NOT BEFORE TIME

Lived experience-led justice and repair

Advice to the Minister for Mental Health on Acknowledging Harm in the Mental Health System

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Reference Group Facilitators: Kerry Hawkins & Tim Heffernan

ACKNOWLEDGEMENT OF COUNTRY

The State Acknowledgement of Harm project was conducted by the project facilitator and the Reference Group members on the sovereign lands of the Bunurong, Wurundjeri and Wathaurong People of the Kulin Nation, the Whadjuk people of the Noongar Nation, and the Wodi Wodi People of the Dharawal Nation. First Peoples have been custodians of these lands, seas and waterways since time immemorial. At the time of First Contact with the British in 1788, there were approximately 260 language groups and 500 dialects.[1] First Peoples had complex and sophisticated kinship systems, with people belonging to other peoples and a place; connection to country.

The arrival of the first fleet brought pain, suffering and death. When Captain Arthur Phillip planted the Union Jack at Sydney Cove on 26 January 1788, he proclaimed what he now called New South Wales, a British colony. There was no negotiation with First Peoples and First Peoples did not cede sovereignty. They never have.[2] First Contact began a process of colonisation, including war, genocide and systemic racism, that continues in new forms today. This has had profound impacts on kinship systems, language and connection to country for First Peoples. The Uluru Statement from the Heart tells Australians:

'This is the torment of our powerlessness.'[3]

The mental health system has been both a product and producer of colonisation, with the use of western biomedical diagnostic systems that erased culturally-grounded approaches to mental health and wellbeing. In addition, the mental health system made use of racist assessment techniques which provided a misleading and damaging accounts about First Peoples. It also used First Peoples in research that furthered careers rather than the needs of their communities.[4] Today, First Peoples in Victoria are subject to violent acts of seclusion and restraint at greater rates than non-Aboriginal people.[5]

Despite this ongoing process of colonisation, First Peoples' 60 000 years of wisdom, culture and survival continues. So too continues the obligation of non-Aboriginal Australia to take a daily personal responsibility to support reconciliation through truth and justice.[6]

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FOREWORD

Victoria's mental health system is at a crossroad. Following the Royal Commission into Victoria's Mental Health System, the Victorian Government, Lived Experience Peaks the Victorian Mental Illness Awareness Council (VMIAC) for consumers and survivors and Tandem for family, carers and supporters, have embarked on implementing the unprecedented and overdue reform agenda. We can see, as a sector a future that may be in sight. Whether we can get there depends on how we grapple with our past and present.

Both VMIAC and Tandem have been represented in the Reference Group informing this report from its establishment and have participated as members of the Steering Group providing project oversight and advice.

This report signals the depth of pain that remains unresolved in our system, existentially affecting people with a lived experience as consumers and their family, carers and supporters.

Reflecting on these systemic experiences, as well as the experiences of individual Reference Group members has, at times, been a deeply painful process. It has unearthed difficult memories and experiences for the purpose of better public policies, services, and lives for Victorians. That commitment in the face of pain reinforces the need to take this report seriously.

We, therefore, support the recommendations in this report for the forthcoming Mental Health and Wellbeing Commission to establish a Restorative Justice Process and the Victorian Government and to subsequently publicly apologise to Victorians with lived experience. The evidence behind these recommendations is strong, as is the moral case for them.

These recommendations are both a challenge and an opportunity. They challenge the Victorian Government, mental health services and practitioners to be curious about and confront the harms that arise from the system. Not just the underfunding of the system, but the way the system understands those of us with lived experience. However, this is also an opportunity. On the other side of these processes is a better relationship between people with lived experience, the Victorian Government and mental health services.

Ultimately, that improved relationship means improved services - one significant way this will be achieved is through the continued and increased participation by people with lived experience in the reform. This benefits all Victorians.

Join us and our broader lived experience communities to examine our past and present, so that we can create a better future.

Craig Wallace, CEO
VMIAC

Marie Piu, CEO
Tandem

LANGUAGE

Language regarding distress is deeply personal, important, and therefore, contested. Whether someone identifies as a consumer, survivor [of the mental health system], service user, patient, trauma survivor, or family member carer or supporter is a personal decision. Individuals will often identify with multiple identities or understand their distress relationally.

This advice acknowledges language as a personal and contested topic. It moves forward noting that we are working with the following terms.

Consumers: a person who identifies as having living or lived experience of mental health issues and who has used mental health services (see further).[7]

Survivor: a person who identifies as a survivor of the mental health system and/or of mental health crisis (see further).[8]

Family: 'Family includes the consumer and those with a significant personal relationship with the consumer. This includes biological relatives and non-biological relatives, intimate partners, ex-partners, people in co-habitation, friends, those with kinship responsibilities, and others who play a significant role in the consumer's life. Some family members may identify themselves as a 'carer' in a consumer's life, others will identify more so with the characteristic of their relationship (for example, parent, child, partner, sibling).'[9]

Carer: 'A person is in a care relationship if he or she provides care to another person, or receives care from another person, because a person in that relationship has a disability; or is older; or has a mental illness; or has an ongoing medical condition (Carers Recognition Act 2012). Care relationships include a range of pre-existing relationships and people in them may not identify as a 'carer'. A care relationship is not just about what one person does for another person, and can be reciprocal.'[10] Importantly, this support is provided without payment.

CONTENT NOTE

This report contains discussions of significant traumas and gross human rights violations. You may wish to read this with peers or ensure that you have supports that are helpful to you before reading.

EXECUTIVE SUMMARY

Victoria's mental health system has been built on imperfect foundations. Like other mental health systems, it was designed on a bedrock of fear and stigma. Crucially, it was designed without the input and expertise of people with lived experience. These early and continued decisions established a schism between the people who use mental health services, and those who work in, operate and steward them.

This schism underpins the most harmful components of the mental health system. While some Victorians value their experiences of the system, many do not, and while many mental health workers seek to challenge the system to change, not enough have done so to enact that change.

Central to these harms are violations of human rights. Through seclusion, restraint, compulsory treatment, and because of the widespread breaches of mental health and human rights law, the system has enacted gross human rights violations against consumers and survivors. In addition to these violations, families, carers and supporters continue to be traumatised through their engagements with the system and the harms it brings to people they care for. The absence of the system or the cost of engaging with it has meant that consumers and survivors, and families, carers and supporters have often had their rights to employment, secure housing and education limited or denied.

Elements of these truths formed part of the Royal Commission into Victoria's Mental Health System's final report. But truth-telling and acknowledging of harms were not a focus of this inquiry. Differing from other royal commissions, Victoria's was forward-looking and policy-focused. This was valuable, but the trauma that envelopes the system and the people in it is unaddressed. It means we as Victorians, have a vision of a better system, but little trust and shared commitment to get there. Impeding that future is the denial of these harms and the pain of those who have used the system.

In early 2022 VMIAC met with the then Minister for Mental Health, the Honourable James Merlino MP, to raise concerns from consumers that despite the value of the Royal Commission, harms had been largely unaddressed. Arising from this meeting, the Department of Health commissioned what would be termed the *State acknowledgement of harm project*.

The project team was tasked with advising the Minister for Mental Health on the best options for acknowledging the harm caused by the mental health system to consumers and survivors, and families, carers and supporters. The project would need to draw on best-practice approaches internationally and within Australia, and would need to hear from groups often marginalised in such policy processes, including people subject to compulsory treatment, Aboriginal Victorians, older Victorians and Victorians from culturally and linguistically diverse backgrounds.

A Reference Group of 10 people (7 consumers and survivors members, 3 family members, carers and supporters) was established to decide on the recommendations to the Minister and advise on all other parts of the project, including this advice.

After reviewing international best-practice approaches to acknowledging harm, this advice details six different options the Minister should consider:

- Political (or state-based) apologies
- Truth and reconciliation processes
- Individual material reparations
- Collective material reparations
- Symbolic reparations, and
- Guarantees of non-repetition.

The Reference Group assessed best practice against Victoria's political and reform landscape, in making two recommendations. These recommendations are informed by principles of restorative justice, transitional justice, mad studies, human rights, critical pedagogy, relationality, critical approaches to violence and First Peoples' calls for justice on this continent.[11]

These two recommendations refer to two mechanisms that are intentionally sequenced.

First, the Minister for Mental Health should request and financially enable the Mental Health and Wellbeing Commission (**Commission**) to undertake a truth and reconciliation process, described in this advice as a Restorative Justice Process, to hear the harms in the system. This Restorative Justice Process should be led by the lived experience Commissioners and be overseen by an advisory group of established and representative lived experience experts. While also drawing on existing evidence, the Restorative Justice Process should reach out to Victorian communities to enable individual and shared truth-telling processes. Mental health practitioners and government officials should be invited to – under careful consideration and support to ensure that it is an emotionally safe process for all – share and hear these truths. While acknowledging shared identities, the Restorative Justice Process should deal with consumer and survivor harms and family, carer and supporter harms separately. In addition to the Victorian Government formally hearing these harms and supporting reconciliation in the sector, the Restorative Justice Process should produce a report on the harms in the system, to be delivered to the Victorian Parliament.

Second, and following this, the Victorian Government should formally apologise to the communities identified in the Restorative Justice Process report. The apology should only be delivered following the Restorative Justice Process and should be done in close consultation with those who are identified as being harmed in the report delivered to Parliament. The Victorian Government should enable participation from mental health services and professional bodies, while ensuring that the process is centred on the rights and experiences of consumers and survivors, and families, carers and supporters.

The research for this project has revealed that this is the first time a government considered formally acknowledging harms caused by their publicly funded mental health system. Therefore, the Minister and Victorian Government should be congratulated for taking this important step.

This advice and its recommendations will be difficult reading for many. They are the product of profoundly difficult experiences, and in some cases, lives lost. They represent both a challenge to the current system, and an opportunity to move towards a new one. Consumers and survivors and families, carers and supporters have been gracious to offer this opportunity. It is the Victorian Government, the mental health sector and the broader community's responsibility to grasp it.

BACKGROUND TO THIS REPORT

In May 2022, following consultation between the Victorian Mental Illness Awareness Council and the Minister for Mental Health, the Department of Health sought external advice for the Minister for Mental Health. The advice to the Minister would focus on how the Victorian Government could formally acknowledge harm by the mental health system. This became the *State acknowledgement of harm project*, commissioned by the Mental Health and Wellbeing Division within the Department of Health.[12]

The context for this advice is a failing mental health system and an evolving reform agenda. It is important to briefly revisit this context.

Taking one step back, to take two steps forward

In February 2021, the Royal Commission into Victoria's Mental Health System (**Royal Commission**) handed down its final report, with 65 recommendations following the 9 recommendations from the interim report.[13] To many, the Royal Commission reflected a once in a life-time opportunity to change the system. This is in large part, what the Royal Commission aimed to do. However, in focusing on the system and policy, other stones were left un-turned and harms unacknowledged.

Unlike other Royal Commissions, Victoria's inquiry was '*policy* and *future focused*. Acknowledging and hearing harms were never central to its work.

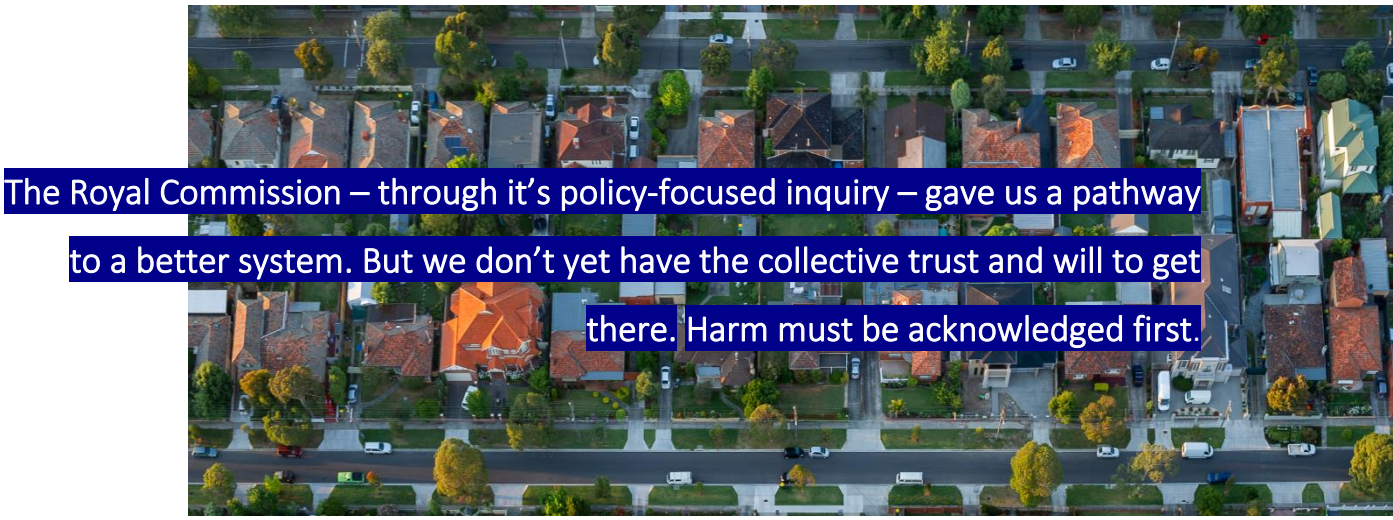
Credit: AAP & Luis Ascui

Inquiries can take different forms,[14] and this Royal Commission was unique from others in recent Australian history. Royal Commissions such as the Royal Commission into Institutional Responses to Child Sexual Abuse

focused on investigating individual harms and providing restorative justice and truth-telling mechanisms for victim-survivors.[15] Whether a Royal Commission is investigative or policy-focused is determined, in large part, by the terms of reference that give rise to it. Before establishing the Royal Commission, the Victorian Government consulted with the community about what the Royal Commission should focus on. Submissions to the terms of reference process, particularly from legal and consumer groups,[16] focused on harms and human rights abuses in the system, with explicit calls for the inquiry to investigate instances of grave harm.[17] However, consultations on,[18] and the ultimate publication of, terms of reference had a future and policy-focused agenda.[19]

This approach enabled the Royal Commission to begin from a position that the 'system is broken'.[20] Doing so allowed the Commissioners to avoid previous reforms to 'fill in the potholes', but instead, craft a 'new road'.[21] However, some queried whether a broken system was the right frame to understand mental health care's current state.[22] Equally, consumers were concerned that, unlike contemporary Royal Commissions, there was no representation of consumers amongst the Commissioners.[23] Many consumers and families, carers and supporters wanted an opportunity to speak to their harms. This, for them, would be one of the central points from which the Royal Commission and future reform should start: the truth.

