



Australia's National Institute for Aboriginal
and Torres Strait Islander Health Research

Yoorrook Inquiry into Systemic Justice in the Criminal Justice System and the Child Protection System

Submission to the Yoorrook Justice Commission

The Lowitja Institute, November 2022



Yoorrook Inquiry into Systemic Justice in the Criminal Justice System and the Child Protection System
Yoorrook Justice Commission

Dear Commissioners,

Re: Yoorrook Inquiry into Systemic Justice in the Criminal Justice System and the Child Protection System

The Lowitja Institute is Australia's national institute for Aboriginal and Torres Strait Islander health research, named in honour of our Patron, Dr Lowitja O'Donoghue AC CBE DSG. We welcome the opportunity to provide a submission to the Yoorrook Justice Commission's Inquiry into Systemic Justice in the Criminal Justice and the Child Protection Systems.

The Lowitja Institute has long advocated for national awareness and action on the social and cultural determinants of health and wellbeing. Significant to implementing cultural determinant driven health policy is the recognition that policy making must be anchored in Aboriginal and Torres Strait Islander ways of knowing, being and doing, and that self-determination is essential for a holistic approach to bettering the health and wellbeing of our communities.

One of the spaces in which this is particularly salient is the justice and child protection sectors. As a national Aboriginal and Torres Strait Islander Community Controlled organisation and a member of the Partnership for Justice in Health, we can speak to how the justice and child protection systems impact adversely on our peoples' health outcomes. This is recognised by Targets 10, 11, and 12 of the *National Agreement on Closing the Gap*, which commits jurisdictional and the Commonwealth governments to work in partnership with the Coalition of Peaks to address overrepresentation across both systems.

The justice system and child protection systems are unsafe for our peoples; both grew from imported colonial penal systems and they are both sites in which colonisation lives on. These punitive and paternalistic systems have been designed to disempower our peoples; they are based on the presumption that they know what is better for our peoples than we do. They are based on coercion and control. The discrimination, racism and lack of cultural safety in these environments and systems is clear. The health impacts just as clear. This must be counted with anti-racist decolonising efforts and system transformation, or new systems. Failure to do so compromises joint efforts under the *National Agreement on Closing the Gap*, which Victoria has a commitment to.

Further, shifting the underlying paradigm of both systems from a deficit lens to a strength based one; and, investing in justice reinvestment, nation building, and the

empowerment of our communities, will improve our peoples' health outcomes and create brighter futures for our children. The Lowitja Institute's recent discussion paper, *Indigenous Nation Building and the Political Determinants of Health and Wellbeing* (Rigney, 2022) describes another lesser discussed type of determinant of health – political determinants. The paper draws on national and international evidence that the empowerment of First Nations peoples increases health and wellbeing. It shows how transforming systems to ones that are led by our peoples and designed for our peoples improves our health and wellbeing. This would certainly be the case with both the justice and child protection systems.

Please find our submission attached. We would welcome the opportunity to further discuss any of the issues contained therein.

Warm regards

A handwritten signature in black ink, appearing to be 'JM', followed by a horizontal line extending to the right.

Dr Janine Mohamed
CEO, Lowitja Institute

1. About the Lowitja Institute

The Lowitja Institute is a national Aboriginal and Torres Strait Islander Community Controlled Organisation working for the health and wellbeing of Australia's First Peoples through high impact quality research, knowledge translation, and by supporting Aboriginal and Torres Strait Islander health researchers.

Established in January 2010, we operate on the key principles of Aboriginal and Torres Strait Islander leadership, a broader understanding of health that incorporates wellbeing, and the need for the work to have a clear and positive impact.

The Lowitja Institute has a longstanding commitment to the National Agreement on Closing the Gap, as members of the Coalition of Peaks, National Health Leadership Forum and the Close the Gap Steering Committee, including authoring the Close the Gap Report over the past 4 years. Through this work, Lowitja has been involved in advocacy efforts and calls for the full implementation of the Uluru Statement from the Heart (Uluru Statement). The Uluru Statement is described as a "gift to all Australians" by one of its architects, Pat Anderson, the long-term chair of the Lowitja Institute.

Additionally, we are members of the Partnership for Justice in Health. The partnership is an alliance of self-determining Aboriginal and Torres Strait Islander academics, legal experts, and national peak health and justice organisations committed to working together to improve Aboriginal and Torres Strait Islander health and justice outcomes. As leaders operating at the interface of the health and justice systems, we are harnessing our leadership, influence, and networks towards realising our vision that 'Aboriginal and Torres Strait Islander people enjoy health and wellbeing that is free of racism in the health and justice systems'.

