involved.

Chief Commissioner Patton acknowledged, 'there were completely unacceptable elements in Victoria Police's practice and procedures at the time of [Ms Day's death] and that they do not meet community expectations of Victoria Police'.[47]

B. Legislative Reform and the Shift to a Health-Led Model

Following years of advocacy by Aunty Tanya Day's family, as well as broader community and legal efforts dating back to the RCIADIC, the Victorian Parliament passed a law to decriminalise public intoxication in February 2021.[48] The offence was formally repealed in November 2023. This reform marked a shift toward a health-led response, ending the use of police cells and ensuring no new police powers were introduced to address public intoxication.[49]

First responder unions gave evidence that health-led models across Australia foster principles of care, protection and harm minimisation.[50] The benefits became evident within the year following reform. The Department of Health submitted to Yoorrook that they are already seeing the positive impact of health-led models, stating that by December 2022 '76 First Peoples' clients had been assisted; people who, otherwise, without the operational trial sites may have been placed in custody'.[51] Today, a wider range of services are available under the First Peoples' Public Intoxication Services response throughout Victoria. These responses are culturally safe and appropriate and provide even further reach by offering sobering up centres (regional and metro) and outreach and transport services (metro).[52]

[44] Evidence to Yoorrook Justice Commission, Melbourne, 5 May 2023, 449 [10]–[45], 450 [40] (Jaclyn Symes) ('*Jaclyn Symes Evidence to Yoorrook*').
[45] Inquest into the Death of Tanya Louise Day (Coroner's Court of Victoria, Deputy State Coroner English, 9 April 2020).
[46] Ibid 101.
[47] Yoorrook Justice Commission, *Witness Statement of Chief Commissioner of Police Shane Patton APM* (Witness Statement, 2023) 21 [80].
[48] *Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021* (Vic).
[49] Victoria Government, 'New public intoxication response services', *Department of Health* (Web Page, 9 November 2023).
[50] Police Association Victoria, Victorian Ambulance Union and Health and Community Services Union, Public Intoxication Reforms (Submission to the Yoorrook Justice Commission, October 2021).
[51] Department of Health, Response to the Yoorrook Justice Commission (Submission to the Yoorrook Justice Commission, 5 May 2023) 24 [119].
[52] Ibid 19 [86].

C. Ongoing Risks and the Need for Accountability

Yoorrook acknowledged that Victoria Police will still need to engage with people who are publicly intoxicated under certain circumstances. However, despite the legislative progress with no additional powers being introduced, Yoorrook heard ongoing concerns regarding the risk of police circumventing laws. This includes using existing powers to detain individuals for public intoxication under other criminal charges or misusing discretionary powers to continue to detain First Peoples.[53] In her testimony to Yoorrook, the Attorney-General acknowledged the risk of unintended consequences such as up-charging, this includes arresting individuals on different, more severe charges when publicly intoxicated.[54] The Chief Commissioner similarly recognised the risk while reaffirming that 'Victoria Police fully supports decriminalisation of public drunkenness and moving to a health-based response model'.[55]

Barry Firebrace-Briggs cautioned that reform risks being undermined through the continued use of ancillary offences such as "hindering police". He noted that in practice, charges of hindering or resisting are frequently layered onto initial encounters involving intoxicated Aboriginal people, escalating what might otherwise be a minor interaction into a cascade of criminal intervention.

This "cascade effect", whereby questioning, escalation, additional charges, custody perpetuate the very patterns that decriminalisation sought to dismantle. As Firebrace-Briggs observed, once escalation begins, it becomes increasingly difficult for individuals to disengage safely from police interaction.

To ensure that police powers are not over-exercised, Recommendation 30 of the Yoorrook for Justice Report provides an obligation on the Chief Commissioner of Police to closely monitor police conduct and powers.[56] This requires the publication of disaggregated data to uphold transparency, and accountability and ensures that monitoring is designed and led by First Peoples. The recommendation also calls for substantive reform to existing policies and procedures, alongside institutional changes to prevent the misuse of police discretion and to promote accountability when police powers are overstepped.[57]

[53] *Yoorrook for Justice* (n 5) 260.
[54] *Jaclyn Symes Evidence to Yoorrook* (n 44) 453 [10]–[30].
[55] *Witness Statement of Anthony Carbines* (n 23) 12 [61].
[56] *Yoorrook for Justice* (n 6) 36.
[57] Ibid.

