



"TYERRI YOO-RROOK" (SEED OF TRUTH)

**Report to the Yoo-rrook Justice
Commission from the First
Peoples' Assembly of Victoria**

June 2021



**First Peoples'
Assembly of
Victoria**



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Acknowledgements

The First Peoples' Assembly of Victoria acknowledges the Traditional Owners of Country throughout Victoria, over which sovereignty was never ceded. We pay our respects to them, their culture and their Elders past, present and future.

The Assembly also offers its gratitude to the many people who shared their thoughts, hopes and expectations for truth-telling and thanks them for taking the time to contribute to this consultation.

The artwork featured in this report is 'Yarkeen', by Gunditjmara, Yorta Yorta and Wemba Wemba artist Tom Day, and reflects the First Peoples' Assembly of Victoria. Every detail – from the image to the colours – represents the people the Assembly represents. This extends to the Assembly itself or our Elders and leaders, past and present, our culture and our peoples' dreams for a better future. Notably, the pink and orange design represents the past, our old people, our Elders, our leaders, now in the Dreaming, but ever present. The predominant images are the trees, with strong and powerful roots planted deep within country. The scars representing culture and identity, formed from generations passing on knowledge, ensuring a continuing succession of proud and strong Peoples. Yarkeen is a Gunditjmara word for dreaming, for we all dream of a better future for our generations that are coming and there is a power in a collective dream.

Photography and artwork credits

Cover artwork – Tom Day, 'Yarkeen'

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Throughout – Tom Day, graphic pattern taken from the artwork 'Yarkeen'

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Terminology

"Our Land, Our Language, Our Lore & Our Lives have been denied for far too long. In order to move forward these must be recognised & respected. This is Yoo-rrook."

– Aunty Stephanie Charles (Wemba Wemba Elder)

For the purpose of this report the following words are used as follows:

Assembly refers to the First Peoples' Assembly of Victoria.

Commission refers to the Yoo-rrook Justice Commission.

Community refers to First Nations people living in Victoria, in all their diversity.

Letters Patent refers to the *Letters Patent* issued by the Governor of the State of Victoria on 12 May 2021 which formally established the Commission and provide its terms of reference.

State refers to the State Government of Victoria.

Treaties refers to the proposed Statewide Treaty and local Traditional Owner Treaties to be negotiated following the establishment of the Treaty Negotiation Framework currently being developed by the Assembly and the State.

Treaty Act refers to the *Advancing the Treaty Process with Aboriginal Victorians Act 2018*.

Truth Telling Committee refers to the Assembly's Committee responsible for progressing a truth-telling process.

Foreword

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

– **Alice Pepper (Yorta Yorta, Mutti Mutti, Arernte, Gunnai, Gunditjmara and Djab Wurrung, and Assembly Member for the South East)**

In June 2020, our Chamber resolved to work with the State Government of Victoria to establish a truth and justice process to formally recognise historic wrongs and address ongoing injustices against First Peoples in Victoria. Our mandate is to lay the groundwork for Treaties, and it is clear for us that truth must be part of that foundation. Truth and Treaties must go hand-in-hand.

For millennia First Peoples have been truth-telling within our communities – truths have been passed down from generation to generation in the form of story, song, art, dance, and ceremony. These stories told of creation, of language and culture, of the history of both the land around us and of our ancestors. This passing down of generational knowledge allowed our people to be the longest surviving culture on Earth.

After the brutal colonisation of this land, these stories began to change in content and context. Language and culture were shared in whispers to avoid detection. Stories passed down were now of lost family – brothers and sisters taken in the dead of night. Future generations now carried the trauma of the brutality their ancestors suffered – forced removal, massacre, slavery, suppression of culture and language, removal of land. Many languages were lost – they now lay dormant waiting to be awoken again.

We believe that the establishment of the Yoo-rrook Justice Commission is an historic opportunity for both Aboriginal and non-Aboriginal people in Victoria finally to begin to listen to each other and create a new heritage together. Our peoples will

no longer have to carry the pain of these stories alone – this history and these truths become everyone's history and truths. With this understanding, real change is urgent and inevitable. The burden is lessened, and the healing can begin.

In naming the Commission, we chose 'Yoo-rrook' – a Wemba Wemba / Wamba Wamba word meaning 'truth'. This report shows some of the seeds or 'tyeri' that have gone into growing this truth-telling process. Using Aboriginal language in Victoria shows the value and contribution of our living culture and is a reminder that Community must be front and centre of this process. Combining these words along with English symbolises the coming together of First Peoples and non-Aboriginal Victorians throughout this process.

The First Peoples' Assembly of Victoria welcomes the launch of the Yoo-rrook Justice Commission as the beginning of a new era of understanding between Aboriginal and non-Aboriginal people in Victoria. We hope it will bring about a period of healing for First Peoples and a new relationship among all Victorians based on truthfulness and openness, justice and equity.

The Assembly thanks all those who contributed to this report, especially to those who shared their time, ideas and hopes for what truth and justice means to them. We also thank the State Government of Victoria for the collaborative spirit in working with us in the design of the Yoo-rrook Justice Commission and committing to historic change. The Assembly congratulates the Commissioners on their appointment, recognises their collective wisdom and wishes them well in their challenging task ahead.

We present this report to the Commission so that its work may be guided by the voices of our communities, not just now but as an introduction to an ongoing conversation throughout the Commission's life and beyond.

[Signed by all 31 members of the First Peoples' Assembly of Victoria]

30 June, 2021



KENNEDY
MOBOURNE
WATHAURONGT
COUNTRY

Treaty
2018

Love ya MDS

Colleen
Atkinson

Executive summary

The Yoo-rook Justice Commission was established after negotiations between the First Peoples' Assembly of Victoria and the State Government of Victoria, in response to a clear call to action by the Assembly in June 2020. The word 'Yoo-rook' comes from the Wemba Wemba word meaning 'truth'.

The *Letters Patent* establishing the Commission require the Commission to have "*due regard to the views and insight provided by the First Peoples' Assembly of Victoria, in a report or reports from community consultation undertaken by it*". This report was prepared for this stated purpose.

The report compiles a wide range of feedback received from First Peoples around Victoria and its surrounds from September 2020 to May 2021. Despite the challenges posed by the COVID-19 Pandemic, broad consultations took place online,

in person, and through social media. The Assembly sought input from Aboriginal communities, organisations and individuals across the state, including Elders and Traditional Owners. As the elected representatives of the Aboriginal community in Victoria, the members of the Assembly also provided their views, as well as collecting input from international experts in human rights law and transitional justice.

Overall, there is widespread support among First Peoples in Victoria for a truth and justice process, with many noting that it is long overdue and is an essential part of the Treaty process. The establishment of the Yoo-rook Justice Commission is the result of decades of activism across the country, including the calls made in the Uluru Statement from the Heart.



Due to the historical relationship between the State and Aboriginal communities in Victoria, and the nature of our experiences of colonisation, Victorian Aboriginal communities expressed ambitious yet cautious hopes for this Commission. Some key themes that emerged from the consultations to date:

1. Truth and justice – In line with the overall objectives of the Commission, Community expects it to strengthen First Peoples' rights to truth and justice by holding the State to account for its role in past and ongoing harm. The work of the Yoo-rrook Justice Commission should lead to a better understanding of our shared history in Victoria and, most importantly, usher in a new future. It must lay the evidence clear for all to see, as a foundation stone on the path to Treaties and self-determination.

2. A full story in our own words – First Peoples across Victoria want the Commission to explore the full scope of its mandate, to examine and acknowledge the range and diversity of injustices they have endured and survived. They want proper attention to local histories as well as common patterns or trends. These include massacres, Stolen Generations, slavery, sexual violence, intergenerational trauma, cultural loss, land theft and forced dislocation from home and land. Despite our common heritage as First Peoples, the Commission needs to recognise how different parts of communities were affected, including the ongoing impacts of gender as well as what injustice means for young people, our elders, and other groups among us. Aside from the harms we have suffered, First Peoples' resilience and acts of resistance or dissent – including among non-Aboriginal allies – are part of our collective story too. This must also be a story of courage, survival and value.

3. A safe space – How the Commission does its work matters as much as what results at the end. First Peoples have endured enough suffering, and this process must repair without causing further hurt. Individuals and communities must be involved in deciding how to participate and on what terms. The conduct of the inquiry must be flexible and welcoming to all. The Commission must ensure that adequate and culturally safe support services accompany the truth telling process, not only for those who come before the Commission but also for its staff and others who might be affected. The risk of re-traumatisation is ever present during this process, and the Commission must avoid replicating systemic injustices itself. This extends to the Commission's own organisational procedures and policies, including ensuring the rights of First Peoples to access data about themselves, as well as maintain control over their cultural knowledge.