'To know where we are going, we need to know where we have come from.' This is a statement common amongst many marginalised groups and social movements. It highlights that creating a better future requires understanding the past and present. The Royal Commission – through its policy-focused inquiry – gave us a pathway to a better system. But we don't yet have the collective trust and will to get there. The Victorian Government and mental health system must acknowledge harm first.



The advice in this report, aims to support the reform of the mental health sector following the Royal Commission. It is the view of the authors that substantial reform of the mental health system cannot occur *without* formal acknowledgements of harm. That harm should build community awareness of the issues raised by people with lived experience, reinforce lived experience leadership in a new system, and repair a broken relationship between the people who use the system and those who administer and steward it. Done well, a formal acknowledgement will create the underlying social conditions that will enable real change to the system,

and ultimately, to Victorians' lives. This advice emerges from advocacy by people with lived experience and leadership from the Victorian Government on mental health reform.

Preparing this advice

This advice was part of a project contracted by the Department of Health to Simon Katterl (he/him). Simon established a Reference Group of 10 members to decide on what recommendations to make to the Minister. Reference Group members:

- Caroline Lambert (she/her)
- Chris MacBean (he/him)
- Flick Grey (she/her)
- Indigo Daya (she/her)
- Lorna Downes (she/her)
- Morgan Cataldo (she/her)
- Katrina Clarke (she/her)
- Robert Stephen-Dettman (he/him)
- Sharon Williams (she/her)
- Simon Katterl (he/him)

Seven of the members identified as speaking from a consumer or survivor perspective, while three of the members identified as speaking from a family, supporter or carer perspective. Members were selected by VMIAC (consumer peak) and Tandem (carer peak) for having experience working from these perspectives in the mental health system.[24] The project was facilitated by Simon who was also one of the consumer members of the Reference Group. As noted, the Reference Group decided on recommendations made within this advice and informed the project administration as well as the advice's broader content.

The project was informed by interviews and consultations with 34 experts across a range of disciplines and from various backgrounds. This included experts:

- transitional justice
- reparations
- First Nations groups, mental health workers and lawyers
- the Yoo-rrook Justice Commission
- advocates from the Uluru Statement from the Heart
- LGBTIQ+ advocates
- sexual health lived experience experts
- previous and current Commissioners in statutory inquiries
- transcultural mental health workers

- alcohol and other drug lived experience experts
- human rights experts
- lived experience peak bodies
- young people with lived experience
- political and policy analysts, and
- other academics.

Our research and interviews avoided 'echo chambers' or groupthink: over a third of the interviews and consultations focused on clinical directors, psychiatrists, mental health nurses and other clinicians currently or previously working within the public mental health system. These interviews and consultations shaped briefings that Simon provided to the Reference Group each month, ultimately informing their decisions on recommendations. We thank each of these members at the end of this document.

Two national lived experience leaders – Kerry Hawkins (she/her, carer) and Tim Heffernan (he/him, consumer) – facilitated each of the Reference Group meetings to provide separation between the project facilitator and the group and to provide an additional means of communication (beyond project facilitator) for consumers and survivors and family member, carer and supporter members.

Preparing this advice was deeply painful and caused significant distress to many members. Meeting as a Reference Group monthly, many disclosed or were reminded of instances of family violence, child sexual abuse, institutional abuse from the mental health system, neglect, or not being believed when disclosing any of these experiences. There are also significant differences within and between consumer and survivor groups and family, carer and supporter groups. For example, families can be a site of support, of hope, of compassion, of unconditional support. Alternatively, they can also be a site of hurt, of abuse, and of neglect. Families can be a complex mix of both at the same time. Equally, within these groups and between these groups, people can have different priorities at different times. While it is important to acknowledge that people may sit in both of these groups, this advice consciously deals with recommendations about these groups separately. This separation is done to honour where they often have different experiences, concerns and ambitions. The group held space for multiple perspectives, while acknowledging the duty to privilege consumer and survivor experiences of direct harm from the mental health system.

Acknowledging difficult conversations to move forward

This advice may generate strong responses from those who work in the mental health system. Such responses are understandable, in part, because of the exhaustion that the mental health workforce currently experiences. Most people enter the mental health workforce with genuine intentions to help and are thwarted from this human potential by inhumane systems. Acknowledging these systemic factors should not preclude difficult truths for workforce members, but it is important to acknowledge the broader responsibility of government and the community. The government sets policies that support human rights breaches, while the community may

support these policies based on stigmatising social norms. However, these policies and norms are also a product of thought leadership from the system and from clinical disciplines such as psychiatry.[25] Therefore, the advice invites workforce members, professional bodies, the Victorian Government and the broader community to read and consider the proposals with curiosity.

Some may believe this advice should recommend that the mental health workforce is owed an acknowledgement of harm. This recommendation is not the scope of this project and therefore focuses on harms to consumers and survivors and families, carers and supporters. While it is important to acknowledge that moral injury, compassion fatigue, burnout and occupational violence impact the mental health workforce, it is also important to pause to reflect on this comparison. To enable this reflection, readers are invited to 'zoom out' to put this advice, the harms it points to and the recommendations it makes, in context.

By legislative design, mental health consumers and survivors can be detained and have their human rights breached. On average, those within Victoria's mental health system may lose 30 years of life due to the medications they are forced to take.[26] Some also die waiting for help. While detained, they may be sexually assaulted.[27] These experiences sit within living memory of the widespread use of lobotomies,[28] insulin comas[29] and other practices that are now regarded as inhumane. Laws are breached with such regularity that rights are rendered 'illusory',[30] with little action taken to remedy those breaches.[31] Families, carers and supporters have lost people they cared for or watched them further harmed in criminal justice systems. Some have spent a lifetime on the precipice of disaster while trying to keep someone they love alive and safe. Collectively, these harms represent gross human rights violations.

These harms are more profound and wider and should be dealt with first.

Hopefully, this advice provides a pathway towards meaningful engagement with harm in the system. In so doing, it hopes to chart a way towards a better mental health system. For mental health workforce members, a meaningful acknowledgement is a step towards better and safer relationships as well as mutual understanding and respect. A meaningful process of acknowledgement also renews the opportunity to provide the inclusive and compassionate mental health care that many workers hope to give. For the Victorian Government, it provides the social mobilisation needed to move the mental health system towards a better future articulated by the Royal Commission.

This advice begins by detailing how the Reference Group has conceptualised the 'harm' in the mental health system. Following that, it provides a review of key mechanisms that have been used to acknowledge harm in Australia and globally. It concludes by making recommendations for how the Victorian Government should act to acknowledge the harms caused by the mental health system.

DEFINING HARMS

This advice signals the thematic types of harms that have been raised by consumers and survivors, and families, carers and supporters. These themes are derived from Reference Group views and evidence already publicly available. Signalling these themes is important to expand the notions of harm beyond current narratives of broken systems and a lack of access.[32] The Reference Group highlighted that there are many aspects of the routine operation of the system that are harmful, not just the elements commonly viewed as broken.

Defining harms helps to shift the conversation and illustrate why formal acknowledgements are needed

Many of the harms identified, particularly those that relate to consumers and survivors, represent gross human rights violations under international and domestic human rights law. These violations are seen not just in the depth of harm they cause, but the routine way in which they are performed, accepted and justified. The justifications of such violations speak to a broader inequality that consumers and survivors face in trying to enjoy their human rights equally with other Victorians.

In one sense, these can be summarised in terms of practices used within the system. These are detailed in the following page. Following that, this advice details broader themes that speak to harms as yet unacknowledged within the system.

HARMFUL PRACTICES

Seclusion Keeping someone locked in a room alone. In other settings this is called solitary confinement.[33]	**Restraint** Physically (with another person's strength), mechanically (by strapping someone to a bed), chemically (through the use of medication) and psychologically (through coercion) limiting someone's bodily and mental integrity.	**Compulsory and coercive treatment** The use, or threat of, force to administer mental health treatment. Medications are among the reason why metro Victorian mental health consumers die 30 years younger than the general population.[34]
Police killings and violence The violence and deaths impacting consumers in their interactions with police.[35]	**Use of Comas** The use of induced comas as a treatment and behaviour management technique. This is still used today in Victoria.[36]	**Neglect** The impact of neglect on consumers as well as family members, carers and supporters. The impact of neglect when it may have contributed to a death.[37]
Institutionalisation Institutionalisation of individuals who have been treated – often involuntarily – over a long period. This can include in Secure Extended Care Units for over a decade.	**Racism** Racism experienced by culturally and linguistically diverse Australians as well as First Peoples in their interactions with mental health services.[38]	**Locked Wards** Locking mental health wards so that people cannot enter and leave freely.[39] Closed environments increase the risk of abuse and ill-treatment.[40]
Lobotomies Severing of parts of the brain from the rest of the brain in order to pacify someone.[41] These are no longer practiced.		**Iced Baths** The use of ice baths as a common form of involuntary 'shock therapy'. These are no longer practiced.

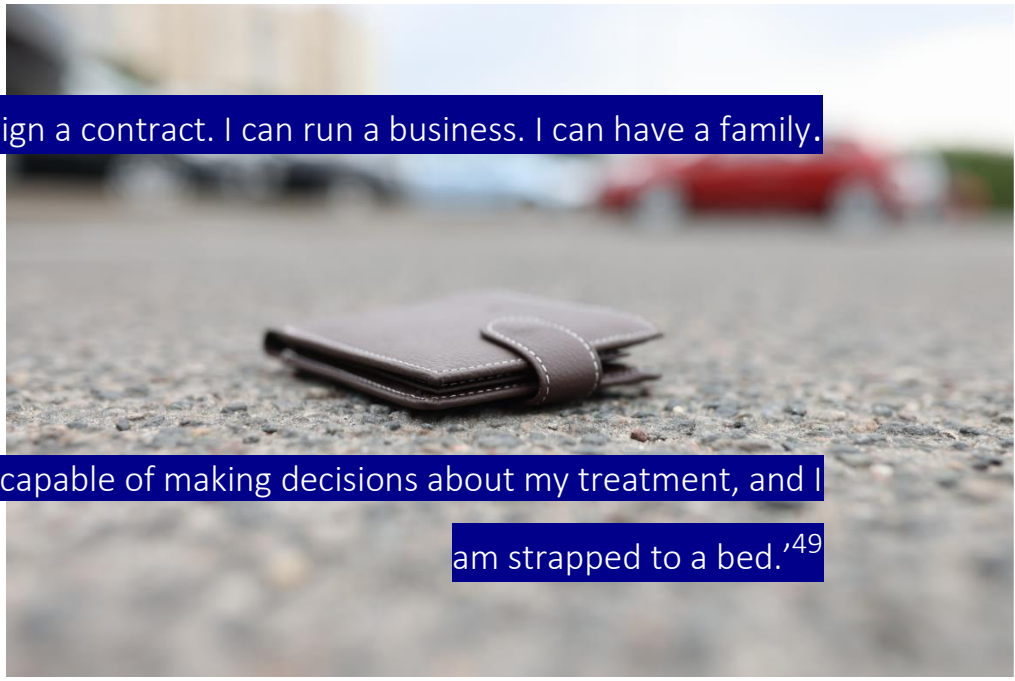
Colonisation, racism and the mental health system

What is now termed Victoria is stolen land and was taken by force through colonisation and genocide. Having been custodians of this land for tens of thousands of years, First Peoples continue to survive and, in some circumstances, thrive, despite dispossession, dislocation, political exclusion, stolen wages and various legal and non-legal injustices. While Aboriginal leaders and activists have long highlighted these injustices, they are only now being formally heard by governments. The Victorian Government is the first Australian jurisdiction to establish formal truth-telling processes. Themes and stories of these harms can be found in the Interim Report by the Yoo-rrook Justice Commission.[42] More themes and stories will come.

