Victorian Aboriginal Legal Service

1800 064 865

273 High St, Preston VIC 3072
vals.org.au

26 October 2026

Productivity Commission
By email: ctg.review.2026@pc.gov.au

Dear Productivity Commission,

Re: Review of the National Agreement on Closing the Gap 2026

VALS welcomes the opportunity to provide feedback to the Productivity Commission on the Closing the Gap Review 2026. The feedback in this letter is based on my extensive experience advocating for Aboriginal communities in roles which overlap or intersect with commitments and frameworks of the National Agreement, including as:

- CEO of VALS, an Aboriginal Community-Controlled Organisation (ACCO) established to address the over-representation of Aboriginal and Torres Strait Islander people in the criminal legal system
- Independent member of the Justice Policy Partnership, established under the National Agreement
- Member of the Aboriginal Justice Caucus of Victoria's Aboriginal Justice Forum, established under the Aboriginal Justice Agreement to improve Aboriginal justice outcomes and reduce over-representation in the criminal legal system
- Chair of the National Aboriginal and Torres Strait Islander Legal Services (NATSILS)
- Member and former Co-Chair of Ngaweeyan Maar-oo, the shared decision-making partner with the Victorian Government on Closing the Gap
- Victorian representative on Joint Council through the Coalition of Peaks
- Former elected member of the First Peoples' Assembly of Victoria, Treaty Negotiator and Treaty Co-Convenor.

Lack of progress under Closing the Gap

The National Agreement is unequivocally failing to achieve its objectives and improve outcomes for Aboriginal people. Of the 19 targets under the National Agreement, nine are not on track and four of these are worsening including children in out-of-home care and suicide rates. Adult and youth imprisonment rates are worsening across all jurisdictions as governments across Australia are all jumping to regressive criminal laws and punitive approaches to managing young people with complex needs. In Victoria:

- In 2019, Aboriginal people were 11.7 times more likely to be imprisoned than people who were not Aboriginal. In 2025, this figure was 15.7[1]
- In 2015-16, Aboriginal women were 13.2 times more likely to be imprisoned than their non-Aboriginal peers. In 2024-25, this figure was 17.4[2]
- Aboriginal young people are over 11 times more likely to be under youth justice supervision than non-Aboriginal young people[3]
- Between July 2025 to July 2026, there has been an increase of 22% in the Aboriginal male prison population and 81% increase in the Aboriginal female prison population[4]
- Aboriginal children are 15.6 times more likely to be in out-of-home care, the highest rate of child removals in the country [5]
- The corrections system is stretched to breaking point. Prisons are full and this, coupled with the crisis of staffing shortages, has meant rolling lockdowns in youth prisons and especially women's prisons.

It is not possible to overstate the devastating human impact of these backslides. Contact with the legal and corrections systems has well-documented harmful effects which ripple through people's lives for decades and generations into the future. Aboriginal people in prison and in prolonged police custody are at grave risk of human rights abuses and death. Our connections to culture, community and Country are harmed.

Lack of accountability

A key failure of the National Agreement is the lack of accountability for governments who act in contradiction of commitments. Without facing meaningful consequences, governments are empowered to override principles of shared decision-making and to continually fail to implement the evidence-based policy that would improve the lives of Aboriginal people.

Despite the principles and goals that governments profess to be committed to under the National Agreement, they can enact legislation and policy that directly harms Aboriginal people. Just in the past three years, the Victorian Government has:

- Introduced harsh and punitive bail laws, proudly declared by the Premier as the 'toughest in the country'[6], which are the single largest factor contributing to the growth in prison and remand populations

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[1] Corrections Victoria, Monthly time series prison and community corrections data
[2] Corrections Victoria, Monthly time series prison and community corrections data
[3] Yoorrook Justice Commission, *Yoorrook for Justice* (2023)
[4] Corrections Victoria, Monthly time series prison and community corrections data
[5] SNAICC, *Family Matters Report* (2025)
[6] Premier of Victoria, Toughest Bail Laws in Australia Pass Parliament (2025), media release, https://www.premier.vic.gov.au/toughest-bail-laws-australia-pass-parliament

- Failed to raise the minimum age of criminal responsibility to 14 when this became politically inconvenient, despite initially making this commitment and acknowledging the significant evidence base[7]
- Introduced 'Adult time for violent crime' sentencing amendments which eroded fundamental tenets of the youth justice system through removal of sentencing principles, introducing life sentences for certain offences and elevation of some matters out of the Children's Court jurisdiction and into a higher court
- Made cuts to diversion programs and cuts to community supports that prevent contact with the system, while increasing funding to prisons
- Expanded police and Protective Services Officer (PSO) powers, despite evidence of racial profiling by police.