Based on this experience we offer the following general comments and responses to some of the questions put forward in the Issues Paper.

2. General preamble

We can think of no better place to start this submission than the words of the Uluru Statement from the Heart, which resonate so strongly in the bright light of this inquiry.

Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.



These dimensions of our crisis tell plainly the structural nature of our problem. This is the torment of our powerlessness. – The Uluru Statement from the Heart

As Aboriginal and Torres Strait Islander peoples, we have maintained sophisticated and diverse cultures and knowledge systems for millennia. We also established and adhered to sophisticated systems of law and lore, which maintained our nations and the health and wellbeing of our peoples.

Over millennia we have cared for Country and for our communities in this place now called Australia. We have maintained our health and wellbeing with holistic approaches aimed simultaneously at community and individual health and wellbeing. Despite the traumatic and ongoing consequences of colonisation and institutional racism, we continue to revitalise, maintain and develop our cultures and knowledge systems, strive towards improved health and wellbeing, and we continue to rebuild our nations.

From the early days of European settlement in Australia in 1788, racism against our peoples has taken many forms, including murder, exploitation and dispossession from our traditional lands and cultures. Our peoples were forced onto missions and reserves, breaking apart our communities and nations, and the systems that were in place to self-govern. As detailed below, racism has profound health impacts.

Government and governance for our peoples did not look like dominant cultural conceptions of government, which originate in British and European models. Our way of governing takes a long-term and holistic approach, understanding the intrinsic connection between participation in community, culture, caring for Country, and health and wellbeing. This means that there is a disconnect between the systems and institutions in place to govern broader society and our ways of knowing, being and doing.

3. Justice and health

There are many examples in which our peoples have died in custody because of inadequate healthcare within the justice system. For example:

On 31 December 2019, Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman, Veronica Walker was arrested for shoplifting and denied bail in the Magistrates' Court. She was remanded at Dame Phyllis Frost Correctional Centre. Three days later, she was found dead in her cell. In the coronial inquest, the coroner heard that she had died from an undiagnosed medical condition. She was thirty-seven years old.

*The night before, she'd been placed in an observation cell. She was reportedly heard crying out multiple times for help but was only checked on once at 4am.¹²³ As reported by the Guardian, 'In the hours before her death she made nine calls over the prison intercom for help, asking four times to see a doctor before a guard said: "It's not an emergency. Stop asking."'*⁴

When our people enter the justice system, the prison system, or the child protection system, they enter into those systems with a range of health needs. Those systems must be adequately equipped to provide culturally safe healthcare. Unfortunately they aren't.

More than thirty years after the Royal Commission into Deaths in Custody, our peoples are still dying in custody at a rate ~50% higher than before the RCIADIC.⁵ This is a health crisis that has much complexity to it. What the Lowitja Institute can offer are a few key policy considerations.

The first consideration is that there must be recognition of the health system's role in determining our peoples' health and wellbeing when they are in contact with the justice system. As emphasised in the Lowitja Institute's discussion paper, *Partnership for Justice in Health: Scoping Paper on Race, Racism and the Australian Health System*, the fact that this is a health crisis is often concealed by the fact that these deaths happen within the justice system.

The coronial inquests into the preventable deaths of Aboriginal and Torres Strait Islander peoples in custody since the Royal Commission continue to reveal the ongoing deficiencies of both systems. Whilst conflating the legal and health system in this context is entirely to be expected as a death in custody will give rise to a legal response, such conflation can blur lines of responsibility that serve to confuse accountability. The health system has particularly benefitted in this regard. Coronial inquests examining the preventable deaths of Indigenous peoples attending health care services such as Ms Williams (NSW Courts 2016), combined with over a decade of policy failure to close the gap of health inequality, have

¹ [Deaths in custody — ANTAR](#)

² [Veronica Nelson Walker's family laid her to rest not knowing how she died in custody - ABC News](#)

³ [Coronial Inquest into death of Veronica Marie Nelson to examine healthcare in Victorian prisons and bail laws – Victorian Aboriginal Legal Service \(vals.org.au\)](#)

⁴ [Veronica Nelson unlikely to have been jailed if convicted of charges, lawyer tells inquest | Deaths in custody | The Guardian](#)

⁵ [Deaths in custody — ANTAR](#)

highlighted how the health system – independently of the legal system – produces racialised health outcomes (Bond 2020).⁶

We urge the Yoorrook Commissioners to keep the health system and the responsibility that it holds in sharp focus throughout this Inquiry. While these systems are distinct, they must operate together. This view is in keeping with our peoples' holistic paradigms.