These harms and injustices are extended to the mental health system, with mental health professions being active participants in colonisation.[43] First Peoples experience the system and the harms that follow within the context of an ongoing colonisation process.[44] These harms are cumulative and compounding. They are also inconsistent with the duties of the Victorian Government and public mental health service to properly consider and comply with Aboriginal Cultural Rights under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**).[45]

Loss of personhood and identity on entry to the system

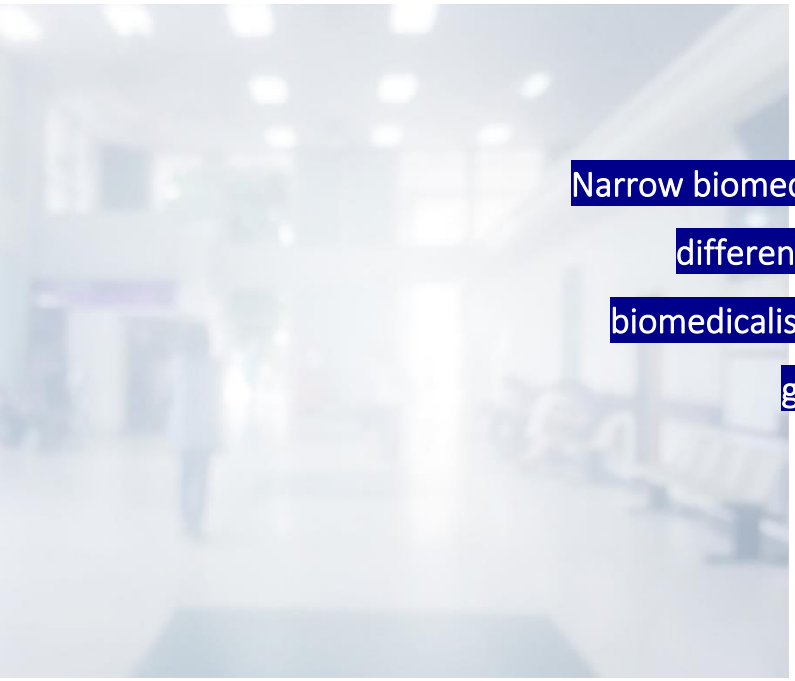
Dignity and compassion are at the heart of many people's hope for mental health care. Connected to dignity is the right of people to move equally through society and mental health services.[46] Under the *Convention on the Rights of Persons with Disabilities*,[47] people with psychosocial disabilities should enjoy legal capacity on an equal basis with others and should enjoy equal protection from the law under Victoria's Charter.[48]



Yet, many mental health consumers and survivors report being rendered 'non-persons' by the mental health system. Denial of personhood and legal rights – such as freedom from non-consensual treatment,[50] privacy,[51] freedom of movement,[52] liberty,[53] cultural rights[54] and more – is a feature of past and contemporary mental health systems.[55] This denial goes hand-in-hand with the definition and use of particular diagnoses in which people's thoughts, feelings and behaviours come to be seen just through that diagnosis.[56] This denial can also occur whether someone is formally placed under mental health laws or engages with the system voluntarily but still experiences coercion. Some have described the process of detention and sedation within these institutions as 'watching myself die'.[57] Reference Group members spoke about how the system transformed them into 'things', and that 'you can easily do things to things'.

Narrow biomedical approaches

While some find biomedical approaches helpful, narrow conceptions of mental health can be harmful and can contribute to other harms. This harm can start with how distress, coping behaviours and concepts of what is considered normal are defined and diagnosed. Gender, sexuality, and diverse cultural experiences and meanings can be reduced to symptoms of mental disorders.[58] Inherent to this approach are objective assessments which risk denying the subjective experiences and expertise of those in distress.



Narrow biomedical approaches to distress, pathologise difference, and our unique experiences. Narrow biomedicalism and a lack of diverse choice has often gone hand-in-hand with the use of force.

Responses to distress, or treatment, are impacted by this narrow approach. Narrow biomedical models can also direct attention away from the social and corporate causes of distress.[59] They also risk objectifying distress in ways that reduce the credibility or value of a person's subjective experience. Raising these concerns often leads to consumers and survivors being labelled as 'anti-psychiatry' or Scientologists.[60]

When families, carers and supporters question this approach, they too are subjected to these labels. The Reference Group heard numerous experiences of families, carers and supporters being marginalised and criticised for raising concerns about a consumer's treatment.[61] The objective and individualistic assessments of mental health also function to exclude the expertise and needs of families, carers and supporters. They can also be irrelevant or harmful to First Peoples, who may understand distress from more collectivist and integrated understandings of social and emotional wellbeing.[62]

Being abandoned or neglected when calling for help

People are told to speak up and ask for help. Under international human rights law, they should get that help. They hold the right to the highest attainable standard of health without discrimination.[63] However, when consumers and survivors approached the system or called to it, help was often lacking. Individuals were turned away from mental health services at times when they desperately needed help.[64] This was in part the result of a chronically underfunded mental health system,[65] sometimes termed the 'missing middle'.[66] This underfunding in turn failed to fund diverse and lived experience-led services. It was also partly the result of service design that systematically excludes some people from receiving care. Mental health services applied criteria that deemed some people 'too well' and others 'too sick' to be able to access a particular service or applied exclusions based on diagnosis. These issues disproportionately impacted people from culturally and linguistically diverse backgrounds who either did not receive services or received services that did not meet their needs. It also impacted people with particular diagnoses, such as 'borderline personality disorder', who experience stigma and discrimination when they ask for help.[67] Ultimately, some people died waiting for help.

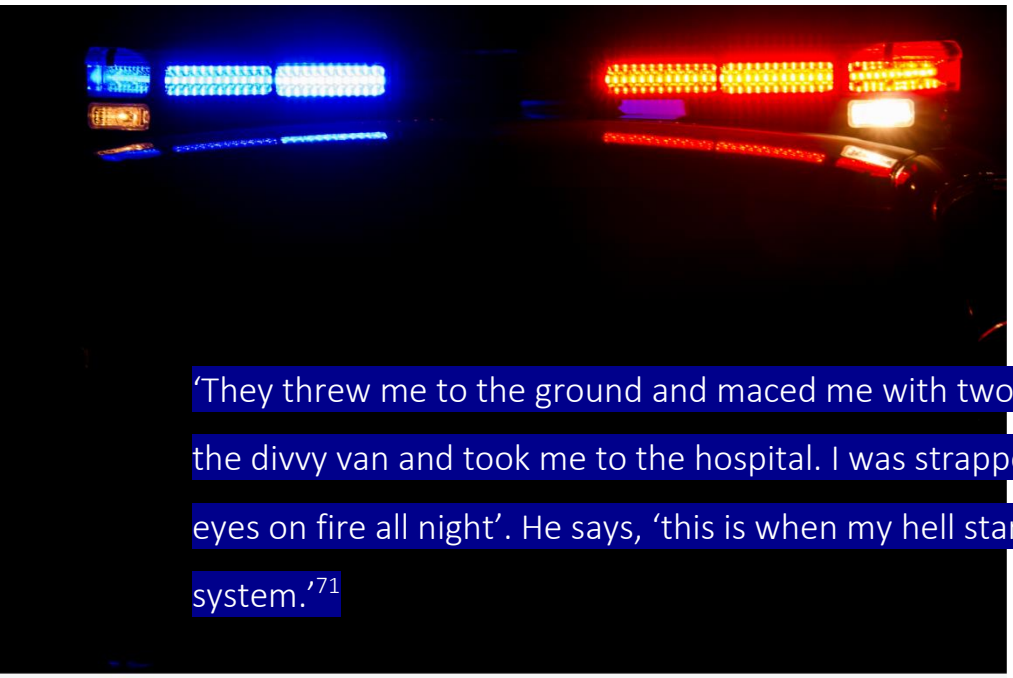
Families, carers and supporters also experienced abandonment and neglect from the system. They were often left to keep people in their life alive in spaces where the system could and should have helped.[68] Often this came down to basic issues, like a lack of information about treatment, care and support options for consumers.[69] This causes and compounds its own distress. One carer told the Reference Group:

> 'I'm barely coherent today, my son is very much at the pointy end of care, or lack of care….I'm making a plea. For those with the extremes of complexity… I fight these battles alone. And can you imagine what you take on? And you're trying to filter yourself. The rage and the anger can't come out. I have to appear coherent, sensible, empathetic, accepting and so on and so on. I'm fiercely fighting for my son's life'.[70]

These experiences become more compounded when those family members, carers or supporters are children. Such experiences can lead to people developing their own distress or mental health challenges.

Use of force within the system

Aaron (pseudonym) was hearing voices when the police arrived at his doorstep. He told the Royal Commission what happened to him:



'They threw me to the ground and maced me with two mace cans, threw me in the divvy van and took me to the hospital. I was strapped to the bed, with my eyes on fire all night'. He says, 'this is when my hell started in the mental health system.'[71]

Force pervades the mental health system. This can be done through detention, restraints (physical, mechanical, chemical and psychological),[72] forced treatment, including involuntary electroconvulsive treatment. These practices done involuntarily are inherently harmful and people have died from these practices.[73] Their use breaches international human rights law.[74] The Royal Commission acknowledged that the use of compulsory mental health treatment and restrictive practices has damaging impacts on individuals and can run counter to principles of personal recovery.[75] Threats of their use to enforce 'compliance' with treatment is, itself, harmful, as is the tag of 'non-compliant' which often comes with speaking up or disagreeing. It also speaks to the way people are forced into the system through police and other coercive mechanism.[76] Additionally, many people experienced neglect followed by force, being initially turned away only to be then forced into receiving treatment.

Unlawful practice and the denial of justice

Justice should not be a luxury. Under Victorian and international human rights law, all people should enjoy all human rights equally.[77] Despite widespread harms to individuals and communities, there have been few examples of justice. Key agencies tasked with protecting the human rights of consumers and survivors and responding to pleas from families, carers and supporters have failed and continue to fail. Complaints have prompted little enforcement of rights,[78] clinical leadership has failed to prevent unnecessary admissions[79] and

many consumers have said that their experience of oversight bodies is poor.[80] The Royal Commission acknowledged evidence from a wide range of stakeholders that:

> [I]t is difficult to see what actions are being taken to hold services to account for quality and safety or human rights failings. Transparency about these activities allows consumers and their advocates to engage in a more meaningful way with the various oversight and improvement arrangements, and hold those charged with these functions to – in turn – be held to account. In contrast, the lack of information about how the Department of Health, the Chief Psychiatrist and other bodies are responding to quality and safety concerns can leave consumers feeling disempowered and distrustful.[81]

As is the case nationally,[82] trust in key institutions needs restoring.

Denial of lived experience knowledge and expertise

Despite having a long history of self-help, mutual aid and peer support,[83] mental health consumers and survivors are not considered experts. Experts in distress, or even experts in their own lives. This denial of knowledge and expertise is compounded when consumers and survivors are considered 'unreliable' witnesses to their own experiences and the events around them.[84] This can be evident when they speak up about their concerns but have those concerns denied.[85] Alternatively, it is concealed behind instances of 'benevolent othering', when consumers and survivors are spoken about in ostensibly positive terms, but ultimately function to reinforce their subordination.[86] Denial of knowledge and expertise can also impact people with migrant and refugee experiences, with the strengths, skills and knowledge they bring to the country and to their own mental health recovery being unrecognised. Young people also have their agency denied in the system, often through involvement of family to participate in decisions without their consent, and in ways that can make them unsafe.[87]

Aspects of this are reflected in the Royal Commission's report, which acknowledged that:

> 'Complex power imbalances rooted in professional, historical, social and statutory hierarchies continue to influence the opportunities available for people with lived experience of mental illness or psychological distress to lead, shape and participate in Victoria's mental health system'.[88]

Indeed the final report stated that these power imbalances can mean true lived experience leadership is not realised within the system.[89] This was in part reflected by the lack of lived experience representation in the higher levels of the mental health system.[90]

Caring for a person, including during crisis, is its own set of skills, experience and wisdom. Yet families, carers and supporters are often not acknowledged for their expertise in supporting people. Moreover, engagements of families, carers and supporters with the mental health system can be impersonal, transactional, marginalising, offensive, traumatising and discriminatory. These experiences are often disrespectful of, and at times

antagonistic to, family and kinship connections within some cultural groups and Aboriginal families; a breach of rights that must be upheld under Victoria's Charter[91] and respected under mental health laws.[92]

Trauma (physical, sexual, cultural, financial, spiritual and psychological)

Trauma is a feature of many people's distress. Unfortunately, trauma is also a feature of the mental health system. Many consumers and survivors have not had their trauma recognised within the system, or have been traumatised by the system. A disproportionately high number of consumers and survivors have experienced prior trauma such as sexual violence, family violence and child abuse.[93] The system fails to recognise calls for help or behaviours of distress as arising from trauma[94] and instead uses practices that often cause greater trauma. Traumatic experiences within psychiatric settings are commonly understood as 'sanctuary harm'.[95] These experiences of disempowerment and force are reminiscent of the original abuse consumers and survivors endure.

The Royal Commission was clear that families, carers and supporters are not spared trauma.[96] They can experience trauma through witnessing or hearing of violence suffered by consumers with whom they have relationships. Trauma may also come from violence (including to children) they experienced while waiting for appropriate, responsive and caring systems to support a consumer or survivor. Waiting for help also means being with children, youth and adults as they want to die.[97] Many of the elements of narrow biomedical approaches to mental health also led to alienation of families and a fracturing of families and relationships. Some are irreparable.