4. Real change through Treaties and structural reform – The recommendations and reports from the Commission must lead to fundamental changes in our systems and institutions of government, service delivery and Victorian culture. This includes reforms to law, policy and practice, and a new public narrative. The interim and final reports and the recommendations they contain will need to be clear, creative and concrete. To achieve this, the Commission will need to consult widely with other relevant initiatives both within government and outside and think outside the box. The Commission will need to think ahead to what justice and truth will look like in practice, first and foremost through Treaties that will follow but also through other small or large actions that can heal the damage done.

The Yoo-rrook Justice Commission cannot follow the mould of past Royal Commissions. It must look, feel and behave in a way that marks a break with Victoria's past and set the tone for a new, inclusive and just future. Only in this way can the Commission produce both Yoo-rrook and justice.

Introduction

The path to Yoo-rrook

The purpose of this report is to provide the newly established Yoo-rrook Justice Commission with an understanding of Community attitudes towards the Commission and the truth-telling process, gathered during its creation. The Assembly intends it to aid the Commission's interpretation of its mandate contained in *Letters Patent*, section 4(c) of which requires the Commission to have due regard to the views and insights provided by the Assembly. This report may also be useful in identifying gaps and directions for the Commission's own community engagement in accordance with section 4(b) of the *Letters Patent*.

By way of background, it is important to outline how the Commission came to be. On 18 June 2020 the First Peoples' Assembly of Victoria issued a clear call for the State to support the establishment of a truth and justice inquiry.¹ The State, following the Assembly's lead, agreed to establish a truth and justice process to formally recognise historical wrongs and address ongoing injustices.² Progressing a truth and justice process complements the broader work of the Assembly, which is outlined in Annex 1 of this report. From September 2020 to May 2021, the Assembly and the State worked collaboratively to design the mandate, identify an appropriate legal basis and process for identifying who should lead such a body. The Assembly's Committee responsible for progressing a truth-telling process quickly identified that the historic nature of this task required broad consultation, creativity and learning lessons from around Australia and elsewhere. This was in addition to the views of Community reflected among the elected Members themselves. A full list of Committee members is attached in Annex 2.

The Committee sought input from a range of sources, including local and international experts on the following broad areas:

- The needs and truth-telling aspirations of Aboriginal communities across Victoria
- International best practice in transitional justice and truth commissions
- The merits of different legal pathways to establishing a truth-telling process
- First Nations' data sovereignty and related legal and cultural considerations.

The final *Letters Patent* incorporate the results of this input and other independent advice and reflect a collaborative drafting exercise between the Assembly and the State that is unprecedented for an official inquiry. Looking beyond the legal formalities, at the heart of the Commission's creation lies the search of First Peoples for our voices to be heard, our "Yoo-rrook" to be recognised, and justice served.

This report presents a synthesis of feedback received from First Peoples all around Victoria and the views of the First Peoples' Assembly, collected between September 2020 to May 2021. It outlines the process by which the Assembly sought and collected community input, and some priority messages for the Commission to consider as it starts its historic task. It is broadly structured in line with the *Letters Patent*, so can be read in conjunction with the Commission's mandate.

How we heard Community

Through the participation of its elected members, the First Peoples' Assembly of Victoria is the representative Aboriginal voice in the State and speaks on behalf of the many constituencies it covers. Members recognised that the landmark nature of designing a truth-telling process needed to reflect the aspirations of First Peoples in Victoria. In parallel to the design process with the State, the Assembly continued to seek community input through several phases which evolved along with the drafting of the mandate.

¹ firstpeoplesvic.org/media/media-release-historic-step-forward-for-truth/

² premier.vic.gov.au/delivering-truth-and-justice-aboriginal-victorians

- **Phase 1 (September 2020-January 2021)** – The Assembly asked for high-level input on what people expected from a truth-telling process, including how it should be different from past efforts (such as Royal Commissions), what types of stories needed to be told and recognised, what the inquiry should focus on, and who should lead the process. This feedback was the basis for an initial draft of the Terms of Reference focusing on the objectives and scope of the Commission, which the Assembly published online in late 2020 for public comment. This input also informed the design of selection criteria and a process to nominate candidates for Commissioners.

- **Phase 2 (February-March 2021)** – Once the Assembly and the State had agreed on the legal framework for the Commission, it sought more specific input on how the Commission should conduct its operations and engage with communities across the state. Questions included:

- What sort of information would be useful for people to know about the body?
- What sort of environment should be offered for individuals to tell their stories?
- What sort of events should be associated with the truth-telling process and where should these happen?
- How should the body approach gendered experiences of colonial violence and what practices should be put in place to address this?
- What should the body do with sensitive information it receives?
- What form could a person's story take?

- **Phase 3 (April 2021)** – Once the commissioner selection process was underway, the Assembly shared information to encourage people to nominate and engage with the selection process. It also asked for more detail on some of the main themes that had emerged, such as:

- What can the Yoo-rrook Justice Commission do to make the process culturally safe and minimise additional harm?

- If you were to testify before the Yoo-rrook Justice Commission what sort of environment would you like this to be done in?
- How can the Commission ensure it responds to Community needs?
- How should the Commissioners engage with Community?
- How should the Commission approach cultural knowledge it receives?
- What information does Community need to know before sharing information with the Commission?

COVID-19 restrictions in Victoria coupled with the tight timeline for developing the Commission's mandate meant the Assembly's engagement work required innovation and adaptation. Discussions took place and the above questions were posed through online surveys, phone calls and in person where possible. The Assembly reached out to First Peoples not only through its elected members, but also through its network of Engagement Project Officers who cover all regions in regular cycles of community meetings, and through the recruitment of a dedicated Truth-Telling Engagement Officer. Some events were focused solely on truth-telling and other events covered truth-telling along with updates on other areas of the Assembly's work. On 18 November 2020 and 29 March 2021, the Assembly held Facebook live panel discussions with members in which they addressed common questions from the public about the Commission's development; these two events alone reached more than 5000 people.

The Assembly reached segments of community who are often voiceless, including First Peoples currently on remand or those otherwise incarcerated in prisons across the State. It reached out to peak and Aboriginal community-controlled organisations and to Aboriginal staff in many organisations across Victoria including the Victorian Public Service.

Introduction *continued*

This report primarily draws from this feedback. It provides the Commission with the seeds (or “tyeri” in Wamba Wamba) which have given rise to the creation of the Yoo-rrook Justice Commission. Where possible, the clan or mob of the person giving the feedback is named. Community involvement is an ongoing process not something that is done just once. For these reasons this report makes no claim to be the definitive or exhaustive, but instead is a useful start for further conversations the Commission will continue. The Commission will need to develop its own approach to community consultation and engagement, which is detailed further overleaf.

The road to Treaties

The Assembly is currently laying the foundations for future Treaties between the State and First Peoples in Victoria. The Treaty Act requires the Assembly and the State to establish the groundwork for Treaty negotiations. The following Treaty-related elements must be agreed and established before Treaty negotiations commence:

- The Treaty Authority will be an independent umpire in the Treaty process. It will ensure negotiations are consistent with the Treaty Negotiation Framework and resolve disputes between parties.
- The Treaty Negotiation Framework will set out the process and ground rules for Treaty negotiations, including what can be included in a Treaty and who may negotiate a Treaty
- The Self-Determination Fund will support First Peoples across Victoria to negotiate Treaty on equal standing with the State. It may also provide independent funding to empower First Peoples to build capacity, wealth and prosperity.

The Assembly has already made key decisions on Treaty-making, including that it will pursue both a Statewide Treaty and Traditional Owner Treaties:

- A Statewide Treaty will pursue structural reform to government in Victoria so that First Peoples as a collective can take control of their own affairs in matters that affect them as a group.
- Traditional Owner Treaties will support individual Traditional Owner groups to take control of their own affairs at the local level in matters directly affecting their Country and community.

While Treaty negotiations are yet to begin, the current work of the Assembly is critical to build the best possible foundations to support Treaty-making for First Peoples in Victoria.

The Commission’s role in supporting and elevating the voices of First Peoples also has a critical role to play in strengthening these very same foundations and paving the way for Treaty-making that will deliver the structural reforms necessary to deliver a self-determining future for all First Nations people in Victoria.