The social, cultural and political determinants of Aboriginal and Torres Strait Islander health.

Aboriginal and Torres Strait Islander peoples' approach to health and wellbeing is holistic, placing equal emphasis on physical, social, emotional and cultural wellbeing, which are interconnected.⁷ It is widely acknowledged by Aboriginal and Torres Strait Islander experts and peak health organisations that there are several 'non-medical and behavioural influences on health'.⁸ The constellation of these 'social and cultural determinants' impact significantly on the health and wellbeing of our peoples and communities. These determinants can be influenced and any adverse impacts ameliorated through sound policy changes⁹ and system reform.

The right to practice culture, traditions and customs, is outlined across a number of Articles included in the United Nations Declaration of the Rights of Indigenous Peoples and should be affirmed in developing and implementing health policy; this includes policy relating to health in the justice system.

This can be achieved by valuing, understanding and privileging Aboriginal and Torres Strait Islander ways of knowing, being and doing that encompass a holistic understanding of health and wellbeing. The cultural determinants of health constitute a conceptual framework based on Indigenous knowledge; they are inter-related to social determinants of health and are rights-centred¹⁰.

⁶ https://www.lowitja.org.au/content/Image/Lowitja_PJH_170521_D10.pdf p. 1.

⁷ M., Salmon, K., Doery, P., Dance, J., Chapman, R., Gilbert, R., Williams, R & R. Lovett, *Defining the indefinable: descriptors of Aboriginal and Torres Strait Islander Peoples' cultures and their links to health and wellbeing*, Aboriginal and Torres Strait Islander Health Team, Research School of Population Health, The Australian National University, 2019, Canberra, p. 1.

⁸ Anderson, I., Baum, F. & Bentley, M. (eds) 2004, *Beyond Band-aids: Exploring the Underlying Social Determinants of Aboriginal Health*. Papers from the Social Determinants of Aboriginal Health Workshop, Adelaide, July 2004, Cooperative Research Centre for Aboriginal Health, Darwin, p. x-xi

⁹ *Ibid*, p. x.

¹⁰ Lowitja Institute 2020, *Culture is Key: Towards cultural determinants-driven health policy – Final Report*, Lowitja Institute, Melbourne. Viewed on 22 June 2022 at [Lowitja CultDefReport 210421 D14 WEB.pdf](#)



Cultural determinants span multiple portfolios beyond health and include these six domains:

- connection to Country
- family, kinship and community
- Indigenous beliefs and knowledge
- cultural expression and continuity
- Indigenous language
- self-determination and leadership.¹¹

Culture plays a significant protective role in our peoples' individual, and community lives. For us, culture is central to understanding the relationship between self and Country, kin, community and spirituality— all of which are key factors of health and wellbeing. Connection to culture strengthens our identity, community bonds and our communal and individual resilience in the face of ongoing racism and inequity. Throughout our culturally diverse nations, cultural practices kept us strong and healthy for millennia.

As acknowledged by the National Agreement on Closing the Gap 2021, and supported by the growing evidence base of the Mayi Kuwayu study, culture is key to closing the gap on our peoples' health and wellbeing outcomes.

“Our culture comes from our lore, a very deep and sacred place. The cultural determinants of our health provide many of the remedies for Aboriginal and Torres Strait Islander health equity and these determinants should be respected, understood and embraced by all. This report shows us what can be achieved by Aboriginal and Torres Strait Islander people through leadership and self-determination, owning our knowledge, continuing our cultures and maintaining connections to Country and kin.”

June Oscar, Aboriginal and Torres Strait Islander Social Justice Commissioner 2020

Colonisation seeks to disrupt and erase culture. As a colonialist system, the justice system was never designed to support our peoples' cultural connections or practices. It was designed to do the opposite. When an Aboriginal or Torres Strait Islander person goes into prison, they lose connection to most if not all the above domains. They are removed from Country; they are disconnected from family and community; their Indigenous beliefs and knowledges are not acknowledged nor

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respected; they are unable to practice culture or cultural expression, nor practice language; and they are entirely disempowered.

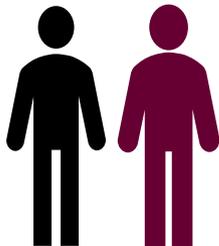
CASE STUDY: JUSTICE HEALTH NSW

Inspired by the Anangu Ngangkari Tjutaku Aboriginal Corporation Ngangkari services in South Australia, Justice Health NSW has developed a funding proposal to initiate a pilot program to introduce Traditional Healers into women's prisons in NSW. The goal is to increase access to culturally safe health services, which include both mainstream and traditional healing health practices.