Issues affecting Aboriginal people, and especially law and order issues, have always been susceptible to politicisation. The current Closing the Gap arrangements have not protected these issues from being used as political issues. Governments have shown us time and time again that they will disregard commitments when it is politically convenient and will win them a few votes.

Parties to the National Agreement are well aware of this flaw. The lack of accountability was a key finding of the Jumbunna Institute's Independent Review and the Productivity Commission's Review, which both recommended the immediate implementation of the independent mechanism. It is deeply disappointing that six years into the life of the National Agreement, Victoria appears to be the only jurisdiction making significant progress on the implementation of the independent mechanism. The independent mechanism in Victoria is being progressed through Treaty processes, where government was brought to the table through frameworks other than the National Agreement and after decades of advocacy by Aboriginal communities. However, the failure to situate the independent mechanism within Victoria's Closing the Gap architecture means that it is susceptible to be removed if Treaty is repealed, which tragically could be a possibility depending on the Victorian State Election result in November 2026.

Resource imbalance and lack of funding

Governments have failed to meet the ambitions of the National Agreement to strengthen and adequately fund the ACCO sector. The need for long-term, sustainable funding in the ACCO sector was identified in both the Productivity Commission's Review and the Jumbunna Institute's Review as absolutely critical, with the latter finding that current funding approaches are fragmented, short-term and inflexible. This aligns with VALS' experience and is a significant barrier to delivering high quality services in the face of ever-increasing demand. At a time of increased criminalisation and incarceration of Aboriginal people, ACCOs are expected to service increased needs with less and less

[7] Premier of Victoria, Keeping Young People Out of the Criminal Justice System (2023), media release, https://www.premier.vic.gov.au/keeping-young-people-out-criminal-justice-system

resourcing. NATSILS directly experienced this during the 2024-2025 negotiations for the new National Access to Justice Partnership (NAJP) funding agreement, following Dr Warren's Mundy's independent review of the National Legal Assistance Partnership. Despite Dr Mundy's review finding that Aboriginal and Torres Strait Islander peoples have the highest legal needs of all priority groups and that current funding levels for ATSILS were drastically insufficient,[8] this did not result in an increase of funding for ATSILS beyond inflation.

Governments failing to invest in Closing the Gap implementation, including by not granting long-term ACCO funding, means we will continue down the same path of Aboriginal over-representation in the legal system. Our people will continue to bear the deep, generational costs of incarceration and criminalisation while government continues to pour money into the corrections and policing systems.

Structural issues and no transfer of power

Accountability and funding issues outlined above persist because ultimately governments hold all the decision-making power. There has been no transfer of power to the Aboriginal community or the ACCO sector under the National Agreement, as the framework is not capable of challenging and transforming decision-making systems.

The National Agreement and its government parties fail to uphold the right of Aboriginal people to have participation reflected in practice, enshrined in Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples, much less engage in shared decision-making and meaningful and effective consultation with Aboriginal people. Australia continues to receive criticism from UN human rights bodies for its failure to engage with Aboriginal peoples and ACCOs despite the principal objectives of the National Agreement including shared decision-making and improved engagement with Aboriginal communities when undertaking changes to policies and programs. The continued practices of the Victorian Government in relation to the participatory rights in the context of the self-determination of Aboriginal peoples in Victoria is contrary not only to their status as 'peoples', but to the objectives of the National Agreement. This is particularly stark in relation to over-representation in custody, where governments pass laws with no consultation or regard for the voices of Aboriginal communities.

Aboriginal people and communities have the solutions. We know what works. But under the National Agreement, the right to self-determination, requiring true partnership and transfer of power, has not been enacted.