Overview of Assembly's Community engagement (Sept 2020-May 2021)



457

people joined general community meetings



170

First Peoples incarcerated in prisons and corrections centres



30,778

interacted through social media platforms (500,000+ total online views)



06

organisations hosted information and feedback sessions



103

detailed feedback responses (online surveys emails or other submissions)



190

Traditional Owners reached from 8 (Victorian) Nation Groups (Gunai Kurnai, Gunditmara, Yorta Yorta, Wamba Wamba, Dja Dja Wurrung, Wotjabaluk, Dhudhuroa, Taungurung)



All

Assembly Members engaged with their constituencies directly

1. We expect truth and justice

“Our true stories to be told in schools. To be counted and to be heard. No more silence or shame.”

– Online Survey Respondent

This part of the report relates to the background and objectives (sections 1 and 2) of the *Letters Patent*. The *Letters Patent* outline seven objectives to direct the Commission’s work. Some of these look “back” to acknowledge First Peoples’ lived experiences of colonisation, the ongoing impact, and identify who was responsible for the harms. Other objectives look “forward” to create a new public narrative that includes positive stories of resilience and identifying what changes are needed to repair and prevent new harm. These objectives accord with the expectations Community consistently expressed: recognising that First Peoples have the right to tell our history and have it heard on our own terms; holding the State to account for its role; and that meaningful change must result from this process. The Commission’s work should also support the Treaty-making process. This objective is addressed towards the end of this report.

The colonisers’ rules don’t define us

First Peoples’ calls for truth and justice in recent years have grown louder in many societies ravaged by colonisation. Likewise, the creation of the Commission has been built on generations of activism by Aboriginal and Torres Strait Islander communities demanding recognition of our rights, not only in Victoria but across Australia. Community wants this history recognised, including acknowledgement that truth-telling has already been taking place for generations. The centrality of truth-telling was reflected in the Uluru Statement from the Heart, released in 2017 by delegates to the First Nations National Constitutional Convention,

alongside constitutional recognition and a proposed Makarrata commission. This time our experiences can no longer be denied or minimised and our voices join those of other First Peoples’ in many colonised countries. The State is catching up with our rights under international and national law to truth and justice, not granting permission.

“This process needs to be assessed under international law as Australian law and Victorian law have and continue to commit human rights abuses against Aboriginal people.”

– Jason Kelly (Mutthi Mutthi, Wamba Wamba, North West Assembly Member)

The Assembly heard that Community wants the Commission to help realise First Peoples’ rights in ways that rise above the limitations of Australia’s colonial legal framework. Many see useful guidance in the United Nations Declaration of Indigenous Peoples (UNDRIP) and its support for the primacy of cultural law/lore of the various nations of what is now Victoria. We encourage the Commission to consider how its work can advance the fundamental rights of First Peoples recognised in the international instruments noted in the *Letters Patent*. These include both the State’s obligations to victims of serious human rights violations as well as the rights of First Peoples under international human rights law. The United Nations Expert Mechanism on the Rights of Indigenous Peoples reviewed the importance of recognition, reparation and reconciliation in 2019 and confirmed that transitional justice processes such as truth-telling can be useful tools towards self-determination if they are led by First Peoples’ participation and ownership at all stages.³

Community voices here echo these calls that acknowledgement and real change to repair harms are pre-requisites for reconciliation.

³ See “[Recognition, reparations and reconciliation](#)”, Report of the Expert Mechanism on the Rights of Indigenous Peoples, United Nations Human Rights Council (2 September 2019).



THE NAMES OF THE
PEOPLE WHO
DIED IN THE
STRAFFORD
MINE
DISASTER
ON 15
MAY 1902
WAS
RECORDED
ON THIS
STAFF
BY
THE
MINE
MANAGER
AND
THE
LOCAL
MAGISTRATE
AT
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15
MAY
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THE
NAMES
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MANAGER
AND
THE
LOCAL
MAGISTRATE
AT
STRAFFORD
MINE
ON
15
MAY
1902

UNCLE TOM'S
UNCLE STEPHEN
UNCLE WILLIAM
UNCLE MICHAEL
JESSE
BILLY
JORDAN
CHRISTOPHER
STABE
MADISON
EMILY
JAMES
JIDAH
LABORIGINAL
WORKING
AUNTY
JANINE
AUNTY
JEREMY
HINDI
NIKAYLA
MURIEL
WAYNE
JILL
MICK
PAUL
WICKI
GERALDINE
TARNEEN
DONUS
DOUGLAS
LIDIA
GARY
LAWRENCE

1. We expect truth and justice *continued*

One survey respondent summarised this as wanting acknowledgement that *“First Nations Indigenous Australians have prior rights over Country and rights to reparations”*, and for another *“the right to practice culture”*. The denial of First Peoples’ autonomy and self-determination has enabled other internationally recognised violations to take place, including racial discrimination, genocide, torture, cruel, inhuman, and degrading treatment. Under international law, victims of these and similar crimes are entitled to reparation, the right to recognition of what happened, accountability for those responsible, and to be assured of action to prevent further violations in the future. In many societies around the world, it is now well established that victims of serious human rights violations have the right to know what happened and why, as well as appropriate forms of justice to address the past and ongoing impact of the harm violations have caused. Impunity for past crimes is fuelled by denial and silence, and it undermines respect for everyone’s fundamental rights today and in the future.

The Yoo-rook Justice Commission joins the ranks of at least 40 other truth commissions around the world but it is also unique. Few truth commissions have looked at the experience of colonisation on First Peoples, and even fewer have examined the continued impact of colonial laws and institutional systems still in use or have involved First Peoples in their design.⁴ The Commission has the opportunity to enhance international recognition of First Peoples’ experiences and to influence statewide, nationwide, and international conversations around transitional justice based on cultural legitimacy.

Holding the State to account

In consultations many emphasised the State’s past and ongoing role as a perpetrator of injustice against First Peoples. Some expressed concern about whether the Commission can demonstrate enough independence from the State to reassure Community

that it is willing and able to hold the State to account. The Commission may wish to consider the different ways in which the State’s role contributes to injustice.

In some cases, state agents directly violated First People’s rights, and the State failed to hold individuals accountable. While the inquiry’s focus is on the role of institutions and systems, some people noted the Commission should also hear evidence about the role of particular individuals, whether or not they were directly connected with government. The State has played a role in celebrating individuals for their colonial conquests, which can be an ongoing source of pain where those individuals were involved in crimes against First Peoples. One survey respondent described this as *“[t]rauma every day seeing an Aboriginal skull in his saddlebag, the reverence of these so-called glorified heroes must be stopped and reversed for all people to see and feel the truth.”*

“For too long there’s been a deliberate covering up of the long-held trauma of past events or policies and how they continue to affect and resonate with the lived experiences of Aboriginal people today.”

– **Marcus Stewart, (Taungurung Reserved Seat holder)**

In addition, the State imposed laws or policies that contributed to or perpetuated structural and systemic racism, including through limiting recognition of First Peoples. Some State actions directly harmed First Peoples, such as limiting their movement or restricting their political participation. But other State policies may have claimed to be for First Peoples’ benefit, yet which may have created or exacerbated divisions among Victorian Traditional Owners given the nature of colonisation here.

⁴ See resources listed in Annex 3. For example, the Maine-Wabanaki Truth and Reconciliation Commission is notable for the role played by the Council of Tribal Chiefs in its establishment together with the State Government.

The Commission's mandate gives it the power to cover both state and non-state entities and it will need to be transparent in its decisions on what it considers to be within its scope and why.

Things cannot remain the same

Other Commissions, other inquiries, and other sharing of stories have preceded this Commission. Aside from the important concern that they were not Aboriginal-led, many people highlighted that despite the time and money that went in, and the recommendations that came out, little had changed. One respondent summarised the problem as "re-traumatisation happens when nothing changes".

"It's important that this process corrects the past, but it is even more important that this process ensures a better future by not making the same mistakes."

– Online Survey Respondent

The Assembly's role in designing the Commission, the open process for selecting Commissioners and the fact that this is being created amidst the journey towards Treaty-making already makes it different in the eyes of many people. They expect this Commission to disrupt long-established systems, to acknowledge Community's lived experience and inherited trauma, and to encourage all Victorians to celebrate their resilience and survival. Critical reflections from First Peoples' experiences with prior inquiries should guide the Commission's approach. At the same time, the Assembly encourages the Commission to be strategic and ambitious in its vision, transparent in its approach, and articulate how its progress will be measured to ensure it remains accountable to community's expectations.