Co-opting of families, carers and supporters

Families, carers and supporters can be an important source of support for many consumers and can give voice to their concerns. However, many families, carers and supporters report being co-opted to meet the needs of the system, rather than the needs of consumers and survivors, or themselves. This may mean that they support or are co-opted into supporting, rights-breaching practices that reinforce disempowerment of consumers. This replication of the system comes at the expense of relationships and causes harm to everyone.

Loss of life, property, opportunity and future

People working in the system want to give, and people who use the system want to receive value. And yet consumers and survivors often experience significant loss. This includes lost lives, relationships, families, property and futures. People die by suicide because they do not receive the mental health and wellbeing supports they need or want. What they needed often differed from what the mental health system offered. People are irreparably harmed through the use of seclusion and restraint.[98] People lose parts of their lives due to the system, either through being involuntarily attached to a system on community treatment orders, or

within psychiatric wards, such as secure extended care units. People also lose years of their lives due to shorter lifespans,[99] partly due to psychotropic medications.[100]

Families, carers and supporters experience loss. They are left behind after a person close to them dies. In some cases, their shared futures and unfulfilled potential are stolen. They live with bereavement for what could have been. Emotions include the grief for the person they cared for, anger that voluntary and inclusive help was not available, a sense of betrayal from government and systems, and a (often unfair) feeling of guilt they hold, can last a lifetime. Connected to this grief and the caring role is the loss of employment, social connectedness, housing, and educational opportunities.

The impact of failing systems and failed pathways between systems

Failing systems act as a maze of interconnected revolving and closed doors. The failure to provide diverse, voluntary and inclusive mental health supports means consumers and survivors are pipelined into other systems that do similar or greater harm. The Royal Commission acknowledged that there was yet to be a clear single system that met the needs of people with lived experience.[101] Many people with distress are housed in Victoria's growing prison population,[102] which earlier access to non-coercive, culturally safe and pluralistic mental health supports could have prevented.[103] Consumers and survivors' entry into the system is often done through police because of a police response and/or through a welfare checks (while noting that clinician-led entry processes also carry issues). These issues disproportionately impact First Peoples, who continue to experience over-incarceration as well as poor healthcare and deaths in custody.[104] Often many other systems have failed consumers and survivors, such as family violence organisations, child protection systems,[105] alcohol and other drug services, youth justice,[106] social welfare and housing services. These fail not only as individual systems but also collectively through the failure to communicate and integrate with one another effectively and to offer meaningful support. In some instances, these systems discriminate against people based on a mental health diagnosis,[107] causing further harm.

Invisible families, carers, supporters, and their needs

Families, carers and supporters are often invisible to the mental health system. Where they are visible to the system, it is as part of a transactional relationship. This relationship means any resistance to biomedical dominance and norms risks families being seen as non-compliant or obstructive.[108] Alternatively, families are unfairly blamed for a consumer or survivor's distress.[109]

The needs of families, carers and supporters have long remained invisible to government and the system.

Children and young people who are family members, carers or who have caring responsibilities often don't have their needs or views seen or meaningfully addressed as distinct from the adults around them.[110] This can impact a young person's childhood development and education, leaving them isolated with few who understand their experience.[111]

Kinship caring can be common within the families of First Peoples.[112] For many First Peoples, these experiences sit within the context of ongoing systems of racism and shame.[113] There has been a refusal to respond to the concerns and needs of families, despite desperate calls, overwhelming evidence and repeated recommendations.

Exploitative use of carers

> 'There will be a lot of people whose lived experience is exceptional but they've been so busy caring… they've never even had an education'.[114]

Due to an underfunded and planned process of deinstitutionalisation, families, carers and supporters take on significant caring roles that are unpaid, undervalued, and often unrecognised. People's life stories can shift based on their mental health caring relationship in ways that they had not expected. Their sense of connection to the community as well as their own mental health can be impacted.[115] This labour – both literal and emotional – is unpaid by the state.[116] This impact is that the state continues to legitimise unpaid labour of families, carers and supporters. It is built into the economy and the financial viability of the current mental health system.

These experiences do not reflect all of those who have accessed, or supported someone to access, Victoria's mental health system. They are, however, common. Such moral, psychological, economic, and spiritual harms

remain unaddressed. These experiences invite the Victorian Government to take responsibility as part of a process to build a new system.

REVIEW OF BEST PRACTICE

The Department of Health commissioned an options paper to be provided to the Minister for Mental Health, advising them on the best-practice and lived experience-informed approaches to acknowledging harm within the mental health system. From that request, the core research question for a review of the literature was: what state-based mechanisms have been used to address harm arising from the state's action or inaction?

From that, the following sub-research questions were developed:

- What key theoretical and practice-based methodologies should inform government responses to harm within the mental health system?
- What are the views of people with lived experience of various harms regarding proposed or completed efforts to acknowledge harm?
- What have been the strengths and weaknesses of each approach, including the strength of evidence, acceptability and political feasibility of each option?

A rapid review of the academic and grey literature (such as policy documents, NGO reports or reports from civil society) was performed. Rather than reflecting a systematic approach, this rapid review adopted a priori key theoretical perspectives and then iteratively examined the literature. Key research and its references became a platform for identifying other relevant research that responded to the research questions. This methodology has been termed the 'berrypicking' model.[117]

The following theoretical and practice-based perspectives were chosen based on the advice of Reference Group members and interviewees (noted in Acknowledgements)[118]: transitional justice, restorative justice, human rights, mad studies, critical pedagogy approaches, concepts of relationality and critical approaches to violence. In addition to this, the project drew on literature on First People's calls for justice underway at state and national levels in Australia.

In searching for literature for this analysis, the review used Google Scholar and Google with a combination of terms relating to the above terms, as well as known instances of state-based efforts, including 'Uluru Statement from the Heart', 'Yoo-rrook Justice Commission' and 'reparations'. It also used terms such as 'established democracies' and 'non-transitional' to identify sources beyond transitional justice literature that focuses on transitional states. This rapid review took a flexible approach to its research, examining both peer-reviewed and grey literature, given the latter often contains greater consideration of lived experience voices and perspectives. The literature review process gathered a broad number of publications, news items, public statements and resources, then reduced these to 132 based on relevance. 77 were peer-reviewed, while 55 were from non-peer reviewed publications and resources, news items and public statements.

From these publications the following mechanisms were identified:

- Public (or state-based) apologies
- Truth and reconciliation processes
- Individual material economic reparations (Individual reparations)
- Collective material economic reparations (Collective reparations)
- Symbolic reparations, and
- Guarantees of non-repetition.

Each of these are explored below. This advice provides working definitions, merits and considerations as well as factors that determine the impact (positive or negative) of each mechanism.

Public apologies

There are broad and narrow definitions of public apologies (often used interchangeably with political apologies). Broadly, they are described as verbal or non-verbal gesture(s) 'by a representative of a state, corporation, or other organized group to victims, or descendants of victims, for injustices committed by the group's officials or members'.[119] A subset of these by heads of states are considered political apologies.[120] Focusing on political apologies by a head of state, Zoodsma and Shaafsma define them as 'all those statements or gestures by states or state representatives that contain words such as 'sorry', 'apologize', expressions of regret or remorse, or requests for forgiveness'.[121]

Apologies are provided by the state but can also be provided by professional bodies.

Public apologies from professional mental health bodies

In the last decade several mental health professional bodies in Australia and overseas have apologised for their participation in racism and colonisation.

Australian Psychological Society

In 2017 the Australian Psychological Society apologised to the Stolen Generations, and First Peoples more generally, for their role in these processes and colonisation.[122] Specifically, they apologised for:

- 'Our use of diagnostic systems that do not honour cultural belief systems and world views.
- The inappropriate use of assessment techniques and procedures that have conveyed misleading and inaccurate messages about the abilities and capacities of Aboriginal and Torres Strait Islander people.
- Conducting research that has benefitted the careers of researchers rather than improved the lives of the Aboriginal and Torres Strait Islander participants.
- Developing and applying treatments that have ignored Aboriginal and Torres Strait Islander approaches to healing and that have, both implicitly and explicitly, dismissed the importance of culture in understanding and promoting social and emotional wellbeing.
- Our silence and lack of advocacy on important policy matters such as the policy of forced removal which resulted in the Stolen Generations.'[123]

The apology contained a series of 'genuine commitment(s)' to change, including 'listening more and talking less', 'following more and steering less', and 'advocating more and complying less'. The apology was presented at a conference and appeared to be well received by delegates.[124]

Royal Australian and New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrists (**College**) has made two recent apologies for the conduct of its members and the profession. The first relates to its participation in the Stolen Generations. In the 439-word statement, only 81 words are devoted to the role of psychiatrists and doctor in the Stolen Generations. They state:

> 'It is probable the medical profession was, to an extent, involved in the planning and implementation of these policies. Psychiatrists, along with many others in mainstream Australia, generally failed to see and understand the destruction and suffering caused by the taking of Indigenous children.
>
> The RANZCP wishes to apologise to the Aboriginal and Torres Strait Islander peoples for our failure as a group of doctors and psychiatrists to act early and effectively to try and prevent and reverse these disastrous practices.'[125]

The College also apologised for its role in abuse in state care in New Zealand:

> '[The RANZCP] apologises to the survivors and their whānau, for the harm experienced in state care and for our failure as a group of doctors to have acted to prevent this. We express our sincere regret to all those who have suffered. We acknowledge and apologise for the pain that placements in State care, including those at Lake Alice, caused people. We condemn any unacceptable behaviour by individual psychiatrists.'[126]

This apology was criticised by civil society and survivors for several reasons, including that it failed to consult survivors to hear their harms and inform the apology. It also failed to address individual instances of abuse and was deemed an 'insult' by a prominent group monitoring an inquiry into widespread instances of abuse.[127]

American Psychological Association

In contrast to the apologies by the College, the American Psychological Association (**APA**) undertook a much stronger reckoning with its past (see a similar apology from psychiatrists).[128] In an *Apology to People of Color for APA's Role in Promoting, Perpetuating and Failing to Challenge Racism, Racial Discrimination, and Human Hierarchy in the U.S.*, the APA demonstrate the elements of an effective apology for institutional harms. The resolution opens with:

> 'The American Psychological Association failed in its role leading the discipline of psychology, was complicit in contributing to systemic inequities, and hurt many through racism, racial discrimination, and denigration of people of color, thereby falling short on its mission to benefit society and improve lives. APA is profoundly sorry, accepts responsibility for, and owns the actions and inactions of APA itself, the discipline of psychology, and individual psychologists who stood as leaders for the organization and field.'[129]

The resolution apologised for the delay in making the apology, acknowledged the importance of lived experience voices in advocating for and informing the apology and committed to significant change that 'decenters Whiteness in science, scholarship and practice'. Central to the development of the resolution were the voices of people with lived experience of racism from the profession, with externally facilitated listening sessions commissioned by the APA. Ultimately, however, people with lived experience and other psychologists deemed it needed to go much farther.[130] They recommended a Truth and Reconciliation Commission to facilitate this.[131]

The successes and shortcomings in the above apology processes speak to the importance of consulting, through deep dialogue and truth-telling, the people to whom the apology is directed, as well as adhering to good guidance on effective apologies.

In recent years, states have been called on to apologise and provide redress for past wrongdoings. Public (or political) apologies have become an increasingly common response to this. Indeed, the last 30 years have been described as 'the age of apology'.[132] A recent study found that there had been 329 political apologies from 79 states to their citizens.[133]

There is longstanding work on the apologies, in their most general form, are. Goffman is regularly cited for characterising an apology as a 'splitting' process. He explains it as:

> 'a splitting of the self into a blameworthy part and a part that stands back and sympathizes with the blame giving, and, by implication, is worthy of being brought back into the fold'.[134]

Further advice on what constitutes an effective apology, according to Goffman and others, is explored below.

The merits of public apologies

The reception of public apologies is mixed. Proponents of public apologies suggest several benefits. Cunningham identifies three key benefits. First, the *recording* of harms and apologies to victims and for victims.[135] Second, the *moral recognition* of the impacted community that comes with the acknowledgement of harm and the apology. Third, it may *reassure* the affected group that the harms identified will not be repeated. The extent to which a public apology can achieve reassurance that human rights breaches will cease, while they continue in a widespread fashion, may be limited.[136] Canada's Apology to Aboriginal Peoples highlights some of these benefits, as well as some of the challenges.

Canada's Apology to Aboriginal Peoples

Canada has a painful history of colonialism. A policy of assimilation, particularly for 'dying cultures', established a coercive educational system that systematically isolated Aboriginal youth from their families, communities and culture.[137] There were inherent harms in this approach, compounded by the fact that these schools were in fact comparatively underfunded compared with mainstream schools of the time. There were also widespread instances of abuse, including sexual abuse.

After growing recognition of these harms, in January 1998 the Minister for Indian Affairs and Northern Development issued a written apology called a 'Statement of Reconciliation'.[138] The statement was roundly rejected for only indirectly speaking to the harms and failing to take responsibility.[139] The government established a Truth and Reconciliation Commission and redress scheme to examine the harms and provide reparations. After several lawsuits and continuing pressure, the then Prime Minister Stephen Harper agreed to provide a formal apology in Parliament to Aboriginal people.