Limited effectiveness of the Justice Policy Partnerships

The failures of the National Agreement to change government decision-making and achieve any real progress are replicated in national, state and territory Justice Policy

[8] Dr Warren Mundy, *Independent Review of the National Legal Assistance Partnership* (2024)

Partnerships (JPP). As outlined above, despite its participation in the JPP the Victorian Government has full license to act in direct contradiction of commitments in relation to Targets 10 and 11. Regressive legislative amendments are aplenty in other jurisdictions, competing in a race to the bottom to be 'tough on crime'. The advice of the JPPs, supported by its independent experts, is too often ignored by governments who are instead influenced by outdated justice narratives and media-driven law-and-order politics. The federal government delegates responsibility for justice to states and territories, despite having the constitutional power to set minimum legislated standards for the treatment of children and young people in state and territory criminal legal systems. This is derived from the Commonwealth's power to make laws about "external affairs", which includes giving effect to treaties that Australia has signed with other countries. The federal government refuses to exercise this lever.

The only semblance of accountability embedded into the national JPP, of which I am an independent member, is a requirement to report to Joint Council. This is not true accountability. Reporting lags behind real-time harms, and government parties – as they have ownership of the data – may obscure true outcomes. Even if reporting is timely and accurate, the evidence of harms as called out by Aboriginal communities does not compel governments to act.

The withdrawal of non-government members from the Northern Territory JPP[9] due to a breakdown in shared decision-making is a signal that cannot be ignored. I know this decision by the staunch, dedicated non-government members would not have been made lightly. These frameworks are broken. Parties continue to tweak around the edges and fail to address deep structural problems and the lack of influence on government decision-making.

The way forward

Whole-of-government and bipartisan frameworks, like the Closing the Gap Agreement, have been in place for decades due to the sustained advocacy of Aboriginal communities and organisations fighting for justice. Despite this, the Federal and Victorian Governments continually fail to implement evidence-based policy that would improve our children's lives; fail to follow their own youth justice standards in prison; continue to contradict publicly stated commitments they have made; fail to meet targets they have agreed to; fail to implement hundreds of recommendations from inquiries they have initiated; and fail to adequately fund Aboriginal led early intervention and diversion services.

Under the National Agreement, there has been a breakdown of trust and shared decision-making. Aboriginal people are let down time and time again when government does not

[9] See Justice experts suspend partnership – calls for genuine collaboration – Joint Media Release, NAAJA, 3 September 2026

truly come to the table, no matter how staunch or unwavering their advocacy is. The broader ineffectiveness of the National Agreement in challenging and transforming decision-making systems is one of the reasons why I resigned as Ngaweeyan Maar-oo Co-Chair. Despite the hard work of Aboriginal advocates, the ACCO sector, governance forums, the Aboriginal Justice Caucus and the Yoorrook Justice Commission, who have provided government with a clear roadmap to change, the National Agreement does present any evolution from the existing system.

The path ahead is clear. With no accountability, no investment and no commitment to true transformation and transfer of power, the National Agreement will not achieve its goals. The recommendations of the Jumbunna Institute's Review must be accepted and implemented without delay – the response of Joint Council to these recommendations has been deeply disappointing. The lack of implementation of recommendations is a further symptom of structural issues.

There must be true commitment to shared decision making and consequences for government parties who do not follow through – including federal intervention where states and territories act in ways inconsistent with human rights obligations. Enforceable National Minimum Standards are a clear, tangible way for the federal government to progress justice outcomes under the National Agreement.

The federal government should use existing funding arrangements under National Agreements to ensure state and territory compliance with Closing the Gap commitments and explore leveraging financial penalties as an accountability mechanism for Closing the Gap. These are levers that the federal government is frustratingly choosing not to use. Without change, the National Agreement is a missed opportunity. A new approach is overdue, one with self-determination and accountability at its centre.

Summary of recommendations

Recommendation 1. Joint Council accept and implement in full all recommendations of the Jumbunna Institute's Review.

Recommendation 2. The federal government incorporate National Minimum Standards for youth justice into Australian law, consistent with international best practice including the United Nations Convention on the Rights of the Child.

Recommendation 3. The federal government use funding arrangements under National Agreements to ensure state and territory compliance with Closing the Gap.

Yours sincerely,

Nerita Waight
CEO, VALS