These might include broad-based consultations to determine the sequencing and focus of the inquiry's priorities, developing metrics to monitor the Commission's progress, securing early and public commitments from the State and others to promote the Commission's work, and building in regular updates and feedback sessions with all relevant stakeholders. With Treaty-making on the horizon, the opportunity for the work of the Commission to pave the way for meaningful structural reform is tangible and within reach.

In interpreting the objectives and context of its mandate, the Assembly encourages the Commission to:

- **Ensure UNDRIP principles inform all aspects of the work**
- **Consider an initial strategic orientation period focused on critical reflections from First Peoples' experiences in prior inquiries in Australia, as well as comparative lessons from those directly involved in similar transitional justice processes in other countries**
- **Develop early consultations and stakeholder discussion on its direction and proposed approach**
- **Design its work with a view to prioritising actionable systemic reform, including through opportunities created by Treaty-making, along with attitude and behaviour change.**

2. A full story in our own words

"Yoo-rook pays homage to a long line of warriors, men and women, who have fought for generations against the callous, discriminatory and oppressive forces of injustices and unresolved human rights abuses against our First Nations Peoples."

– Ngarra Murray (Wamba Wamba, Yorta Yorta, Dja Dja Wurrung, Dhudhuroa and Wiradjuri. Metropolitan Assembly Member)

Community expectations are clear that for this Commission to expose the harm caused by colonisation its inquiry must be broad-ranging. In this respect, the Commission's mandate is unprecedented. Most truth commissions in other

countries have covered either time periods of at most a few decades, or have focused on a narrow range of human rights violations. Given the breadth of its inquiry, the Commission will need to decide how to allocate its time and resources. The Commission's work could be organised thematically, geographically, by type of harm, by key time periods or in other ways. There are a number of factors the Assembly heard were priorities for First Peoples.

The past lives on in the present

Section 6 of the *Letters Patent* defines colonisation as going back to 1788 but the Assembly received feedback that even this starting point might be arbitrary and warrant a generous interpretation. For this reason, the Assembly urges the Commission to seek guidance from Aboriginal communities



about when they consider that first contact occurred and consider relevant background context from at least 1770.

Similarly, First Peoples want to see a broad interpretation of what kinds of events and harms can be included in the Commission's examination, noting that the mandated scope of subject matter in the *Letters Patent* is non-exhaustive. Some topics featured prominently in community consultations. Examples included:

- Massacres
- Land theft
- Genocide
- The Black Wars
- Stolen Generations and ongoing removal of Aboriginal children
- Human slavery/ Domestic servitude
- Rape and sexual violence
- Intergenerational trauma
- Ongoing racial divide
- Missions/ institutionalisation
- Treatment of Aboriginal servicemen
- Health impacts
- Ongoing dishonesty from government and institutions
- Loss of distinct gendered realities
- Family dispersion
- Loss of language
- Forced cessation of cultural practices and cultural loss
- Forced dislocation from home and land.

"We want the Yoo-rrook and nothing but the Yoo-rrook."

– Gary Murray (Gourmjanyuk Elder of the Wamba Wamba Nation)

Overall, people emphasised that the brutality of historic violence should be exposed, but also that ongoing lived experiences of colonisation are no less painful than stories of frontier wars. Many of these stories remain largely ignored and actively hidden from the Australian consciousness. One survey respondent lamented that *"it is often believed that events that disadvantaged and continue to disadvantage Aboriginal people all occurred before 1950, but there are still issues that purposely and successfully cause harm and disadvantage"*.

For First Peoples the links between massacres, exile from Country, stolen generations and deaths in custody today are self-evident and do not fall neatly into separate categories of historic systemic injustice and ongoing systemic injustice. The Assembly heard that the official silence and widespread lack of recognition of these intergenerational links is itself a further source of injustice, and one of the greatest challenges in broader public acknowledgement and understanding. While the Commission is tasked with investigating both categories of injustice, this must reveal and not obscure the continuity of First Peoples' experiences and inherited intergenerational trauma. The structuring of the inquiry and will need to accommodate this, taking into account the importance of avoiding further trauma

Gendered harms

Although the *Letters Patent* do not explicitly call out gender as a factor in looking at the types of harms, the Assembly considers this within the Commission's mandate and urges the Commission to specifically consider the different and multiplying impacts of colonisation on Aboriginal women and men. Australian society is currently grappling with a crisis around the links between gender inequality and abuse of power, which Aboriginal women have long known and experienced. Earlier truth commissions that focused on public civil and political human rights violations often failed to incorporate a gender lens, although more recent examples have included special thematic hearings looking at women's

2. A full story in our own words *continued*

experiences, as well as those of young people or otherwise marginalised groups. This Commission should consider how gender sensitivity can be built in from the outset in all major decisions on its procedures and design.

The Assembly notes that considering specifically the treatment of Aboriginal women during colonisation is essential if a full story is to emerge from the Commission's work. Attempting to understand these gendered experiences involves considering the multi-layered intersectional trauma experienced by Aboriginal women. For example, the targeting and dehumanisation of Aboriginal women was a trigger for broader frontier conflict and lives on in deep intergenerational trauma that is experienced by Aboriginal communities to-date. Women experienced specific forms of normalised violence on a male-dominated colonial frontier, such as sexual slavery and domestic servitude. Community feedback noted there is documentation and family stories of European sealers raiding camps to kidnap women for their swimming and sealing skills, exacerbating conflict, and severing cultural and family connections by taking women to other locations far from Country.

"Identify our resilience as a culture and that we survived some of the harshest forms of abuse as a culture – We are still here today thriving in culture."

– Online Survey Respondent (Wurundjeri)

In later periods Aboriginal women faced attacks on their reproductive autonomy as part of genocidal assimilationist policies and practices. Family violence, although a widespread problem in non-Aboriginal society, has specific connections for First Peoples men and women with the lasting impacts of dispossession and attempted destruction of cultural

identity. The continued forced removal of children from Aboriginal families remains much higher for First Peoples children in out of home care in comparison to 'other' Australian children. Aboriginal men's violence against women is the primary driver for the vast majority of these children being removed from their families. Women may carry a double burden of family violence and separation from their children, as they did previously with sexual violence by colonisers and the forced removal of their children. Community input suggests a widespread desire for the Commission to address both the historical and ongoing impact of removal of Aboriginal children from their families, especially considering the clear links with mental health: the recent Royal Commission into Victoria's Mental Health System found that up to 47% of First Peoples in Victoria have a family member who is part of the stolen generations.

Positive stories of survival and resilience

While the Commission's primary focus may be to shine light on the injustices experienced by First Peoples, the Commission is mandated to also improve public understanding of our survival and cultural resilience.⁵ The public narrative about First Nations people in Australia too often relies on negative language, especially in reference to how we compare to non-Aboriginal Australia. Examples of this are the Closing the Gap report – Aboriginal health and education targets are compared to how they measure up to non-Aboriginal people across the country. Community do not want their experiences explored through a colonial lens – Aboriginal culture stands alone and continues. First Peoples have suffered but we do not define ourselves as victims. Feedback repeatedly noted that recording stories of strength, resilience, and positive experience is essential.

⁵ *Letters Patent*, paragraph 2(d).

“Aboriginal culture is not a culture of deficit but a culture of strength that has value to other cultures.”

– Online Survey Respondent

This could include a focus on high profile examples of Aboriginal resistance, such as the Cummerganga Mission walk-off, or the fight to save Northland Secondary College in the early 1990s, which demonstrated the power too of the broader non-Aboriginal public standing up together with First Peoples’ leaders and activists. While informal truth-telling regarding these examples already exists, through historical studies and artistic representations, the inside story especially behind State or institutional actions remains unclear.

“My own mother told us stories about the things that happened at Cummeragunja – about her life growing up and about the cruelty they experienced, how children were beaten and taken away, how we were banned from speaking our language, about the lack of food. But she also told us about the strength and resilience of her community who fought for their rights and country. That motivates me in teaching my own grandchildren.”