The apology was delivered in the House of Commons with a range of ceremonial and official activities to signify its importance. The Prime Minister clearly detailed the actions that occurred, stated that they were wrong and apologised and took responsibility for them on behalf of the state.

The apology was well received by many Indigenous communities. However, it was also criticised for failing to connect the instances of abuse to the broader currents of colonialism that enabled it. By focusing on specific acts and practices, it has

been argued that it failed to enable broader social change.[140] This was in contrast to the Apology to the Stolen Generations by the then Prime Minister Kevin Rudd, who clearly linked removal practices to broader colonisation processes.[141]

Apologies are also becoming the norm in healthcare. Traditionally averse to acknowledging harms in healthcare due to perceived legal risks, time constraints and advice from insurers (among other factors),[142] Australia and Victoria are undergoing a cultural shift towards 'open disclosure'. Open disclosure refers to the 'open discussion of adverse events that result in harm to a patient while receiving health care with the patient, their family and carers'.[143] It is considered a core component of good clinical practice[144] and a patient right.[145] These have now been reflected in Victoria's legislative 'duty of candour' framework, an Australian first.[146] These legislative provisions apply to individual instances of harm but reflect the Victorian Government's intention to make healthcare and harm recognition more transparent.

It should be noted that these duties of candour and open disclosures face significant barriers in closed mental health settings. Victorian consumers and survivors do not enjoy their human rights on an equal basis with consumers in other healthcare settings.[147] They face a series of structural and cultural barriers to the routine acknowledgement of errors and harm.[148] Some services do not adhere to basic obligations to record outcomes from complaints.[149] It appears there are no enforcement actions to address these failures.[150] This highlights the necessity of specific culture change activities to meet the vision underpinning duty of candour reforms. Truth and reconciliation processes (discussed below) may assist this.

However, critics suggest that public apologies are performative and function to exculpate the state from responsibility.[151] While genuine apologies often result in increased trust between individuals, this is less likely between groups (such as the state and consumers), in part reflecting the greater scepticism that operates at a group level.[152] Part of this scepticism comes from the concern that public apologies can be performed to silence ongoing criticisms and repair the image of the state.[153] This partly results from the power asymmetries between the apologising state and the victims it is apologising to.[154]

Some of the central criticisms of apologies are that they are done in isolation from any reparative actions that provide redress to victims. Speaking in the South African context, Judge and Smythe acknowledged these concerns:

> '... apology alone cannot materially transform the interpersonal, social, political, or economic relationships – past and present, distant and proximate – in which injurious harms are located.'[155]

Indeed, to be accepted by those to whom the apology is directed, there may need to be change to the underlying power relations that gave rise to the original injustice.[156] This is relevant for mental health consumers who experience significant power imbalances[157] and continue to experience serious and widespread human rights abuses.[158]

Factors that determine the impact of public apologies

The success of an apology is clearly subjective, and its reception may differ according to the stance of the person and whether or not they have been harmed. Nevertheless, several factors, both internal and external to the apology process, influence whether or not it is deemed successful.

The quality of the apology

There has been significant research into public apologies, including what distinguishes a 'good apology' from a 'bad apology'. Battistella draws on Ervine Goffman's definition of a good apology as having the following components:

- Expression of shame
- Acknowledgement of inappropriate conduct and violation of rules
- Sympathy towards the victim
- An explicit disavowal (disapproval) of the previous conduct
- A commitment to pursuing correct behaviour, and
- Penance and an offer of restitution.[159]

However, there is disagreement on whether all of these or other elements need to be present for something to qualify as a public or political apology.[160] These elements highlight that an effective apology will require a commitment to other elements of this acknowledgement process, such as truth-telling and possibly reparations or guarantees of non-repetition. Another element of apologies is that they must be able to be rejected: the apologiser must put themselves in a vulnerable state that is open to rejection.[161] The Victorian Ombudsman has also provided extensive advice on how government departments and public sector organisations can properly apologise for their judgement and performance errors, and where harm has occurred to citizens.[162]

Australia has entered its own age of apology. Recent public apologies include the:

- 2008 Apology to the Stolen Generations, the Victorian Government's apology to the LGBT community for laws criminalising homosexuality (2016)[163]
- Apology to Victims of Child Sexual Abuse within institutions (2018),[164] and
- Apology to Parliamentarians who experienced bullying, sexual harassment and sexual violence (2022).[165]

Calls for a public apology also come from the intersex community who have been subjected to non-consensual medical treatments that constitute human rights violations.[166]

2008 Apology to the Stolen Generations

Following its election in 2007, the Labor government, since the release of the *Bringing them Home* report (1997), supported the recommendation to apologise to First Peoples for child removals by past governments. In the first year of government, after consulting with Aboriginal and Torres Strait Islander leaders on wording,[167] Prime Minister Kevin Rudd apologised to First Peoples via Parliament.

The then Opposition Leader Brendan Nelson MP provided a reply, also supporting the apology (with some dissent from Coalition MPs such as Peter Dutton). Nelson also chose to express empathy for the child protection workers who, he stated, were doing what they thought was in the best interests of children and families at the time. This was met with widespread criticism outside of Parliament.[168]

It is important to note that despite the positive reception to Rudd's speech, some child protection practices remain racist with many calling our current removals another Stolen Generation.[169] The Prime Minister also rejected calls to establish a national reparations scheme, noting that the *Closing the Gap* initiatives addressed this. However, this was criticised as misunderstanding the nature of reparations. *Closing the Gap* initiatives are merely expressions of a state's duty to citizens. Addressing structural inequalities is separate to reparations for harms and human rights abuses.[170]

Accompanying actions preceding and beyond the apology

It is also important that apologies are embedded within and connected to other actions. For example, the *Set the Standard* report into bullying, sexual harassment and sexual violence in Commonwealth Workplaces, following high profile staff member allegations, included an acknowledgement of harm as the first recommendation. Importantly though, this apology's success rested on the other commitments and recommendations set out in the report.[171]

2022 Apology to Staff in Commonwealth Parliamentary Workplaces

Following allegations of widespread bullying, sexual harassment and sexual violence in Australian Parliamentary workplaces, the Commonwealth Government asked the Australian Human Rights Commission to conduct a review of the institution as a workplace. This review produced the *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces.*[172] The first recommendation from the review was for leaders (not limited to the party in government) to deliver a Statement of Acknowledgement to Parliament. This was taken up by leaders of the Coalition, Labor and Greens parties, among others.

In the acknowledgement delivered to Parliament, directed at the victims of bullying, sexual harassment and sexual assault, the then Prime Minister Scott Morrison provided an apology, stating 'We are sorry. I am sorry…'. The Prime Minister detailed the themes of harms raised in the report, identified power imbalances as one of the primary factors enabling such harms and misconduct, and moved towards cross-Parliamentary commitments to eliminate this misconduct going forward.[173] The apology was well-received. However, it is noteworthy that concerns were raised about the Prime Minister raising an individual matter and the impact this could have on court proceedings.[174]

Processes preceding an apology are crucial too. In Canada, the apology from the then Prime Minister Stephen Harper was accompanied by a truth and reconciliation process, as well as processes for reparations. This

contrasted an earlier 'statement of reconciliation' that had no accompanying actions.[175] By contrast, the Apology to the Stolen Generations *followed* the *Bringing them Home* report from the Australian Human Rights Commission. This connects to a broader need for public apologies to address the 'epistemic bedrock of conflict and violence'.[176] They do so by ensuring that apologies are the outflow of a new understanding of harms and why they occurred.

Truth and reconciliation processes

'Truth' is critically important in grappling with, and responding to, widespread harms and human rights breaches. In transitional and post-colonial settings, truth and reconciliation processes are being considered and used to establish facts surrounding widespread harm and violence, acknowledge and empower survivors, and inform future policy and behaviour change by groups or institutions.[177]

How is transitional justice relevant?

Transitional justice represents a broad and diverse set of theoretical frameworks and practical tools that assist new democracies to address widespread human rights violations under previous regimes. They include a range of mechanisms or tools including the use of truth and reconciliation commissions and the performing of material and symbolic reparations. More recently, the tools of transitional justice have been considered useful in established democracies that are looking to come to terms with colonisation and its consequences. Similarly, these tools have been used in other non-transitional settings such as to address the institutional abuse of children. The application of transitional justice concepts to these new areas is being explored and will confront challenges.

More often than not, these processes take the form of Truth and Reconciliation Commissions (**Truth Commissions**) or formal inquiries to examine harms. While most of these processes are state-led, others have emerged in the absence of political will.

Defining truth and reconciliation processes

Truth and reconciliation processes are often understood as synonymous with Truth Commissions. The structure, goals and definitions of Truth Commissions have evolved over time.[178] Some scholars focus on the defining features of Truth Commissions, such as their:

- complementarity to existing legal processes (including criminal prosecution)
- focus on gross and widespread violations of human rights
- having defined periods of investigation
- taking of large amounts of evidence, and
- victim-centric approaches.[179]

Similar definitions have been provided elsewhere.[180] Truth Commissions can also operate in a range of contexts, with some focused on widespread abuses of recently deposed regimes or to acknowledge harms from recent civil wars.[181] Others focus on more established democratic settings and on truth-telling regarding colonisation and dispossession.[182] More recently, calls for similar processes have emerged regarding sexual violence[183] and

psychiatric harm.[184] The latter 'non-transitional' forms of Truth Commissions represent a greater share of the overall use of Truth Commissions in the 21st century.[185]

Yoo-rrook Truth and Justice Commission

In Victoria, the Yoo-rrook Justice Commission has been authorised to examine and highlight systemic injustices against First Peoples in Victoria since the start of colonisation. From their terms of reference, the Commission identified truth-telling (a public record), understanding (deep listening to First Peoples) and transformation (changing laws and institutions) as their goals. The Commission was established under the *Inquiries Act 2014* (Vic) and has the same powers as a Royal Commission – to conduct public hearings and compel evidence. There are four Commissioners, only one of which is not Aboriginal. The First Peoples' Assembly of Victoria – a body set up to enable negotiations with the Victorian Government on treaty – provided advice to the Yoo-rrook Justice Commission on how to embed cultural safety, truth and justice that will lead to treaties and structural reform.[186] An interim report was released in July 2022,[187] detailing how the Commission approached its work as well as its preliminary findings.

Royal Commission into Institutional Responses to Child Sexual Abuse

In recent years Royal Commissions – at either state and territory or Commonwealth level – have been used to acknowledge abuse and failing institutions. The *Royal Commission into Institutional Responses to Child Sexual Abuse* (**Institutional Child Abuse Royal Commission**) was one such example. In addition to providing a future-focused set of recommendations to compensate for harm caused and prevent further instances of abuse, the Institutional Child Abuse Royal Commission provided an example of truth-telling through an inquiries process.[188] This 'truth-telling royal commission' was said to have a greater focus on restoring dignity, addressing human rights breaches and the loss of identity that came from abuse and its denial.[189] This is evidenced in the way that the Institutional Child Abuse Royal Commission carefully conducted its hearings in trauma-informed ways and its elevation of the voices of lived experience. An example of the latter was the more than 1000 Messages to Australia from survivors who gave evidence to the Royal Commission.[190]

However, it is important to note that some truth and reconciliation processes may not constitute 'Truth Commissions', but still have similar functions or objectives. These can include formal inquiries, such as a Royal Commission, or the *Bringing them Home* report.[191] Moreover, not all processes need to be state-led. In the absence of political will, some communities establish their own truth and reconciliation processes outside the control of governments.

Truth and public inquiries: the Bringing them Home report

The *Bringing them Home* report in 1997 recounted Australia's history of child removals, or what has been termed the Stolen Generation.[192] It highlighted that these actions by government and the community amounted to gross violations of First Peoples' human rights and were an act of genocide aimed at eliminating First Peoples. The *Bringing them Home* report was a landmark report made by the Australian Human Rights Commission, commissioned by the then Keating

government. After its release, the subsequent Howard government refused to apologise for the report's findings. This report was one of the precursors to the 2008 Apology by Prime Minister Kevin Rudd to the Stolen Generations.

Greensboro, Morecambe, West Cheshire and Glasgow Truth Commissions

Greensboro (North Carolina, US), Morecambe (UK), West Cheshire (UK) and Glasgow (Scotland) each developed their own community-led Truth Commissions to highlight and respond to unaddressed harms. Greensboro Truth and Reconciliation Commission was established as a restorative justice process to unearth and address historical racial violence that had impacted the community.[193] The Morecambe Bay Poverty Truth Commission centred on people with lived experience of poverty, with private and public actors committing to a series of actions and shared projects to improve the lives of locals.[194] Central to these processes has been a 'nothing about us, without us' philosophy . This philosphy centres the needs and decision-making of those with lived experience. They illustrate a community-led response where governments have been unable or unwilling to lead on truth and reconciliation processes.

Truth and reconciliation processes are also argued as being inherently 'victim-centric' and restorative in nature, speaking to the connection with restorative justice.[195] By enabling victims and survivors of abuse to speak, truth and reconciliation processes centre victims as experts. Indeed, they become *the point* of any process. Characterising the Institutional Child Abuse Royal Commission as restorative in nature, Tjandra notes:

> 'As such, they [survivors who gave evidence] were not treated as ordinary witnesses to an inquiry, but rather were treated with validation and respect in order to generate a positive cathartic response for the witness. The focus on restorative justice was just as important as the investigative or evidence gathering component of the Commission's role.'[196]

This distinguishes restorative-focused truth processes from criminal justice or other inquiries: 'they are concerned with the status of the victim'.[197] That is, they centre the dignity, voice and rights of those that have been harmed, rather than focusing on harms to the state.