CONCLUSION

The evidence before Yoorrook confirms that current systems of police accountability and oversight in Victoria are insufficient to prevent or remedy systemic racism and misuse of police powers. Despite decades of reform, First Peoples continue to experience disproportionate harm and violations of their rights under the *Charter of Human Rights and the Equal Opportunity Act 2010 (Vic)*.

Yoorrook's findings and recommendations provide a clear legal framework for structural change, including the establishment of an independent oversight body, strengthened monitoring and data transparency, and the full realisation of a health-based approach to public intoxication. These measures are necessary to ensure policing in Victoria complies with human rights standards and reflects the principles of accountability, proportionality, and independence.

Implementing these reforms would represent an important step toward rebuilding trust between First Peoples and policing institutions. By establishing independent oversight, strengthening accountability and supporting health-led responses to public intoxication, Victoria can begin to address long-standing structural injustices and move toward a policing system grounded in human rights, transparency and self-determination.

> "THESE MEASURES ARE NECESSARY TO ENSURE POLICING IN VICTORIA COMPLIES WITH HUMAN RIGHTS STANDARDS AND REFLECTS THE PRINCIPLES OF ACCOUNTABILITY, PROPORTIONALITY, AND INDEPENDENCE.

IV. RECOMMENDATIONS FOR REFORM

The following recommendations outline practical steps that Victoria Police and the Victorian Government should take to implement the findings of the Yoorrook Justice Commission and strengthen police accountability, oversight and community trust.

OVERARCHING REFORM

1: Acknowledge truth-telling and commit to institutional reform

Victoria Police should formally acknowledge the findings of the Yoorrook Justice Commission, including the historical and ongoing role of policing in the dispossession, violence and systemic discrimination experienced by First Peoples. This acknowledgement should be accompanied by a clear public commitment to implement relevant Yoorrook recommendations and embed truth-telling within institutional reform.

2: Embed First Peoples' leadership in policing reform

Victoria Police should work in genuine partnership with the First Peoples' Assembly of Victoria and other First Peoples organisations in designing, implementing and evaluating policing and accountability reforms.

POLICE ACCOUNTABILITY

3: Embed anti-discrimination obligations in police operations

The Victorian Government should amend the *Equal Opportunity Act 2010 (Vic)* to prohibit discrimination in the administration of State laws and programs, including policing functions, consistent with Yoorrook Recommendation 29.

Victoria Police should operationalise these obligations through training, operational policy reform and clear accountability mechanisms addressing racial profiling and discriminatory policing practices.

4: Strengthen executive accountability for systemic racism

The Victorian Government should implement Recommendation 31 by embedding clear anti-racism and human rights criteria in the appointment, performance review and promotion of the Chief Commissioner and other senior police leaders.

Leadership accountability should include measurable indicators relating to organisational culture, anti-racism initiatives and community trust.

IV. RECOMMENDATIONS FOR REFORM

5: Improve transparency through policing data

Victoria Police should strengthen the collection and public reporting of disaggregated policing data, including data relating to:

- police stops and searches
- use of force
- complaints and disciplinary outcomes
- cautioning and diversion decisions
- interactions involving First Peoples.

Regular public reporting will enable independent monitoring of systemic racism and the exercise of police powers.

INDEPENDENT OVERSIGHT

6: Establish a fully independent police oversight authority

The Victorian Government should implement Recommendation 27 by establishing a fully independent and properly resourced police oversight authority responsible for:

- investigating complaints against police
- investigating police contact deaths and serious incidents
- conducting systemic reviews of policing practices
- monitoring police custody and detention.

The authority should include a **dedicated First Peoples-led division** responsible for investigating complaints involving First Peoples.