– Aunty Geraldine Atkinson (Bangerang and Wiradjuri, North-East Assembly Member)

The courage of First Peoples and non-Aboriginal individuals who resisted colonial dominance must be acknowledged. One community member said that stories of positive experiences or things that people value in the recent history of our state “will likely lessen the burden of trauma on Aboriginal people and, in particular, on Aboriginal youth”. Another community member suggested that “telling stories of ‘rights’ as well as ‘wrongs’ will give credibility to the process”. Highlighting past examples of generosity and solidarity can build public support for a more inclusive and hopeful future vision that does not shy away from the painful aspects of our collective history but reaffirms the dignity and value of First Peoples’ culture and knowledge.⁶

In interpreting the scope of the inquiry, the Assembly urges the Commission to:

- **Consult with Community to ensure that the early contact prior to formal colonisation is appropriately recorded to ensure a full picture of Victoria’s history**
- **Avoid a rigid separation between historic and ongoing systemic injustices**
- **Recognise the particular experiences of women and other key groups and ensure the Commission’s processes appropriately accommodate these**
- **Create space for positive stories of courage, survival and cultural resilience.**

⁶ Community feedback on this issue aligns with the idea of “hope-based communications” that parts of the human rights movement has begun to adopt. See [A Guide to Hope-Based Communications | OpenGlobalRights](#)

3. Creating a safe space

"Yoo-rrook should develop a set of protocols or a toolkit to ensure cultural safety. This will enable meaningful and purposeful dialogues. Historical and intergenerational trauma will result in triggers and in many cases it will take time and patience, authenticity, and a willingness to honour cultural protocols to develop a relationship of trust with our people. Many of our nations are taking the lead in healing the grief and loss in their communities already so it will be important to listen to their vision, priorities and needs, their stories, and respect their self-determination and autonomy."

– **Online Survey Respondent**

The conduct of the Commission and how it operates will be as important as what results at the end of the Commission's mandate. Community's overriding message throughout the consultations was that avoiding re-traumatisation should be the Commission's top priority in all aspects of its business. Some important factors people highlighted that could create this safe and trauma-informed space were that the Commission should be guided by Elders' cultural knowledge and other relevant expertise, there must be ongoing transparency and consultation with First Peoples in all their diversity, and that there must be flexibility in the conduct of hearings and how First Peoples participate. Many referred to the provision of support services, particularly trauma-counselling, as essential. The Commission's mandate allows for more than simply an inquiry, and people want to see culturally appropriate other functions that can maximise the

impact of the Commission during its lifetime and beyond. First Peoples also want to know that the sovereignty of any material they share will be protected appropriately.

There are a number of practical suggestions described below, and the Assembly recommends that the Commission conduct further consultation and seek feedback on its draft protocols before implementing them, as well as regularly monitoring and feedback to see how they are working in practice.

Guided by Elders

Overwhelmingly, community noted that cultural authority rests with Elders. The Assembly acknowledges Elders' contribution to the long and dedicated path of activism both in Victoria and across the country. They have fought for justice for generations and play a significant and vital role in providing wisdom and knowledge to community. Community feedback noted that Elders' guidance needed to come from a broad range of Traditional Owners of country covered by the Commission's inquiry. When asked about who the Commission should contact for research, materials or advice, almost all respondents answered Elders and Traditional Owners. In establishing its Expert Advisory Committee, the Commission should consider a role for Elders as the primary experts, as well as seeking out other technical expertise such as institutional reform or transitional justice.

"The Commission will need to speak to Traditional Owners in each region to discuss appropriate cultural protocols. It will be important to actively create culturally safe non-judgemental spaces."

– **Alister Thorpe (Gunai, Yorta Yorta, Gunditjmara, Metropolitan Assembly member)**



3. Creating a safe space *continued*

The Assembly recently created an Interim Elders' Voice mechanism, and can provide more detail about this to the Commission as required.

Some feedback raised the sensitivity of avoiding practices that ask for cultural input without proper compensation or protocols, given the legacy of intellectual theft of First Peoples knowledge. Developing a clear policy on this with guidance from Elders should be a priority for the Commission.

Reach out to all Community: "Listen to even the quiet voices"

Community feedback emphasised the need for the Commission to be inclusive and engage with Aboriginal communities on an ongoing basis during the period of operation, as mandated in Section 4 of the *Letters Patent*. This should commence as soon as possible and continue throughout the Commission's life. There are many reasons why First Peoples' voices remain marginalised, which need careful consideration.

Community members also want the Commission to reach out to:

- **Aboriginal and Torres Strait Islander researchers and experts**
- **International First Nations groups**
- **Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)**
- **Koorie Heritage Trust**
- **Land Councils**
- **Aboriginal Community-Controlled Organisations (ACCOs)**
- **Individuals involved in the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) and the Bringing Them Home Report 1997.**

"Enabling Stolen Generations and other Aboriginal people impacted by forced removal and transferred interstate to engage with the Commission will be an important element of the Commission's work. Aboriginal people now living interstate but whose traditional lands are in Victoria would have important experiences and perspectives to share with the Commission. So too would Aboriginal people removed interstate and placed in Victoria."

– **Submission from Aboriginal Executive Council**

People expect the Commission to seek out different lived experiences of colonisation across nations, clans, families, as well as among individual community members. For this truth-telling process to adequately understand and give voice to the truths of Aboriginal peoples across Victoria it needs to be accessible to all and meet the needs of each Nation, Clan or Family. While Traditional Owners occupy a special role in the Commission's work, people suggested that information should be made available to all those with connections to land, culture or family, whether or not they have a Registered Aboriginal status. As one survey respondent said, the Commission should *"reach widely and listen to even the quiet voices... not just be dictated by those who voice strong opinions often"*.

"Community consultation [needs] to be front and centre of decision-making processes."

– **Online Community Feedback Response**



3. Creating a safe space *continued*

We heard that the Commission should ask communities to identify a range of people to come forward and who can speak to different experiences and perspectives of young people, government employees, unemployed people, those currently incarcerated, and so on. Community outreach strategies should accommodate differing levels of education, literacy, and access to technology. Respondents suggested the Commission make materials accessible in English, Plain English, and Easy English, as well as in a number of Aboriginal languages tailored to communities across the state.⁷

The Commissioners all have their own networks and established credibility as community leaders, and they will be the public face of the Commission.

Community told the Assembly that the Commissioners need to demonstrate their empathy, integrity, honesty, independence, and objectivity to build public trust in the Commission. There are diverse opinions about the landmark public nomination process, with some people still concerned about the influence of the State, so confidence building will need to start immediately by Commissioners being visible and accessible in all regions and country.

Using popular or trusted information sources to pass on information about the Commission, such as radio stations 3KND, 3CR, the Koorie Mail newspaper, NITV, local and regional newspapers, Aboriginal Controlled Community Organisations, and local sporting bodies such as Rumbalara, could all play important roles in

⁷ centreforinclusivedesign.org.au/wp-content/uploads/2020/04/Easy-English-vs-Plain-English_accessible.pdf



engaging community. The Assembly through its own engagement program has developed a range of approaches, including plain-English fact sheets, videos, Facebook livestream discussions and more, and can share more information with the Commission as required.

A flexible and welcoming inquiry

A core aspect of the Commission's inquiry function is to solicit and receive First Peoples' testimony; it must be accessible to all. Many First Peoples have direct or indirect experience of what is largely seen as a discriminatory colonial legal system, so it will be important to differentiate the Commission's procedures from a judicial body or even other more legalistic Royal Commissions. Section 4f(iii) of the *Letters Patent* gives the Commission flexibility to design its own approach and it is mandated under Section 4f(v) to acknowledge and respect the differences between First Peoples groups. While there may be useful practices to draw from for example, victims' services in the mainstream justice system or specialised protections for children, it should also be guided by community feedback and international best practice. The Commission could signal its commitment to this requirement by making it clear to communities at the outset that community's interests remain at the heart of its work.

"Please consider that some of us mob still don't know where they belong, but they have a story too. Sometimes if you listen to their stories you can help them find their way home."

– Online Survey Response

Community feedback suggests this should allow for individuals and communities to choose how they wish to participate and share their stories, allowing for the diversity of First Peoples' preferences. Some suggested that Commissioners should provide people with the opportunity to build a relationship

with those receiving their testimony, engage in candid conversations, and decide together what form their testimony could take. The Assembly heard various suggestions, such as:

- Poems
- Songs
- Paintings
- Voice recordings
- Photos
- Oral stories
- Video stories or re-enactments
- Written accounts
- Interviews or informal conversations

Community feedback suggests a strong desire for testimonies to be tailored to the individual, family, clan or nation. Individuals should be offered spaces to provide private or public testimony. Some thought sensitive content should only be presented to Aboriginal commissioners or staff.