The merits of truth and reconciliation processes

Evaluation of truth and reconciliation processes are difficult. This is in part due to their evolution over time, the different objectives and expectations of parties and the differing local contexts which may enable or hinder their progress.[198]

There are several arguments in favour of using Truth Commissions and broader truth and reconciliation processes. They give expression to the *right to truth* recognised under international human rights law.[199] A central argument for these processes are their enhanced flexibility over criminal justice proceedings.[200] Criminal justice processes have been criticised – particularly from restorative justice practitioners and advocates – for failing to see and respond to the needs of victims and survivors of crime.[201] More broadly, such processes can support improved relations between groups who have been in conflict[202] and can further enhance democratisation processes.[203]

Those who advocate for truth and reconciliation processes often do so based on the belief of what truth can deliver. Speaking to these benefits, Rowen notes:

> 'proponents see truth commissions as capable of helping them realize a wide range of goals, including documenting abuses, punishing perpetrators, letting survivors tell their stories in a public forum, and getting other types of compensation from the state'.[204]

The benefits of this are not limited to the primary victim-survivors in systems; they extend to those working within systems. Truth Commissions are also being acknowledged as crucial, both as preventative mechanisms for future harm and for states to fulfill guarantees of non-repetition of human rights violations.[205] Social workers operating in oppressive systems have called for truth and reconciliation processes to enhance anti-oppressive practice.[206] Practitioners calling for truth and reconciliation processes have claimed similar benefits would apply to the mental health workforce.[207] Importantly, there are signs that such processes can occur in mental health systems, as they did (at a smaller scale) in New Zealand's Confidential Forum.

New Zealand's Confidential Forum

The Confidential Forum for Former In-Patients of Psychiatric Hospitals (**The Forum**) was an initiative set up by the New Zealand government in 2005 with an aim to assist '...those who participated in their quest to make peace with the past and to move towards an internal place of resolution and calmness'[208]. The Forum was a reconciliation-focused process to enable patients, family members and former staff to describe their experiences of psychiatric facilities prior to legislative reform in the early 1990s.

The Forum took a 'constructive approach' to harm that identified past harms and their impact on people's lives today.[209] The Forum was conducted by panel members who provided people with a space to talk about their experiences. An evaluation of the process was overwhelmingly positive, with few individuals having previously been given a forum to voice their experiences and be heard.[210] However, there is limited public evidence on the process, which may have limited its ability to shape national conversations on mental health and the experience of in-patients.

Equally, there are shortcomings or challenges with truth and reconciliation processes, with some suggesting they are 'hyped'.[211] Truth Commissions, particularly those in new democracies, have been criticised for favouring more palatable rather than radical accounts of past harm. They claim this conservatism is enacted to enable nation-building and trust in institutions (though these shortcomings are less relevant for a mental health policy context, given this is an established democracy rather than transitional setting).[212] Another criticism of Truth Commissions is that they are a covert mechanism for perpetrators to avoid accountability, although evidence doesn't support this.[213] In post-colonial settings such as Australia, these processes are criticised for failure to result in structural changes, despite truth-telling processes in education settings already underway.[214] Responding to these concerns, issues regarding transitional democracies are less relevant for this policy context.

Meanwhile, issues over Truth Commissions obscuring the opportunity for prosecutions should be put within the context of extremely rare prosecutions in the first place within mental health settings. Finally, it is worth noting that there appear to be fewer education initiatives speaking to harms in mental health settings than those regarding colonisation in Australia (perhaps justifiably). Therefore, these issues speak more to implementation and associated political issues rather than core failures of the mechanism.

Factors that determine the impact of truth and reconciliation processes

Several factors influence the impact of truth and reconciliation processes. A critical factor in determining whether Truth Commissions are successful or not is whether civil society is involved in their establishment.[215] This is often a guard against truth and reconciliation processes being curtailed by a current government's needs by enabling strong advocacy from civil society organisations, such as victim-survivor groups.[216]

The mandate and political conditions surrounding truth and reconciliation processes are also important. The political conditions, such as the relationship between the impacted parties, often influence the credibility and mandate for Truth Commissions.[217] These issues have impacted the disability (Commonwealth),[218] youth justice (Northern Territory)[219] and mental health (Vic) Royal Commissions.[220] Similarly, the mandate outlined in the terms of reference can be an enabling or limiting factor.[221] The terms of reference in the Royal Commission into Victoria's Mental Health System focused on neither documenting truth and harms nor individual accountability for wrongs. This approach contrasts with the Institutional Child Abuse Royal Commission[222] and the Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability[223], both of which explicitly focused on documenting and responding to individual instances of harm. Equally important is the legitimacy of people who head Truth Commissions,[224] with past inquiries being contested based on their appointments.[225]

Others have stressed the importance of being victim-centric and focused on restorative justice. Expression of this victim-centric approach includes ensuring that victims feel believed in the process, rather than feeling cross-examined. The approach should also enable flexibility, so that individuals have choices about how they would any like reparations to occur.[226] This victim-centric approach is inherent, some say, to restorative justice processes aimed at resolving harm.[227] Part of this approach is about avoiding the 'instrumentalising of victims'. That is, utilising victims and survivors' stories for broader ends, such as to reinforce the status quo or legitimise certain practices, at the expense of their individual needs.[228] Moreover, victim-centric approaches are said to encourage systemic narratives of the past that explain the social and political conditions that allowed for abuse to occur.[229] Another component of this victim-centric approach is addressing power imbalances and dominant parties to ensure that any processes are not co-opted.[230]

Individual reparations

Reparations are common in transitional justice settings and as a response to widespread institutional harms. These are usually either material or symbolic reparations. Within the material reparations category of reparations, there is a distinction between individual reparations and collective reparations (collective and symbolic reparations are considered below).

Victims and survivors often seek material reparations. While individuals can seek individual claims before a court or a regulator such as the Mental Health Complaints Commissioner, states (governments) may take the proactive step of establishing a structure for providing redress.

Defining individual reparations

Reparations or redress take on different definitions. The Institutional Child Abuse Royal Commission defined the purpose of redress: 'to provide 'redress' is to remedy or rectify a wrong'.[231] They are reflected in international human rights law and aim to remedy a breach of a legal obligation to another.[232]

Reparations and Human Rights Law

Domestic and international human rights law inform acknowledgements of harm in general, and reparations in particular. They inform this process in at least four ways. First, they inform which harms need to be apologised for, including breaches of human rights set out in the *Convention* on *the Rights of Persons with Disabilities* (2009) (**CRPD**), the Charter, and the *Mental Health Act 2014* (Vic). There is evidence of gross human rights breaches in Victoria's mental health system.[233]

Second, they create an obligation on state parties (such as Australia and by extension Victoria) to create mechanisms for redress. For example, Article 8 of the CRPD calls for equal access to justice, while section 8 of the Charter requires that people, including those with mental health issues, enjoy equal protection from the law.[234] Further guidance on remedies and reparations is provided by the Working Group on Arbitrary Detention's report[235] as well as the 'Van Boven Principles' for gross human rights violations based on systemic discrimination.[236]

Third, they inform how such reparations should proceed. In particular, they highlight the importance of people with lived experience of mental health issues being central to the decision-making around the design and operation of the acknowledgement and reparations process.[237]

Fourth, human rights-based approaches can assist with the balancing of interests in the mental health system. Mental health consumers and survivors, families, carers and supporters, and clinicians may have different interests and needs. The principles of proportionality set out in the Charter enable balancing these interests.[238]

The merits of individual reparations

Victoria's mental health system continues to commit gross human rights violations.[239] The depth and breadth of these violations necessitates that the Victorian Government consider reparations. There are several reasons

why the Victorian Government may consider this option. First, there is a moral imperative to redress harm to those who have been harmed by accessing, or failing to access, the mental health system. Individuals have spoken about the enduring trauma associated with this, generating a moral case for reparations.[240] Second, reparations fulfill the state's duties under domestic and international human rights law (see above).[241] Thirdly, they provide perhaps the most 'victim-centric' form of acknowledgement (as compared with apologies, truth and reconciliation processes, community reparations or agreements of non-repetition), that goes directly to those harmed.[242] Initiatives by the Victorian and Commonwealth governments provide examples.

Stolen Generations Reparations Package

The Victorian Government has experience of setting up and establishing redress schemes. In March 2022 the Victorian Government opened the Stolen Generations Reparations Package.[243] The package enables a range of financial and restorative redress options. These are:

- 'a lump sum payment of $100,000
- a personal apology from the Victorian Government
- supported access to healing programs such as family reunions, reconnection to Country and language programs
- an opportunity to record and share your story and experience
- access to trauma-informed counselling
- access records held by the State about your removal.'[244]

This package was built on the back of a report by the Stolen Generations Reparations Committee, which made a series of recommendations and advised on how to make the scheme a trauma-informed process.[245]

National Redress Scheme

The National Redress Scheme was established in 2018 as part of the recommendations from the Institutional Child Abuse Royal Commission. That Royal Commission heard thousands of stories of abuse which led to 409 recommendations, one of which was the National Redress Scheme (**Scheme**). The Scheme aimed at providing a trauma-informed and nationally consistent pathway for victim-survivors to access justice. People could make a claim to the Scheme and face fewer hurdles and legal requirements than they would through courts.

However, it is important to note that the Scheme has been criticised by many people who have used it (only 25% of people described it as 'good' or 'very good'). Significant delays, the failure of some institutions to opt-in to the Scheme, and the risk of re-traumatisation were the key criticisms and reasons for some avoiding the Scheme.[246]

There are also risks or challenges associated with these schemes. An obvious challenge is cost – this can be prohibitive. Moreover, determining the victims and beneficiaries of the scheme can be difficult.[247] For example, some victims and beneficiaries will be well accepted by all, while others may be more contested. There are questions about whether such schemes are indeed victim-centric and safe, with reparations schemes such as those from the Institutional Child Abuse Royal Commission being criticised for being cumbersome, impersonal and retraumatising.[248] However, arguably, these factors may reflect implementation issues rather than an argument against their use.

Factors that determine the impact of individual reparations

There are several factors that determine both the likelihood of a redress scheme being established and whether it is considered successful. A redress scheme is more likely to occur where there has been a recommendation from an independent body (such as the Institutional Child Abuse Royal Commission) or where there has been successful litigation that poses a significant financial and political risk to governments.[249] The scheme's funding – both to cover compensation and the scheme's administration – is also crucial.[250] In addition, there are issues with how power imbalances are addressed in schemes, with survivors from disadvantaged backgrounds less likely to achieve full redress than other survivors.[251] Resistance from responsible institutions or professions – even if they are not paying for the redress – has been a factor in other redress schemes.[252] Finally, these reparation processes tend to be more favoured when they fit within a broader set of actions to address and acknowledge harm caused.[253]

Collective Reparations

In some instances, states seeking to provide redress for harm choose collective, rather than individual, reparations. This approach has tended to focus on greater economic development and social services for the marginalised group.[254]

Defining collective reparations

Collective reparations are defined as 'forms of distribution of public goods or services that are designed for the benefit of all members of a [victimised] region, group, or community, rather than for specific individual victims.'[255] The reparative intent is similar, but the level at which the reparations are provided is higher than for individual reparations. Collective reparations are also more forward-looking, with a focus on distributive rather than corrective justice. As such, the benefit to individuals is more indirect.[256]

Within mental health, this may come in the form of additional non-coercive and consumer-led crisis supports and alternatives to the current system,[257] as well as greater social and emotional supports for families, carers and supporters. However, there are issues with defining services as a form of reparation (discussed below). Another example is granting higher education opportunities to those who come from identified survivor communities, perhaps to speak to their harms.[258]

The merits of collective reparations

Collective reparations are partly a response to the challenges of building support for, and implementing, individual reparations schemes. Like individual reparations, collective reparations are recognised under international human rights law as a necessary response to gross human rights violations.[259] If a government has limited resources, such as a 'developing' country or a country in the Global South, collective reparations are a more fiscally conservative option than individual reparations.[260] Part of the value of collective reparations has been that they remedy what has been seen as a narrow legalistic approach to reparations that have only focused on civil and political rights, rather than broader structural issues around social and economic rights.[261] Peru's reparatory efforts and the former Commonwealth Government's 'Closing the Gap' reforms highlight the strengths and criticisms of collective reparations.