The proposed pilot program at Justice Health NSW centers Aboriginal and Torres Strait Islander health knowledge and practices and would go towards implementing greater cultural safety in the corrections context. It is hoped that it will contribute to reducing the rates of deaths in custody and improving the health and wellbeing of Aboriginal and Torres Strait Islander women, and their families and communities.

The health impacts of racism

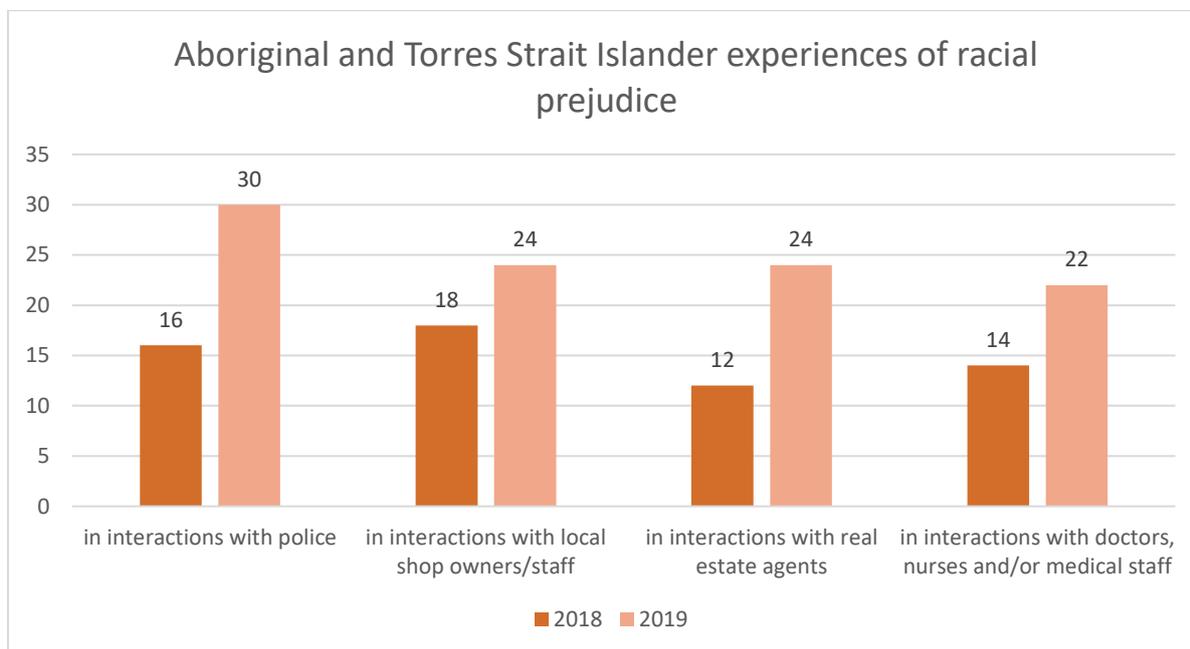
Racism and racial discrimination against our peoples are common. It is therefore important to further understand prevalence and impacts. Reconciliation Australia's Australian Reconciliation Barometer provides some helpful insight into prevalence.



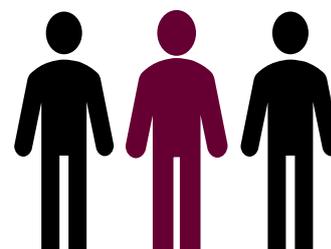
For example, the 2020 report found 52% of Aboriginal and Torres Strait Islander people have experienced at least one form of racial prejudice in the previous 6 months (43% in 2018).¹² Further, there was an increase in the likelihood of Aboriginal and Torres Strait Islander people experiencing racial discrimination in the previous 12 months:¹³

¹² [Australian Reconciliation Barometer -2020 Summary-Report web spread.pdf](#)

¹³ [Australian Reconciliation Barometer -2020 Summary-Report web spread.pdf](#)



Comparitively, 2014-2015, the National Aboriginal and Torres Strait Islander Social Survey (NATSISS), found that ~ 1 in 3 Aboriginal or Torres Strait Islander peoples 15 years or over (33.5% of respondents) had experienced unfair treatment in the previous year because they were Aboriginal and/or Torres Strait Islander.¹⁴



More recently, the Jumbunna Institute at the University of Technology of Sydney has developed [Call it Out, a First Nations Racism Register](#).¹⁵ This is a confidential reporting mechanism that enables our people to report incidents of racism and discrimination. The incidents reported will be collected and analysed by the Indigenous Law and Justice Hub to inform evidence-based research. This will enable Jumbunna to report on racism and its impacts, which will have useful policy and advocacy application. Since its launch, 260 reports were received in the first three months from all states and territories.