Overwhelmingly community said that the Commission should travel to different areas, emphasising the importance of truth-telling happening in culturally safe spaces on Country. Responses varied greatly regarding the location and environment of testimonies – some suggested testimony over a cup of tea on Country, many said it should be outdoors, by a river or a culturally significant place for the specific mob. Others wanted recognition to occur by testifying in a more formal setting such as a court room. Consideration should be given to the accessibility of locations and services should be provided to ensure community members are able to travel to and from these locations. Opportunities to participate online or over videoconference and phone calls will allow greater flexibility as well.

"The Truth Commissioners need to come into prisons to talk to us."

– Prison inmate (April 2021)

3. Creating a safe space *continued*

Some people noted that the Commission's procedures and style of working should avoid using terms or protocols that too closely resemble those used in criminal justice or other formal court processes. Many First Peoples have experienced racism or other trauma associated with the State justice system, and will need reassurance that this will be different. This includes the use of terminology about the Commission's processes such as "capturing" or "taking" testimony, or suggestions that peoples' stories will be subject to cross-examination or need to be proved. The Commission should consider how best to ensure cultural sensitivity in developing and reviewing the effectiveness of its procedures.

Community is also particularly interested in ensuring those that are currently incarcerated or otherwise involved in the justice system have access to the

truth-telling process. The Assembly's engagement with prisons and correction centres confirmed that Aboriginal inmates want to participate in the Commission's work, provided it does not negatively impact on their current circumstances. For Aboriginal staff involved in the criminal justice system particularly, whistleblower or other appropriate protections should be considered by the Commission.

Testimony may be historical and possibly unverifiable through evidence or documentation, or contemporary, making allegations about living persons and ongoing organisations. Presentation of either of these classes of testimony may cause individuals to feel at risk of retaliation, prosecution, persecution, accusations of defamation, or feel that their personal safety is at risk. The Commission will need to ensure as a priority that systems are in place



to address these issues and that individuals who may wish to give testimony have clear information and advice about the protections that they have from legal action relating to these concerns.

Principles of free, prior and informed consent in line with the UNDRIP must be incorporated into all the Commission's procedures and this must be properly explained before people decide to engage with the Commission. Aside from other Royal Commission practice in Australia, truth commissions have often grappled with how to ensure procedural fairness for individuals while meeting their objective of a comprehensive public account, particularly if people testifying are also involved in other legal processes.⁸ The Assembly heard directly of these concerns from people detained on remand or still subject to further criminal appeal processes. First Peoples' experience from participating in the Bringing them Home inquiry or the Royal Commission into Institutional Responses to Child Sexual Abuse may also be helpful as the Commission develops its data management and consent protocols. For example, the Maine-Wabanaki Truth and Reconciliation Commission used terms such as "statement providers" and "statement receivers" to convey that the stories continued to belong to First Peoples.

Community emphasised the need for gender sensitivity in how the Commission designs and conducts its work, including taking account of women's and men's business protocols that have been passed down by Elders from generation to generation. In seeking localised cultural guidance on appropriate protocols for its hearings and other business, the Commission should clarify gender-specific elements such as by consulting Elders of all genders. This might include staffing arrangements for gender-specific subject matter, for instance. There may also be barriers to women's full and effective participation in the Commission's work, such as if the timing and location of its hearings impact on other obligations that tend to fall

disproportionately on women, such as caring for children or dependent relatives. Availability of child-care facilities, or supporting home-based testimony, could be incorporated to mitigate these risks. Space should be provided for group testimonies, including the separation of men's and women's groups, and opportunities for families to provide joint testimonies.

Many people highlighted the importance of engaging with children and young people, both through school participation but also in case young people want to participate more directly, so that it is done in a safe, supportive and appropriate manner. Working closely with Aboriginal organisations with expertise in this area can help avoiding re-traumatisation.

Practical support services

Many people noted that before the Commission starts any hearings, there needs to be clear support services in place to provide trauma counselling, bringing a support person, childcare, transport assistance or other identified needs. Some proposed the Commission should establish partnerships with existing community-based organisations who already have the skills, networks and experience in providing such services. It may also need to look at how it can reinforce other initiatives such as the Stolen Generations Redress Scheme. Where possible community members should have choices in where they can obtain necessary support services, including accessing services they may already have built a relationship with.

"Counselling should be leading up to the interview and follow up to ensure the process is more or less a gathering, a yarning place where people give their life experiences freely and not as an interrogation."

– Online Survey Respondent (Yorta Yorta)

⁸ See Mark Freeman, Truth Commissions and Procedural Fairness (2006).

3. Creating a safe space *continued*

Accessibility might also require other practical design considerations. Some of the responses from community have mentioned ensuring locations are wheelchair-accessible, that interpreters are provided for both different languages and for people with hearing-impairments or other health requirements, and that a diverse range of options be given for engagement including remote testimony.

The Commission is mandated to prioritise employment of First Peoples under Section 4(j) of the *Letters Patent*. Not only will this provide job opportunities and economic wellbeing for First Nations peoples, but Community believes having Aboriginal staff at the Commission, especially for engagement and community facing roles, will contribute to a safer and more accessible

environment. However, it will also be important to consider the impacts of exposure to trauma through truth telling on all Commission staff, particularly on Aboriginal staff. It will be crucial that trauma support and designing a trauma-informed workplace be prioritised for all staff working at the Commission.

Not just an inquiry – ceremony, art, spirit

Community provided many ideas about how to create a culturally safe space, all of which are consistent with section 4(i) of the *Letters Patent*. Incorporating cultural practices can build trust among Community to engage and trust the process, and can demonstrate the value of culture to the broader public.



“Gifting of cultural items for reciprocity and giving cultural strength.”

– Online Survey Respondent (Dja Dja Wurrung)

Examples community proposed to the Assembly include:

- Welcome to Country ceremonies
- Cleansing and smoking ceremonies
- Giving and receiving of gifts as a gesture of cultural strength and reciprocity
- A minute’s silence
- Yarning circles
- Painting, dancing, singing, weaving and toolmaking
- Cultural healers.

“Healing ceremonies should incorporate physical and mental strategies such as mediation, mind cleansing, culture games and walks.”

– Online Survey Respondent (Gunditjmara)

While many emphasised the need to let local Traditional Owners determine the appropriate event for their country, some also suggested convening a state-wide conference that could bring all groups together to see where stories intersect and to raise public awareness among the non-Aboriginal community. The Commission could seek to connect its work with existing Aboriginal community events.

This will ensure that community are already surrounded by their support systems and in an environment in which they feel comfortable. Many community members have expressed the importance to Aboriginal people of coming together over communal meals.

“Standard ceremonies should be held in respect to Sorry Business – acknowledgement of ancestors from Country, and fire law ritual to engage the ancient spirit of truth, justice, healing, peace, harmony and love.”

– Online Survey Respondent (Eastern Gunai)

The Commission should consider ways to involve artists as well as community-led organisations and mainstream media, to capture the public’s imagination and value First Peoples’ cultural practice. The period of the Commission’s operation will also be an important opportunity to engage with the broader Victorian community. The Commission could choose to encourage or endorse a complementary programme of arts and media activity, as has been done alongside other truth commissions around the world.⁹

Data sovereignty

While the Commission’s legal basis in the Inquiries Act 2014 means that its archive will ultimately be transferred to the Public Records Office of Victoria, Section 4f(iv) of the *Letters Patent* requires the Commission to uphold the sovereignty of First Peoples over their knowledge and stories by ensuring adequate information and data protection. Community feedback emphasised the importance

⁹ For example, the Sierra Leone Truth and Reconciliation sparked a Vision 2020 project encouraging public participation in developing a new national identity for the country. In South Africa a long running TV drama series *Soul City* pioneered social and behaviour change through “*edutainment*” on issues complementary to the narrower focus on political violence of the Truth and Reconciliation Commission. Truth Commissions and other transitional justice processes in Timor Leste, Argentina, Sierra Leone and elsewhere have worked closely with civil society groups and media to promote public understanding of and engagement with their work. Further examples of good practice are available in the ICTJ Guidelines on Making an Impact (2011) described in Annex 3.

3. Creating a safe space *continued*

of Aboriginal control over their own stories and data held about them. This is consistent with the concept of “*data sovereignty*” and the core principles of ownership, control, access and possession. These should guide the Commission’s development of its own policies around data usage, consent, confidentiality and privacy.

Feedback suggests that the following are key concerns for community in relation to sensitive materials received by the Commission:

- Confidentiality
- Informed and ongoing consent
- Culturally appropriate handling of data
- Transparency of processes
- Ongoing Aboriginal ownership of data
- Anonymity
- Safe storage arrangements
- Controlled access

For example, the Commission should check back in where relevant with community representatives to confirm any interpretation of stories about that community.