7: Ensure transparency during the oversight transition

Victoria Police should cooperate fully with the transition to a new oversight body by transferring investigative functions, ensuring transparency in internal processes, and facilitating access to relevant data, records and evidence.

PUBLIC INTOXICATION REFORM

8: Safeguard the transition to a health-led response

Victoria Police should support the full implementation of the health-led public intoxication model by limiting police involvement to circumstances where safety risks require intervention, developing clear operational guidance, and preventing the misuse of ancillary offences or discretionary powers.

9: Strengthen monitoring and public reporting

Consistent with Recommendation 30, the Chief Commissioner should ensure that police interactions involving intoxicated individuals are monitored through transparent, disaggregated data collection and independent evaluation.

The Victorian Government's evaluation should be First Peoples-led, conducted after the first 12 months and again after three years of implementation, with findings publicly released.

APPENDIX A: YOORROOK JUSTICE COMMISSION RECOMMENDATIONS REFERENCED

RECOMMENDATION 27

The Victorian Government must establish and adequately resource a new independent police oversight authority, headed by a statutory officer who has not been a police officer, to:

A. Investigate and determine all complaints about police (except for minor customer service matters)

B. Investigate and report on all police contact deaths and serious incidents

C. Conduct independent monitoring of and reporting on police custody and detention

D. On its own motion, monitor, audit, systemically review and report on the exercise of police powers and interactions with the public including customer service matters

E. Undertake own motion, public interest investigations, and

F. Publish reports in the public interest.

The new authority must:

G. Have powers to arrest, search property and compel the production of information including from Victoria Police; and

H. Include a dedicated division for complaints from First Peoples that is under First Peoples leadership.

RECOMMENDATION 28

Access to pre-charge cautions in the adult criminal legal system in appropriate cases should be increased by all necessary legislative, administrative and others means including by

A. Legislating a positive duty upon Victoria Police to:

- **i.** take into account an Aboriginal person's unique background and systemic factors when making decisions on cautioning or diversion
- **ii.** demonstrate the steps taken to discharge this obligation, and
- **iii.** record reasons for their decisions

B. introducing a legislative presumption in favour of alternative pre-charge measures in appropriate cases (for example, verbal warnings, written warnings, cautions and referrals to cautioning programs), and

C. Victoria Police publishing cautioning data in its Annual Report, including specific data comparing cautioning rates for Aboriginal and non-Aboriginal people

RECOMMENDATION 29

The Equal Opportunity Act 2010 (Vic) must urgently be amended to prohibit race and other forms of discrimination in the administration of State laws and programs, including all functions performed by Victoria Police, Corrections Victoria and child protection authorities.

RECOMMENDATION 31

The following mandatory criteria must be introduced for the selection and appointment of the Chief Commissioner of Police and when undertaking annual executive performance reviews of the Commissioner:

A. knowledge, experience, skills and commitment to changing the mindset and culture of Victoria Police, to end systemic racism and to ensure the human rights of First Peoples are respected, protected and promoted in all aspects of police operations

B. Understanding of the history of colonisation and in particular the role of Victoria Police in the dispossession, murder and assimilation of First Peoples, and the ongoing, intergenerational trauma and distrust of police this has caused

C. Recognition of ongoing systemic racism within Victoria Police and the need for this to be identified, acknowledged and resisted, and

D. Experience, skills in, and commitment to, changing the culture of Victoria Police to end systemic racism and to ensure the human rights of First Peoples are respected, protected and promoted in all aspects of police operations and the organisation.

RECOMMENDATION 30

In relation to the decriminalisation of public intoxication:

A. must ensure that Victoria Police conduct is closely monitored to ensure police members do not use existing powers to unnecessarily take intoxicated people into custody, for example by 'up-charging,' and

B. The Victorian Government's planned independent evaluation of the monitoring of police conduct must:

- **i.** Be First Peoples-led, with appropriate governance by them
- **ii.** Cover at least the first 12 months and then three years of implementation; and
- **iii.** Have results that are made public.

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Justice Commission

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