The *Mayi Kuwayu* study has been looking at our peoples' experiences of, and the health impacts, of racism. Their 2021 study comprehensively explored and provided

¹⁴ [Prevalence of Everyday Discrimination and Relation with Wellbeing among Aboriginal and Torres Strait Islander Adults in Australia \(mkstudy.com.au\)](#), p. 13.

¹⁵ [Call it Out Racism Register | University of Technology Sydney \(uts.edu.au\)](#)

evidence for the strong links between racial discrimination and our peoples' health and wellbeing outcomes.¹⁶

Specifically in the justice context, the study found that 1 in 6 respondents reported being unfairly bothered by police with higher rates in remote settings.¹⁷ The study notes that this aligns with the 2014-2015 NATSISS, which found a significantly higher prevalence of unfair arrests or charges in remote compared with non-remote settings.¹⁸ The authors note that while this was the least commonly reported experience of discrimination, "it is far from consequential given that unfair treatment by police is an extreme form of interpersonal discrimination, with potential substantial implications for life opportunities."¹⁹

In terms of the health and wellbeing impacts of racial discrimination, the above study found that there are links to:²⁰

- ❖ Social and Emotional Wellbeing
 - General mental health
 - Anxiety
 - Depression
 - Psychological distress
- ❖ Physical health (general health)
- ❖ Health behaviours
 - Smoking
 - Alcohol use
 - Gambling
- ❖ Key health conditions
 - Heart disease
 - High cholesterol
 - High blood pressure
 - Diabetes
- ❖ Cultural and spiritual wellbeing
 - Feeling torn between cultures
 - Feeling disconnection from culture
 - Choosing not to identify as Aboriginal or Torres Strait Islander.

¹⁶ [Prevalence of Everyday Discrimination and Relation with Wellbeing among Aboriginal and Torres Strait Islander Adults in Australia \(mkstudy.com.au\)](http://mkstudy.com.au), p. 13.

¹⁷ [Prevalence of Everyday Discrimination and Relation with Wellbeing among Aboriginal and Torres Strait Islander Adults in Australia \(mkstudy.com.au\)](http://mkstudy.com.au), p. 12-13.

¹⁸ [Prevalence of Everyday Discrimination and Relation with Wellbeing among Aboriginal and Torres Strait Islander Adults in Australia \(mkstudy.com.au\)](http://mkstudy.com.au), p. 13.

¹⁹ [Prevalence of Everyday Discrimination and Relation with Wellbeing among Aboriginal and Torres Strait Islander Adults in Australia \(mkstudy.com.au\)](http://mkstudy.com.au), p. 13.

²⁰ [Prevalence of Everyday Discrimination and Relation with Wellbeing among Aboriginal and Torres Strait Islander Adults in Australia \(mkstudy.com.au\)](http://mkstudy.com.au), p. 14.

The strength of these associations varied between the above outcomes, with particularly high links found to alcohol use, smoking, and social and emotional wellbeing outcomes.²¹



The authors of the study concluded that “There is a clear need to reduce experiences of interpersonal discrimination for Aboriginal and Torres Strait Islander peoples. The impacts of interpersonal discrimination need to be considered within the broader system of racism, including the interrelated and reinforcing influences of systemic and structural racism, including their impacts on social determinants of health”.²² They highlighted the potential for improving our peoples’ health and wellbeing by reducing exposure to racism.²³

The Need to Define and Understand the Complexities of Racism and Anti-Racism Work

Since racism contributes significantly to health inequalities for our peoples, it is important to be able to define, measure²⁴ and respond on a policy level.

However, adequate policy responses require a sound understanding of what racism is and the connection it has to health inequity. To date, there has been a troubling unwillingness to acknowledge or understand the role that racism and racial bias plays in adverse health outcomes and preventable deaths for our peoples.