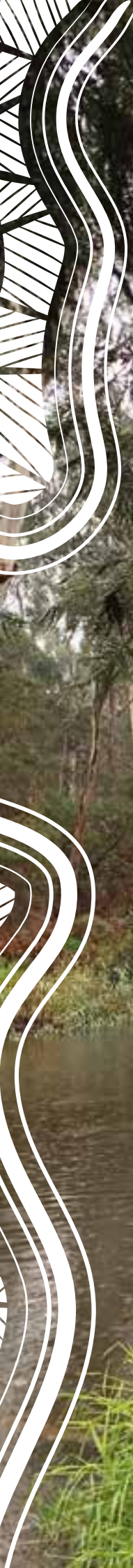
Community have expressed a hope that materials collected as a result of this process would be managed by an Aboriginal-led body upon its conclusion. The Assembly suggests that the Commission consider data sovereignty considerations at the outset, to inform not only its internal information management systems planning and future archiving, but also to ensure appropriate consent is obtained from First Peoples before they decide to participate in the Commission’s work. This should include discussions with the Koorie Records Unit in the Public Records Office of Victoria.

Effective data management will be essential, given the time period covered by its mandate and the expected flood of materials in many forms that the Commission can expect to receive. The Commission could look to ways of using new technology tools to help, including those used by other truth commissions.¹⁰

In designing the conduct of the inquiry, the Assembly Commission to:

- **Seek input from Elders on cultural governance practices**
- **Reach out early, wide and consistently through community networks and strategic alliances with media, arts and culture organisations**
- **Design accessible options for flexible and welcoming hearings**
- **Draw upon existing cultural expertise in service provision around trauma management, support and ceremony**
- **Plan early for data sovereignty protocols and information management systems.**

¹⁰ One example is [Memria.org](https://www.memria.org/), an organization that works with truth-telling processes using digital voice technology to collect, manage and analyse testimony at a scale that would be difficult to do manually.



4. The road to Treaties and structural reform

“Truth telling is the first step towards achieving aspirations of First Nations people for a better life.”

– Online Survey Respondent

The Commission faces a challenging task in meeting its objectives. The *Letters Patent* require both an interim report within its first year, and a final report. Both reports are expected to lay out findings of what happened and why. Some community members question whether a single shared narrative is even possible or desirable as the outcome of the Commission’s work, so the Commission may need to consider ways to address such concerns. The Commission’s reports and recommendations should, however, take account of the following feedback and issues the Assembly has identified through consultations and its broader functions. Feedback from Community emphasised the critical importance of the Commission’s work resulting in concrete practical change and positive outcomes for Community. This is an objective that the Assembly shares. Working together, the Commission and the Assembly have an opportunity to marry the investigation of historical and ongoing injustices with a forward-looking agenda for reform that sees power transferred into Aboriginal hands so that these injustices never occur again.

Design considerations

Community and the Assembly expect the reports to outline recommendations and concrete steps that can be taken to remedy and repair the injustices documented. Where previous processes have failed to create lasting reform, this process has the opportunity to work directly with community to ensure reforms meet the actual needs and aspirations of Aboriginal people across Victoria. Community feedback strongly stressed the importance of Aboriginal people and communities across the state being able to feed into decisions

about future reforms. This is an important way in which the Commission can demonstrate self-determination in practice and correct the historical exclusion of First Peoples from decision-making.

As well as consistent consultation with community in the report and reform writing process, the Commission should examine recent creative practice in framing, designing, and presenting recommendations from other truth commissions, Royal Commissions, or other relevant processes. For example, the Final Report of the Truth and Reconciliation Commission of Canada made recommendations, or ‘calls to action’, aimed at not only the Government but of various institutions. The Sierra Leone Truth and Reconciliation Commission produced a child-friendly graphic novel-style version of the report. Reports could also be video based, turned into podcasts or other formats to ensure maximum reach and accessibility. Another example is the *Message to Australia* book that came out of the Royal Commission into Institutional Response to Child Sexual Abuse.

Overhauling history education

The *Letters Patent* also emphasise the importance of the Commission’s contribution to transforming public education and how and what Victorian children learn about our history, culture, and shared heritage. The Assembly’s consultations confirmed that this is in line with community expectations of the Commission’s legacy. All Victorians should know on whose country they live, the hurt that first occurred then recurred through denial, and how the cultures have survived despite it all. Community is clear that the Commission must identify what should be included in an extensive public education campaign, that changes how our history is taught in schools, universities, museums, and is part of both statewide and localised conversations around the true history of the colonisation of Victoria.

Coordination with other processes

There are currently a number of processes occurring in Victoria relating to the advancement of rights for Aboriginal peoples including programs for reforms and redress, including the work of the Assembly. Community have expressed a concern that if these processes operate separately they risk not delivering the best outcomes for community. The Commission is mandated, under Section 4(h) of the *Letters Patent*, to coordinate with relevant inquiries and processes. Community suggested some ways in which coordination is important to avoid re-traumatisation:

- Research into previous process and where they failed to meet community needs
- The re-use of historical testimonies in order to avoid individuals re-sharing traumatic information where appropriate
- Noting the risk of consultation fatigue in community and considering how to ease the burden on First Peoples across the state (and possibly the country) to engage separately with a number of different processes
- Specific coordination with the Stolen Generations Redress Scheme that will run concurrently to the Commission to ensure a coherent reparations program and to ensure support services for both processes are complementary.

The Assembly welcomes the opportunity to develop a constructive relationship with the Commission to ensure appropriate coordination between our respective mandates.

Informing the shape and content of Treaties

The Commission has a responsibility under Section 1 of the *Letters Patent* to promote the advancement of Treaty or Treaties. The Commission's support of the Treaty-making process, as mandated in section 2(f) the *Letters Patent*, should take the form of, among other things:

- Providing a shared narrative of the impact of colonisation, founded on First Peoples' voices, and awareness-raising of this narrative
- Identifying subject matter for potential inclusion in a Treaty or Treaties
- Making recommendations for appropriate redress to be included in a Treaty or Treaties
- Identifying political, systems change or other institutional reforms that can be addressed in Treaties at the statewide level and the local level.

"We need to be in those meetings about reform, we need to be helping to interpret the mandate and the recommendations. We need to be able to strengthen our mob, but we don't have access to these processes."

– Online Survey Respondent

Testimonies gathered by the Commission will shape Victoria's conversation around Treaty-making, as well as the national conversation across Australia. Treaties and a Treaty Negotiation Framework that are founded on an understanding of our collective inherited past will be more equitable, culturally strong, and better equipped to address the harms suffered by Aboriginal people in Victoria. Sharing generational stories about the frontier wars, massacres, enslavements, policies of protection and assimilation, stolen generations and ongoing removal of Aboriginal children, over-incarceration and deaths in custody will inform, educate, and prepare the

4. The road to Treaties and structural reform *continued*

wider Victorian community for the benefits that Treaties can have. More importantly, the Commission's work will be integral to the work of the Assembly and for First Peoples in Victoria preparing to negotiate their own Treaties. Any Treaty will be richer for having been informed and underpinned by stories that have been either too infrequently or never told.

Treaties will provide a strong institutional platform to ensure that the Commission's recommendations are effectively implemented. Entrenching the Commission's recommendations on how to prevent future harm through systemic change rests on transferring responsibility to First Peoples through negotiated Treaty processes. Such fundamental changes to policies, laws, service delivery and public and political culture are likely to require new visions of First Peoples' institutions and governance structures, including potentially through an Aboriginal representative body that succeeds the Assembly and enables the self determination of First Peoples in Victoria on statewide issues. Broader public understanding of why such change is necessary to restore the inherent rights and repairing the damage done will rest on acknowledging the entirety of First Peoples' experiences of colonisation. As the elected body for advancing Treaties, the work of the Assembly and the Commission will feed into each other as each process evolves. Even as the Assembly and the State develop a Treaty Negotiation Framework, the Commission's interim report could focus on elements that can inform that process and any Treaty negotiations that follow, even prior to the Commission completing its mandate.

In early planning for reporting and recommendation development, the Assembly encourages the Commission to:

- **Report/recommendation design considerations**
- **Consider the Treaty Negotiation Framework progress and identify relevant points of connection with the Assembly's work.**



Conclusion

“Nobody should be fearful of this in the mainstream. As we all grow up, we learn the uncomfortable secrets in our families that might have been kept quiet when we were young. It’s the same here and Victorians are ready to hear the full story. If the truth is told, it can only lead to a better version of Australia based on honest relationships and a knowledge of actual events.”