Peru's Collective Reparations Program

After a period of transition following ongoing intra-state violence, Peru established a truth and reconciliation commission that recommended a reparations plan. There were six areas of reparations to the defined groups. Those areas were health, education, housing, civil rights, symbolic reparations and collective reparations. These areas of reparations included projects on infrastructure, schools, playgrounds and symbolic commemorations to survivors. However, the framing of these initiatives was criticised by human rights groups for being ordinary development projects recast as reparations.[262]

Australia's 'Collective Reparations' through Closing the Gap

Following the Apology to the Stolen Generations, First Peoples advocates and community leaders called for reparations. The Australian Government resisted this call by claiming that its *Closing the Gap* initiatives were collective reparations that addressed disadvantages faced by First Peoples. However, this characterisation was criticised in a similar vein to those who criticised Peru's program, stating that nation-building and addressing structural injustices are separate from redress and reparations.[263]

However, collective reparations are subject to criticism. Some critics suggest that providing services to harmed groups is a core component of government and development and should not be repurposed as collective reparations.[264] Firchow, commenting on these issues in Colombia, asked, 'must our communities bleed to receive social services?'.[265] Another in Columbia described it as follows:

> 'People say "the State should build this bridge as a reparation to the people" but really, that is the duty of the State to do anyway. So why should we struggle in order for them to build a bridge as reparation when they should be doing that to start with? That is the duty of the State not with regards to victims but with people who live there.'[266]

Moreover, others have suggested that collective reparations are unlikely to lead to structural reform if they are short-term in nature, which is common in transitional justice approaches.[267]

Factors that determine the impact of collective reparations

Several factors determine whether collective reparations are likely to occur and be well-received. The first factor is whether there has been agreement amongst the community on the identifiable victim.[268] As noted earlier, this remains a challenge for any reparations scheme. The second is whether the reparations program is designed and delivered in a participatory manner with those impacted.[269] This consideration applies to many aspects of the reparations process, including the development of forms to access schemes.[270]

Symbolic Reparations

Symbolic reparations tend to come in the form of public apologies and memorialisation for harms and atrocities. A public apology is part of symbolic reparations but has been separately explained earlier.

Defining symbolic reparations

Symbolic reparations can be defined as 'various forms of recognition and acknowledgement for the suffering of victims, such as commemorations, rituals in homage to the victims, changing the names of streets in honour of victims, places of memory, and apologies in the name of the nation, either as public acts or through private letter.'[271] Symbolic reparations are often spoken about similarly to memorialisation processes, a subset of symbolic reparations. Examples of memorialisation include:

- creation or designation of sites as places of recognition,
- the naming of places, streets or suburbs,
- creation of monuments,
- establishing museums (physical or virtual), and
- days of commemoration.[272]

Other examples could also include providing visibility to consumer survivor experiences, as the Child Abuse Royal Commission did for survivors of child abuse within institutions.

Institutional Child Abuse Royal Commission and 'Message to Australia'

The Child Abuse Royal Commission took significant steps to centre the voices of survivors.[273] An example of this was the publication of more than 1000 messages from survivors to Australia, called 'Message to Australia'. A single copy book was provided to the National Library of Australia, with digital versions of the messages published on their website.[274] Researchers who have examined the Royal Commission processes have reflected on how this enabled silenced voices to be heard and provided a more broadly cathartic opportunity for survivors and the community.[275] This, in part, explains why the national discourse changed regarding child sexual abuse.[276]

The merits of symbolic reparations

There are merits to symbolic reparatory efforts, but these should be weighed against their risks. For many, dealing with the past is a foundational component of transitional justice and addressing systemic and widespread harms.[277] One of the arguments in favour of memorialising follows the logic that *confronting our past abuses means we are less likely to repeat them*. Early proponents of this idea stated:

> 'Our moral understanding of the past is often a way of bringing to imaginative life the full implications of principles to which we are already in theory committed'.[278]

Memorialising, however, is contentious and carries risks. While acknowledging the past may be important, some authors suggest that constantly reverting to it can actually widen social divisions. They claim that within certain contexts, it may reignite violence.[279] Others are concerned that the forms of memorialisation are overly prescriptive and have become ideology;[280] these concerns are, however, contested.[281]

Factors that determine the impact of symbolic reparations

The UN Special Rapporteur provides authoritative best-practice guidance on the use of symbolic and memorialising processes *in the field of cultural rights* (Special Rapporteur).

UN Guidance on Memorialisation Processes

In a report to the Human Rights Council, the Special Rapporteur provided extensive guidance on best-practice memorialisation processes.[282] The report focuses primarily on transitional democracies when advising on memorialisation processes. The principal focus of such processes is to provide 'to those affected by human rights violations the spaces necessary to articulate their narratives' while enabling 'civic engagement' and 'critical thinking' regarding the past.[283] Guidance is included on who should be considered victims (and who should be considered perpetrators and heroes),[284] how memorialisation can promote critical thinking about the past[285] , and the value and challenges of involving artists in such processes.[286] The report indicated that such memorialising processes were usually derived from recommendations arising from truth and reconciliation processes.[287]

Once again, identifying who the victims are is an issue in this process.[288] This consideration relates not only to a general identification of the victim-group but also to identifying individuals. Many traditional memorialising methods seek to name the individuals who have been lost. If this information is unavailable, it may prove impersonal. If individuals are excluded, it may cause further harm. Similarly, any memorialising process should be primarily controlled by the groups who have been impacted. Failure to do these risks further disempowerment.[289]

Guarantees of non-repetition

In an effort to prevent repeated acts of violence and harm, states may make guarantees of non-repetition or engage in other agreement-making mechanisms.

Defining guarantees of non-repetition

Guarantees of non-repetition (sometimes termed 'guarantees of non-recurrence') refer to states committing to 'specific actions that reduce the likelihood of recurrence' of a particular harmful act or event.[290] They are necessary where there is a risk of those acts occurring or the reintroduction of the same legal arrangements that caused the harm.[291] They were originally understood as a subset of reparations but are increasingly thought of as their own distinct mechanism.[292] This distinction is because unlike other reparatory efforts focused on the past, guarantees of non-repetition are firmly focused on future harm prevention.[293]

The forms of these guarantees are disparate[294] and evolving under international law. They are reflected in the Van Boven Principles, which include a focus on promoting civil society involvement and law reform.[295] Such legislative changes are often intended to bring state parties in line with international human rights law obligations.[296]

Within mental health settings, survivors have called for the abolition of laws permitting compulsory treatment.[297] Committing to guarantees of non-repetition may also call for the state to criminalise certain conduct,[298] such as efforts to introduce criminal penalties,[299] which reflect obligations under the *Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment.*[300] The government may initiate other structural and cultural reforms to address issues within particular workforces.[301] Other considerations, similar to those used in water management, might require the government to consult with key bodies, such as peak bodies or formally empowered references groups, when making decisions regarding systems management and reforms that impact human rights.[302]

Merits of guarantees of non-repetition

Guarantees of non-repetition have several obvious benefits. The first is that survivors of harm, including in the mental health system,[303] see them as a component of reparations. Similarly, it fulfills survivors' hopes that what happened to them would never happen to anyone else.[304] Guarantees of non-repetition achieved through restorative justice and community-based approaches, including but not limited to truth and reconciliation processes, allow greater dialogue and dispute resolution opportunities between communities.[305] These can be particularly important in institutions empowered by law to use force, but which have done so improperly in the past.[306]

There are criticisms of the conceptualisation of guarantees of non-repetition. Some scholars have commented that these practices are indistinguishable from broader development and peacebuilding activities.[307] However,

others distinguish guarantees of non-repetition as distinct from development due to their specific connection with abusive pasts.[308]

Factors determining the impact of guarantees of non-repetition

Due to their evolving and diverse nature, there is less evidence on the factors that determine the impact of guarantees of non-repetition. The UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence highlights that where state parties have made these commitments, it was usually a product of significant civil society lobbying.[309] Roht-Arriaza identifies the importance of any guarantee of non-repetition explicitly connecting the previous violation of the law and the currently proposed mechanism or guarantee.[310] There will likely be development in these spaces in the short to medium term, with the Yoo-rrook Justice Commission investigating both the criminal justice and child protection systems.[311]

RECOMMENDATIONS

The Victorian Government can lead internationally by providing world-first steps towards truth and reconciliation within the mental health system. The Royal Commission's recommendations have given a path towards a better mental health system, however, unheard, unacknowledged and unresolved trauma sits between that future and this present. It also sits between those who use the system and those who administer and oversee it.

In crafting this advice and developing recommendations, the Reference Group has been informed by the following eight concepts, movements, groups, and philosophies.

Restorative Justice

Acknowledging harms can bring together those party to the harms and have open and victim-centric conversations about what is needed to heal.[312] There are other restorative options that keep those harmed and who caused the harm separate, such as formal recognition of harm.

First People's Wisdom & Calls for Justice

First Peoples carry over 60 000 years of cultural knowledge on social and emotional wellbeing and 280 years of wisdom surviving and resisting colonisation. First Peoples have led in calls for justice in Australia. This advice learns from and supports those calls for justice.

Transitional Justice

A range of different mechanisms are needed to move from violent systems to peaceful systems.[313] These broadly form part of transitional justice. While transitional justice is traditionally used in new democracies, its mechanisms are being used more frequently in established democracies.

Mad Studies

Approaches to madness should be survivor-led, grounded in experiential knowledge and move beyond narrow biomedical approaches to distress.[314] Mad Studies privileges people with lived experience as expert 'knowers'. This advice benefits from 'Mad' scholars and activists.

Human Rights

All people should enjoy all human rights equally.[315] Taking a human rights-based approach means acknowledging the state's responsibility to respect, protect and fulfill human rights,and provide remedies and reparations when they have been breached.[316]

Critical Pedagogy

Consciousness raising occurs is crucial in any acknowledgement of harm.[317] This necessitates a dialogue between parties to find words that have meaning and challenge oppression. This should move beyond cultures of silence that currently conceal and perpetuate the processes of silencing and domination.

Relationality

People are interdependent, with their experiences connected to, and embedded within, their social and relational contexts.[318] Families and social relationships can be key to mental health and wellbeing. This was acknowledged by the Royal Commission.[319]

Violence

Our approach to understanding violence focuses on visible forms of violence, the ongoing violence that is built into the smooth running of mental health systems, and how concepts and language around mental health can embed further domination.[320]

RECOMMENDATION 1: ESTABLISH A RESTORATIVE JUSTICE PROCESS

Acknowledgement begins with a Restorative Justice Process led by the forthcoming Mental Health and Wellbeing Commission. The process will serve dual functions of acknowledging and responding to harm and trauma, while establishing a shared sense of truth. Without this, an apology will be uninformed and harmful, and a future system will be the same as the past. With this, a pathway for cultural change and elimination of harmful practices is possible.

RECOMMENDATION 2: ISSUE PUBLIC APOLOGIES

Following the Restorative Justice Process, the Victorian Government should issue public apologies in Parliament. Such apologies should be made separately, to consumers and survivors first, and to families, carers and supporters second. Naturally, those apologies should respond to the harms identified in the Restorative Justice Process.

Restorative Justice Process

Any acknowledgement of harm must be built on a deep understanding of that harm, informed by those most impacted. Australia has, in recent times, begun exploring harms resulting from state and institutional failure.[321] Similarly, Victoria has examined the impacts of these failures on parents and children[322] and the LGBTIQ community.[323] A mechanism for understanding the nature and impacts of harms and an opportunity to support reconciliation is needed.[324]

What it is

This advice recommends that the Victorian Government establish a Restorative Justice Process to uncover and acknowledge harms in the mental health system. This process should have three principal aims: to acknowledge harm in the system; to formally document the harms in the system; and where appropriate, to support reconciliation between on the one hand, consumers and survivors, and families, carers and supporters, and, on the other, mental health practitioners and the Victorian Government. The process should focus on harms to consumers and survivors first, and to families, carers and supporters second.

Why it is needed

To know where we are going, we need to know where we have come from. The Royal Commission, through its 74 recommendations, has provided a *what*. But in the absence of truth and mutual understanding of the harms, there is no *why*.[325] A restorative process that documents the harms is crucial to improve relations between those who use and administer the system, motivate cultural change in services, and reduce the prevalence of human rights violations. It is necessary to hear and understand the specific harms if the Victorian mental health system does not wish to repeat them. This process supports Victoria's push towards open disclosure and the duty of candour regarding health-system-inflicted harms and is consistent with rights under the Charter.[326]

How it may work

While there are various mechanisms for acknowledging harm, documenting truth and restoring relations, this advice focuses on pathways within existing institutions. Rather than recommend the Victorian Government conduct a formal truth and reconciliation process via the *Inquiries Act 2014* (Vic), this advice recommends that the Minister for Mental Health request the forthcoming Mental Health and Wellbeing Commission to conduct a process.[327] The rationale for this is to ensure alignment and enhancement of the existing Royal Commission reform agenda and to build the legitimacy of the Commission within the community.[328]

In undertaking the Restorative Justice Process, the Commission would visit Victorians to hear their harms. There should be a range of mechanisms to enable acknowledgements, truth-telling and restoration, including:

- Telephone services – that enable people with lived experience to call and have their experiences of harms heard by the Commission

- Submissions – people may choose to make submissions, in the form of written, recorded or art-based submissions, to express the harm that has been caused
- Hearings – there may be hearings with a Commissioner in some instances, based on the nature of the harms and the importance of hearing under-represented groups
- Online modalities – a range of online hearings or restorative groups should be used for individuals, often young people, who would prefer to participate outside of their geographic area, and
- Restorative circles are carefully facilitated by the Commission, bringing together those harmed by the system and those within government and mental health services. Such restorative circles must be designed and delivered with the leadership of people with lived experience to ensure they are trauma-informed and resist co-option.

Crucially, people's submission to, and participation in, the Restorative Justice Process should include opportunities to communicate via art.