Despite the multiple coronial inquiries exposing the issues inherent in both the justice and health systems, and the “heavy presence of race”, it took until 2020 for a coronial inquest to examine whether systemic racism was a contributing factor in the death of Auntie Tanya Day.²⁵ As noted in the Lowitja Institute’s discussion paper, the Coroner was unwilling to draw a line “between statistical evidence about the over-representation of Aboriginal women in custody and Ms. Day’s circumstances”.²⁶ The Coroner also determined that professional non-compliance with policies and procedures could not be viewed as evidence of unconscious bias or racism. This was despite strong evidence, including testimonial evidence from Aboriginal families

²¹ [Prevalence of Everyday Discrimination and Relation with Wellbeing among Aboriginal and Torres Strait Islander Adults in Australia \(mkstudy.com.au\)](https://www.mkstudy.com.au), p. 14.

²² [Prevalence of Everyday Discrimination and Relation with Wellbeing among Aboriginal and Torres Strait Islander Adults in Australia \(mkstudy.com.au\)](https://www.mkstudy.com.au), p. 16

²³ [Prevalence of Everyday Discrimination and Relation with Wellbeing among Aboriginal and Torres Strait Islander Adults in Australia \(mkstudy.com.au\)](https://www.mkstudy.com.au), p. 12.

²⁴ [Developing and validating measures of self-reported everyday and healthcare discrimination for Aboriginal and Torres Strait Islander adults | International Journal for Equity in Health | Full Text \(biomedcentral.com\)](https://www.biomedcentral.com)

²⁵ P4JH paper, p. 1.

²⁶ P4JH paper, p. 1.



and communities.²⁷ This is a clear example of our voices not being heard when it comes to a subject that the evidence (above) shows we are all too familiar with, racism and unconscious bias.

There is a couple of other deeper issues that contribute to this unwillingness to call out racism:

- ❖ There is no consistent definition to base such deliberations or policy decisions on, and
- ❖ There is no coordinated anti-racism strategy. Although we note that the Department of Families, Fairness and Housing is currently developing an anti-racism strategy, which was due for release mid-2022.

On the national level this failure is clear. As highlighted in the Lowitja Institute's discussion paper,

Yet where the Australian Health Practitioner Regulation Agency might be helped in this commitment by a statutory organisation charged with protecting and promoting human rights, it is instead waiting on that organisation to decide on what race and anti-racism looks like.²⁸

The paper notes that even the Australian Human Rights Commission's (AHRC) 'concept paper', which was released during the development of the AHRC's National Anti-Racism Framework, fails to define key concepts, such as race, racism and anti-racism.²⁹

When we talk about 'racism', there is complexity; it manifests in multiple ways and there are multiple terms that are applied, often with imprecision – i.e. individual, systemic, institutional, discrimination, through unconscious bias, etc. – and the nuance is important.³⁰ For example, the term 'systemic racism' is sometimes understood to denote a set of institutions and practices; to be synonymous with institutional racism.³¹ However, others use the term to denote deeper political structures and how these connect with social relations. This view sees systemic racism as structural or societal,³² which makes it important to also define and appropriately utilise the term 'institutional racism'. Once we have better defined these terms, we will be better able to articulate their operation and impact, and thereby create appropriate policies and strategies.

²⁷ P4JH paper, p. 1.

²⁸ P4JH paper, p. 2.

²⁹ P4JH paper, p. 2.

³⁰ P4JH paper Pp. 6-1

³¹ P4JH paper Pp. 6-1

³² P4JH paper Pp. 6-1



Advocating for a consistent national anti-racism strategy and definition is something that the Lowitja Institute and the Partnership for Justice in Health are particularly focused on. This is something that Victoria can support and provide leadership on within its jurisdiction, within its government institutions, in its policy mechanisms and relationships with key Victorian stakeholders, and in its interactions with the other jurisdictions and the federal government. With these things in place, it is our hope that Coronial Inquests will look much different and that the role of racism in the deaths of our people in custody will be acknowledged within such systems and by the wider Australian population.

We urge the Yoorrook Commissioners to highlight this gap in their report and recommend that the Victorian government ensures that their anti-racism strategy adequately defines key terms. A sound anti-racism strategy must be precise; and it must acknowledge the overlay between racism, colonisation, and the need for cultural safety. This would enable good policy-making that aims to eliminate racism from the health, justice and child protection systems in a holistic and consistent way. This should be done in partnership with Aboriginal and Torres Strait Islander Victorians.