– **Troy McDonald (Gunai Kurnai Land and Waters Corporation Reserved Seat holder)**

As noted throughout, this report is not intended to be a substitute for the Commission’s own outreach to community. The Assembly strongly recommends the Commission carry out an independent and extensive community consultation both at the outset of its work and on an ongoing basis, as envisaged by the mandated responsibilities in Section 4b & 4d of the *Letters Patent*. This will require building relationships with grassroots non-government organisations, sporting clubs, health, housing and education service providers or anywhere community networks already exist. Consultations must be genuine two-way dialogues with feedback loops built in, not merely provision of information. The Commission should ensure that all community consultation is done in a culturally-appropriate manner and reflects the diverse cultural practices of groups across the State. Similar engagement work also will be essential among the broader public. Some immediate steps to consider might be:

- Produce plain English and video versions of the main elements of the *Letters Patent* and circulate widely to raise awareness
- Ensure recruitment of staff reflects diversity of Victorian Traditional Owners
- Ensure cultural safety and sensitivity protocols from outset
- Convene expertise from those who have practically been involved in similar processes internationally, possibly through an initial orientation to share key lessons on the operational design and structure
- Establish the Expert Advisory Group as soon as possible
- Develop monitoring and evaluation systems to ensure accountability back to community and public.

The Assembly wishes the Commission every success and looks forward to a productive relationship based on our shared values and goals. While respecting the Commission’s independence in deciding how it conducts its inquiry and develops its findings, the Assembly will follow closely the Commission’s work and will share with it feedback from the constituencies it represents. The Assembly welcomes the opportunity to discuss the contents of this report with the Commission and provide additional information as required.



Annex 1: About the First Peoples' Assembly of Victoria

The Assembly is the voice for Aboriginal communities across Victoria, representing them in negotiating the Treaty process with the State.

The Assembly is currently made up of 31 members – all proud Traditional Owners of Country in Victoria. These Aboriginal leaders were chosen by their communities to represent community views. Twenty-one representatives were determined by a statewide Aboriginal community vote based on five electorates and ten representatives were appointed to reserved seats by formally recognised Traditional Owner groups. The Assembly is led by a nine person Board elected by the members and includes two Co-Chairs who are elected by the Board.

Since its first meeting in December 2019, the Assembly has been working to establish the key Treaty structures required under the Advancing the Treaty Process with Aboriginal Victorians Act 2018 (Vic). This includes four foundational elements that will support future Treaty negotiations:

- Develop an interim dispute resolution process to resolve disputes between the Assembly and the State during the negotiation of the Treaty elements
- Design a Treaty Negotiation Framework that sets out the process and parameters for negotiating future Treaty or Treaties¹¹
- Build a Treaty Authority that will act as an independent umpire to facilitate and oversee Treaty negotiations
- Create a Self Determination Fund to support Victorian First Peoples to participate on an equal footing with the State in Treaty negotiations, as well as providing a financial resource to empower Victorian First Peoples to build future capacity, wealth and prosperity.

As of April 2021, the Assembly and the State have formally agreed the interim dispute resolution process. The Assembly has also worked to establish elements of the Treaty process not required by legislation. For example, the Assembly and the State have agreed on a set of protocols that govern conduct in negotiations between the Assembly and the State; agreed to establish an interim Elders' Voice, which will assist with establishing a permanent Elders' Voice to provide wisdom and cultural oversight to the Assembly's decision-making; and established the Yoo-rook Justice Commission.

Looking ahead, the Assembly continues to focus on two aspects of the Treaty-making process; establishing structures required under the Act and establishing culturally significant elements not required by legislation. Regarding the Assembly's mandated work, the primary focus is to progress negotiations with the State on the Treaty Negotiation Framework. This will include discussions on sovereignty, Aboriginal political power at a state-wide level, nation building through local Treaties and rights, and economic self-determination for Aboriginal people in Victoria. Other structures, such as the Treaty Authority and Self-Determination Fund will be developed once the Treaty Negotiation Framework is more fully developed, to ensure that each structure works harmoniously with the others. All of these processes will benefit from the feedback that community share with the Yoo-rook Justice Commission and the subsequent recommendations the Commission makes.

Regarding additional work being conducted, the Assembly is committed to establishing a permanent Elders' Voice in 2021 to provide critical cultural oversight to Assembly decisions. The Assembly is also progressing work on broadening its representation, to ensure that as many Aboriginal voices in Victoria are involved in negotiating the Treaty structures as possible.

¹¹ Treaty Act, ss 27-28.

Annex 2: List of Members of the Assembly Truth-telling Committee

- Melissa Jones (Committee Co-Chair)
- Troy McDonald (Committee Co-Chair)
- Marcus Stewart
- Geraldine Atkinson
- Jason Kelly
- Matt Burns
- Esme Bamblett
- Jacinta Chaplin
- Muriel Bamblett
- Alister Thorpe
- Carolyn Briggs
- Sissy Austin
- Trevor Gallagher
- Peter Hood
- Jordan Edwards
- Donna Wright
- Ngarra Murray
- Robert Ogden

Annex 3: Suggested resources

- Truth-Seeking: Elements of Creating an Effective Truth Commission (International Centre for Transitional Justice, 2013)
- The Healing Foundation, Bringing Them Home 20 Years on: An Action Plan for Healing
- Easy English, Plain English (Centre for Inclusive Design, 2020)
- Report of the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (2015)
- Report of the Truth and Reconciliation Commission of Canada (2015)
- [Recognition, Reparations and Reconciliation: Report, United Nations Expert Mechanism on the Rights of Indigenous Peoples \(2019\)](#)
- Paige Arthur, 'Indigenous Self-Determination and Political Rights: Recommendations for Truth Commissions' in Indigenous Peoples' Access to Justice, Including Truth and Reconciliation Processes (Institute for the Study of Human Rights, Columbia University, 2014)
- [The First Nations Principles of OCAP](#)
- Taylah Cramp and Anita Mackay, Protecting Victims and Vulnerable Witnesses Participating in Royal Commissions: Lessons from the 2016–2017 Royal Commission into the Protection and Detention of Children in the Northern Territory, Volume 29, Journal of Judicial Administration (2019)
- Megan Davis, 'A Reflection on the Royal Commission into Aboriginal Deaths in Custody and its Consideration of Aboriginal Women's Issues', Australian Indigenous Law Review, Vol. 15 (2011)
- Mark Freeman, Truth Commissions and Procedural Fairness (Cambridge University Press, 2006).
- Eduardo Gonzalez, The Interaction Between Transitional Justice and Indigenous Truth and Reconciliation Processes (Essay prepared for the United Nations Permanent Forum on Indigenous Issues, April 2021)
- Elena Marchetti 'Critical Reflections upon Australia's Royal Commission into Aboriginal Deaths in Custody', Macquarie Law Journal (2003).
- Clara Ramirez, Making an Impact: Guidelines on Designing and Implementing Outreach Programs for Transitional Justice (International Center for Transitional Justice, 2011).



**Cover artwork:
'Yarkeen', by Tom Day**

*"The artwork reflects the
First Peoples' Assembly of Victoria.*

*The predominant image is the trees, strong and
powerful roots planted deep within country.
The scars representing culture and identity, formed
from generations passing on knowledge, ensuring a
continuing succession of proud and strong Peoples.*

*The leaves signify the future, the generations that
will continue to come, benefiting by the seeds
planted by the previous generations and the present.*

*The central design represents the coming together
of the Assembly. The diversity of countrymen and
countrywomen, young and old, linked by purpose.*

*The designs above and below the central design
represent the journey being embarked on.
The above design representing the conversation
to date and the below design representing the
conversation to come, unwritten, a new chapter.*

*The pink and orange design represents the past,
our old people, our elders, our leaders, now in
the dreaming but ever present. The reason we
exist today is in their strength, courage, wisdom
and compassion. Traits of character integral as
much today as it was in the past.*

*The designs above and below the pink and
orange design represent our lineages, from
across the state. Each with a powerful story, each
powerful and proud, evident today as it ever was.*

*The individual lines throughout the piece
are representative of the people, past, present
and the future.*

*The artwork is titled Yarkeen, a Gunditjmara
word for dreaming, for we all dream of a better
future for our generations that are coming and
there is a power in a collective dream."*

Tom Day
Gunditjmara
Yorta Yorta
Wemba Wemba



firstpeoplesvic.org