Further, an understanding of racism is important to develop our collective understanding of 'anti-racism'. As expressed in the Lowitja discussion paper,

[T]he term anti-racism can be minimally defined as “those forms of thought and/or practice that seek to confront, eradicate or ameliorate racism” which “implies the ability to identify a phenomenon – racism – and do something about it”. Activist and other efforts to combat racism have often manifested a specific focus on addressing racial prejudice and discrimination. This has often reflected a liberal focus on human or civil rights, and operated through a belief that education and access to legal remedies will reduce attitudinal and institutional racism.³³

However, this is just a part of the whole. Another important component to understanding anti-racism is having an understanding of why cultural safety is important and how it is a necessary component of any anti-racism work.

As academic discussions in about race in health and social sciences progressed through the mid-20th century, there was a shift away from talking about race. Instead, discussions were focused on culture. However, what happened was that culture often ended up being used as a euphemism for race; racist myths about our

³³ P4JH paper p. 8

peoples were recoded as “cultural truths arising from group practices and choices”.³⁴ This is sometimes known as cultural racism.³⁵

This conflation of culture and race enabled the masking of the material impacts of race as a social construct; and, it has also enabled the production and reproduction of pervasive racialised logics about our peoples.³⁶ So even if we dispel the myth of race as a biological fact and view it as a social construct, the same perceived ‘inferiorities’ are being explained by non-Indigenous understandings of our peoples’ cultural factors and choices. This enables blame for health inequities to be placed at our feet, and the problematic deficit lens that is too often applied to our peoples to be maintained.

These misunderstandings of our peoples’ cultural lives are ‘racialised imaginings’ and in this way, they connect to racism. Anti-racist work needs to tackle this form of cultural racism as well. As expressed in the Lowitja Institute’s discussion paper,

Given the entanglement of race and culture, and in particular the use of culture to disguise the realities of race, in its operation within the health system, an ‘anti-racist’ or ‘race-critical’ agenda might be worth considering more explicitly, within cultural safety or cultural competence or independently from. More than a terminology issue, such a decision should be based upon the ideology which underpins these concepts. (p. 10)³⁷

The Role of Research

Further, once there is a consistent and adequately nuanced definition and understanding of racism, we will be able to improve how we research and measure it, provided these research projects are funded.

Discrimination has been identified by our peoples as a high research priority.³⁸ As noted in a 2021 article (Thurber, K.A, et al.) “to date, the majority of studies have been localised with small sample sizes (approximately 100–350 participants).”³⁹ These studies did not use validated measures for Aboriginal and Torres Strait Islander

³⁴ P4JH paper p. 8

³⁵ P4JH paper p. 8

³⁶ P4JH paper p. 8

³⁷ P4JH paper p. 10

³⁸ [Prevalence of Everyday Discrimination and Relation with Wellbeing among Aboriginal and Torres Strait Islander Adults in Australia \(mkstudy.com.au\)](https://doi.org/10.3390/ijerph18126577)

³⁹ Thurber, K.A.; Colonna, E.; Jones, R.; Gee, G.C.; Priest, N.; Cohen, R.; Williams, D.R.; Thandrayen, J.; Calma, T.; Lovett, R.; et al. Prevalence of Everyday Discrimination and Relation with Wellbeing among Aboriginal and Torres Strait Islander Adults in Australia. *Int. J. Environ. Res. Public Health* 2021, 18, 6577. <https://doi.org/10.3390/ijerph18126577>, p. 3.

populations, and often only relied on single item or brief measures.⁴⁰ They also only examined a limited number of outcomes.⁴¹ Given the scale of the impacts of racism, high quality measures are vital to good research. This is something that the *Mayi Kuwayu* study team are successfully working on.⁴²

While beyond the scope of this submission to go into the detail, it is important to also note that Indigenous Data Sovereignty will be vital in this context. We refer to the work of Professor Ray Lovett and Dr Kalinda Griffiths in this space.

The Lowitja Institute has also been leading advocacy for a stronger focus on racism within Indigenous health research. The institute has done so through investment in several national symposiums and commissioned research papers to further the field of inquiry. We urge the Yoorrook Commissioners to include government support for research into systemic and institutional racism, and anti-racism in their final recommendations.

Justice reinvestment

Aboriginal and Torres Strait Islander leaders as well as non-Indigenous organisations have been calling for justice reinvestment for a long time. For example, Change the Record advocates for justice reinvestment to redirect money from prisons to community. We will leave it to others to speak to the evidence base of this approach. However, the Lowitja Institute commissioned a piece of research in 2015.

This study (Simpson, P., et al, 2015) looked at public attitudes to justice reinvestment in the context of prisons. The study was focusing on what it had identified as a “important obstacle to a reform agenda in the criminal justice area”,⁴³ which is public opinion. Policymakers’ perception of public opinion plays a large role in policy making and orientation. The study noted that this fact is “often exploited by politicians to perpetuate punitive penal policies.”

Interestingly, when the researchers engaged a citizens jury to find out whether public opinion would favour alternative approaches to imprisonment (including justice

⁴⁰ Thurber, K.A.; Colonna, E.; Jones, R.; Gee, G.C.; Priest, N.; Cohen, R.; Williams, D.R.; Thandrayen, J.; Calma, T.; Lovett, R.; et al. Prevalence of Everyday Discrimination and Relation with Wellbeing among Aboriginal and Torres Strait Islander Adults in Australia. *Int. J. Environ. Res. Public Health* 2021, 18, 6577. <https://doi.org/10.3390/ijerph18126577>, p. 3.

⁴¹ Thurber, K.A.; Colonna, E.; Jones, R.; Gee, G.C.; Priest, N.; Cohen, R.; Williams, D.R.; Thandrayen, J.; Calma, T.; Lovett, R.; et al. Prevalence of Everyday Discrimination and Relation with Wellbeing among Aboriginal and Torres Strait Islander Adults in Australia. *Int. J. Environ. Res. Public Health* 2021, 18, 6577. <https://doi.org/10.3390/ijerph18126577>, p. 3.

⁴² [Developing and validating measures of self-reported everyday and healthcare discrimination for Aboriginal and Torres Strait Islander adults | International Journal for Equity in Health | Full Text \(biomedcentral.com\)](#)

⁴³ Assessing the public's views on alternatives to imprisonment using a citizen's jury approach, P. 1

reinvestment), they found that “jurors were open to the idea of alternatives to imprisonment, especially approaches that focus on lowering overall crime rates.”⁴⁴ Three core principles emerged from this study in determining how offenders should be dealt with:⁴⁵

1. Equity and fairness
2. Prevention, including a commitment to addressing the social and economic causes of offending, providing pathways for education among those who might be at risk of offending or re-offending, and developing an increased sense of community belonging.
3. Community involvement and representation in the development of justice policies and programs.

Governance that encourages cultural safety

In the Lowitja Institute's *Culture is Key: Towards cultural determinants-driven health policy*, the authors outline the factors required to successfully implement a cultural determinants approach to health policy:⁴⁶

- ❖ the development and application of shared definitions
- ❖ creation and operationalisation of policy mechanisms, and
- ❖ changes to policy approaches and processes.

The paper notes that implementation of this type of policy requires “change in policymakers, at both individual and organisational levels, including participating in a process that may require relinquishing control of policy to participants outside of the bureaucracy or broader government.”⁴⁷

There are commitments under the National Agreement on Closing the Gap to transforming government organisations under Priority Reform 3. The paper expresses what is required to meet government commitments under this agreement well:

In their work on governance as a social determinant, Sullivan and Oliver (2007) argue that the lens of analysis must be turned towards the culture of non-Indigenous organisations and point to the cultural limitations of the bureaucracy in navigating the complexity of whole-of-government delivery. They argue that the failure of development policy often focuses on the navigation of cultural interfaces, whereas Indigenous organisations already act within ‘culturally hybrid spaces’. More attention, therefore, needs to be given to the ‘impediments to whole-of-government cooperation’

⁴⁴ P. 2

⁴⁵ P. 2

⁴⁶ Culture is key, p. 28

⁴⁷ Culture is key, p. 28



including the limitations of government agencies to share resources and cede control (p.185).⁴⁸

The Lowitja Institute believes that the above governance approach would have useful application in the justice and child protection policy context, where our peoples' health outcomes are necessarily impacted and influenced. Further, Victoria has made this commitment under the National Agreement on Closing the gap. It has made a commitment to our peoples' self-determination and empowerment under its Self-Determination Reform Framework. It has made that promised to the many Victorian Aboriginal governance bodies.

As expressed in the Lowitja Institute's recent discussion paper, *Indigenous Nation Building and the Political Determinants of Health and Wellbeing* (Rigney, D., et al, 2022):

The social, cultural, economic and political disempowerment of Indigenous peoples persists in settler-colonial policy regimes, programs and governmental practices. These systems perpetuate trauma because they prevent Indigenous peoples from living according to their own cultural worldviews.⁴⁹

This is relevant for two reasons: Our peoples understand how to care for our individual and community wellbeing and need to be entrusted to lead policy responses. Additionally, our self-determination and empowerment *in and of itself* influences our health outcomes.⁵⁰

⁴⁸ Culture is key, 29

⁴⁹ Nation Building P. 9

⁵⁰ Nation Building P. 9