Lived experience leadership and oversight

The lived experience Commissioners should be granted the responsibility to lead this process. The Commission would need to establish a steering group to oversee the design, delivery and evaluation of the Restorative Justice Process. The group should be composed of consumers and survivors, and families, carers and supporters, and they may have guest non-lived experience attendees at their discretion. The design of this Reference Group could inform the design of that steering group.[329]

Dealing with harms separately

The Restorative Justice Process should also hear about these harms separately, and in a sequenced fashion. That is, hear first from consumers and survivors, and hear family, carer and supporter harms following this. There should be processes for people to speak in both processes if they identify as both a consumer or survivor, or a family member, carer or supporter. The reason for this separation is to give voice to the distinct experiences of these groups. The reason for sequencing is to hear first from consumers and survivors who have experienced direct human rights breaches from the system.

Use of existing evidence

The Commission would utilise existing evidence from Royal Commission submissions as well as evidence from other inquiries. Doing so reduces the burden on Victorians to re-tell their stories if they do not wish to. The Commission should focus on historical harms, more recent and present harms, as well as the future harms that may arise from the system in the near future.

Outreach and community-building

The Commission would conduct regional tours of Victoria as part of the Restorative Justice Process. This would mean that while there would be sittings within metropolitan parts of Victoria, there would also be visits to

regional settings. Importantly, the Commission would also visit and welcome evidence from people detained within prison settings. Use of lived experience workers during this stage will be crucial, including age-appropriate workers to perform out-reach to specific age groups.

Participation of clinicians and the community

Significant thought and preparation would be required if clinicians participate in the restorative circles. Participation of clinicians should be accompanied by support for clinicians as well as thoughtful briefing and preparation to ensure they can safely participate, ideally coproduced with consumer and survivor leaders, and family, carer and supporter leaders. The steering group should be heavily involved in the design and delivery of this process.

Supports to those with lived experience

Optional supports should be offered to people speaking about their experience of harm. However, it will be important to seek advice from the consumer and survivor community about how to do this, rather than offering support from the same system in which people experienced harm.

Publish the report

Once the Commission has completed hearing from people with lived experience, it should document its findings. These findings should form a report that is published in the public domain and provided to the Minister for Mental Health to be tabled in Parliament. The Minister may then use this report to inform a formal public apology.

Considerations for the Victorian Government

Opportunities	Obstacles	Risks of inaction
Enable mutual understanding and trust between all involved in the mental health and wellbeing system Therapeutic opportunity for those harmed by the mental health system Enable a deeper understanding and commitment to the Royal Commission reform agenda Support the inclusion and leadership of people with lived experience in Victorian Further embed the Duty of Candour reforms through a culture-change process	Cost implications Resistance from some quarters of the mental health system Denial of harms due to the challenging nature of lived experience testimony	Continued disagreement and distrust towards the mental health system People with lived experience may conduct their own inquiry, undermining the Victorian Government's leadership on reforms Undermining any public apology by the government as lacking a basis in truth and reconciliation A lack of culture change in the system and continued harms

Reinforce the Victorian Government's commitment to truth and restorative justice, consistent with the Yoo-rrook Justice Commission's work Reduce the incidence of human rights violations and other harms by building a more detailed picture of the types and scale of harms		

Public apologies

After truth has been reckoned with and reconciliation begun, apologies to consumers, and then families, carers and supporters should follow.

What it is

We recommend that following the Restorative Justice Process, the Victorian Government apologise for harms to consumers and survivors, and to families, carers and supporters. These apologies should be directed to those who have been harmed by systems and be delivered within Parliament.

Why it is needed

A public apology is crucial to recognise the harms within the mental health system and to begin eliminating them. Public apologies are increasingly common within Australia to First Peoples[330] and to those harmed by state and institutional failures.[331] An apology is needed to re-establish the political relationship and social contract between the state and people with lived experience. That revised relationship can emerge through both the Restorative Justice Process and the public apology that responds to it. Doing so provides an alternative path forward to a new and better system.

How it may work

A public apology cannot be separated from a Restorative Justice Process. An apology without a restorative process risks missing truths, promoting mistruths and causing harm. Ultimately, it would be a cosmetic approach to justice that failed to address the underlying conditions that caused the harm.

Contents of an apology

It would be premature for this advice to detail, beyond the harms explored above, what the Victorian Government should apologise for. Instead, this advice recommends that the Victorian Government work closely with affected communities in drafting the apology. Affected communities should include those who have experienced compulsory mental health treatment, who have been pathologized by the mental health system and who have lost someone close to them to the system. Strong coordination with the consumer and carer peaks would be crucial, as would further consultations with affected communities. An intersectional approach should be taken to identifying, understanding and apologising for harms. Importantly, the Victorian Government should apologise for the ongoing experiences of harms that may continue in the short-term but enunciate a clear commitment to eliminating these harms. This should carry clear timeframes and be backed by meaningful accountability mechanisms that involve lived experience leadership.

Resisting unhelpful and dominant narratives

Nothing in a public apology should reinforce the harms identified in the Restorative Justice Process. For example, consumers and survivors should be consulted closely to ensure that any apology does not suggest or support the use of coercive or discriminatory practices.

Involving lived experience leaders

The apology could be from the Minister for Mental Health or from the Premier. At all times people with lived experience should be involved in this process, with discrete spaces held for consumers and survivors, and for families, carers and supporters. This should be done through a panel of representative members.

Workforce involvement

Should representatives from the mental health system wish to apologise, they should work with the Victorian Government and lived experience leaders to support the apology. This may take the form of a series of pledges and formal commitments designed in conjunction with consumers and survivors, and families, carers and supporters. Pledges and commitments should acknowledge and respond to the distinct harms between consumers and survivors, on the one hand, and families, carers and supporters on the other.

Considerations for the Victorian Government

Opportunities	Obstacles	Risks of inaction
Assist the Victorian Government to take responsibility for past and present failures of the State Enable the Victorian Government to enliven the vision of a different mental health and wellbeing system Allow the Victorian Government to become a world-leader on mental health Support the healing of consumers and survivors as well as families, carers and supporters Support greater inclusion and leadership of people with lived experience by asking for forgiveness	Rejection if done without a Restorative Justice Process Resistance from other clinicians and calls for a similar acknowledgement process for the workforce (that should be dealt with separately)	Increasing calls for a public apology Continued harm to consumers and survivors and to families, carers and supporters Continued mistrust from survivors and consumers as well as families, carers and supporters

ALTERNATIVE OPTIONS

Individual Reparations

The Victorian Government should consider individual reparations to address the harm caused by the mental health system. This would most likely be in the form of redress scheme. These reparations may be provided to individuals or to the consumer and survivor and family, carer and supporter communities at large via collective reparations.

Why it may be needed

Mental health consumers and survivors as well as families, carers and supporters have suffered significant harm as a result of the mental health system (and interlinking systems that deal with mental health). These harms are physical, psychological, spiritual, and economic. Reparations or redress may be justified to compensate individuals and as a moral act of the state taking on responsibility for its failures.

How it could work

It should be noted upfront that the Victorian Government would need to undertake more extensive consultation on the design of a redress scheme. The restorative process would provide further information that would inform this process. However, some considerations from the Reference Group may assist with this process.

The Victorian Government may consider establishing a redress scheme to compensate individuals who have experienced violence, abuse, neglect and exploitation by the mental health system. The scheme would be administered by an independent body, either the new Mental Health and Wellbeing Commission, or a for-purpose body.

The thresholds of harm, monetary payments and applicant eligibility (or 'victim'-identification) of the redress scheme needs further consultation.

Harm thresholds

How harm is assessed within this context is complex. A 'minimalist' approach to redress may focus on a prima facie breach of the *Mental Health Act 2014* (Vic)[332] and other human rights instruments. A maximalist approach would be more grounded on subjective experiences of harm. Another approach may be to identify specific acts as carrying an inherent risk of harm, and evidence of those practices meets that threshold.

Monetary payments and other forms of redress

Components of any redress scheme should enable:

- Access to monetary payments
- An apology from the Victorian Government or mental health services

- Supported access to psychological and peer-led therapies
- An opportunity record and share their experience, and
- Access to medical records and mechanisms to change or amend those records in line with existing laws.

This should not be seen as an exhaustive list. Further consultation with lived experience leaders and other Victorian Government departments is necessary.

Applicant eligibility

In addition to the harm threshold, further eligibility criteria would need resolution. The redress scheme would need to determine whether the individual redress scheme is open to consumers and survivors only, or also to families, carers and supporters. Further consultation would be needed on this, but it would be influenced by what harm threshold was agreed upon.

Considerations for the Victorian Government

Opportunities	Obstacles	Risks of inaction
Meet the moral case to address the harm caused by the mental health system Address the socio-economic disadvantage faced by those who have been harmed by the mental health system Support the inclusion and leadership of people with lived experience in Victorian Build trust towards the Victorian Government and the mental health system	Significant cost implications Contested views on eligibility Risk of retraumatising individuals if not sufficiently co-designed	Continued socioeconomic disadvantage for those harmed Calls for redress will continue Strategic litigation may prove widespread

Collective reparations

The Victorian Government should consider collective reparations to address the harm caused by the mental health system. This would most likely be delivered as part of a collective reparations package to consumers and survivors and to families, carers and supporters as distinct groups.

Why it may be needed

As noted, mental health consumers and survivors as well as families, carers and supporters have suffered significant harm. Reparations or redress may be justified to compensate these groups and to address the underlying structural causes of their disadvantage. They also provide an ability for the Victorian Government to take responsibility for their policy failures with a clear and predictable financial investment.

How it could work

Like individual reparations, this should be further designed in consultation with both consumer and survivor and family, carer and supporter groups. It should also be informed by the Restorative Justice Process. Elements of collective reparations could include, but not be limited to:

- The funding of specific scholarship and research grants with a focus on truth-telling
- Providing a portion of funding to lived experience peaks to determine the appropriate method of collective reparations.

These collective reparations should be distinct from existing community services and should be recognisable as a response to harm caused by the mental health system. They should support the impacted communities in the first instance, and where possible, support the broader processes of truth-telling and prevention of future harms. They should not be framed as part of the Royal Commission reform agenda, but as a distinct process (while noting they may be complementary).

Considerations for the Victorian Government

Opportunities	Obstacles	Risks of inaction
Meet the moral case to address the harm caused by the mental health system Address the socio-economic disadvantage faced by those who have been harmed by the mental health system Support the inclusion and leadership of people with lived experience in Victorian	It is unclear whether collective reparations reduce the liability for individual claims Individual loss may not be redressed if individual reparations are not performed	Continued socioeconomic disadvantage for those harmed

Build trust towards the Victorian Government and the mental health system		

Symbolic Reparations

The Victorian Government may consider the use of various symbolic acts of recognition or reparations. This would be through a range of initiatives, some led by the Victorian Government, some led by those with lived experience.

Why it may be needed

On their own, symbolic reparations do not make a compelling case. This literature review has illustrated that efforts solely devoted to symbolic reparation are not well accepted. Therefore, if it were considered, it should only be done in concert with other more material acts of reparation and structural reform.

Within the context of those measures, symbolic reparations do have value. Along with a public apology (which is itself a symbolic measure), other symbolic measures may contribute to a changing relationship between those who use the system, those who administer the system (mental health workers) and those who steward the system (the Victorian Government). They may be part of broader efforts to resolve disputes between these parties and to enable a platform for a new mental health system that helps more than it harms.

How it could work

Further consultation would be needed by the Victorian Government were it to take up this approach. Examples that the Victorian Government could consult on include:

- Establishing a day, perhaps during Mental Health Week (October) or Human Rights Week (December), to commemorate the harms in the system
- The naming of certain sites, projects or initiatives after consumer and survivor and family, carer and supporter advocates
- Funded opportunities for physical or virtual museums to educate the public on the harms in the system.

All these initiatives, and others, would need to be co-designed with those consumers and survivors and families, carers and supporters, and in many instances led by these groups.

There may be arguments for focusing less on memorialising the past, and instead consider a more positive future and celebration of the value of people with lived experience. While important, such acts would be better considered part of existing reform initiatives, including anti-stigma and pro-inclusion reforms, than as part of symbolic reparations.

Considerations for the Victorian Government

Opportunities	Obstacles	Risks of inaction

If done in conjunction with other mechanisms: Assisting the Victorian Government to take responsibility for past and present failures of the State Enable the Victorian Government to enliven the vision of a different mental health and wellbeing system Acknowledge and assist the processing of harms to consumers and survivors as well as families, carers, and supporters Support consumer and carer leadership through co-design and consumer- and carer-led initiatives	If done in the absence of a truth and healing process, will risk causing harm, be rejected and be unlikely to lead to a cessation of these practices There will be resistance from some working in the mental health system and calls for an equivalent apology to clinicians	Continued mistrust from survivors and consumers as well as families, carers and supporters

Guarantees of non-repetition

The Victorian Government may commit to various mechanisms as part of guarantees of non-repetition. These guarantees should reflect a series of structural and legislative changes to prevent the continuance and re-occurrence of harms notified within the Restorative Justice Process.

Why it may be needed

There are strong reasons to consider making guarantees of non-repetition. Done well, they may provide the structural foundations for change within the mental health system. They also build trust amongst consumers and survivors and families, carers and supporters in the system. Committing to guarantees of non-repetition would be consistent with Australia's obligations under the CRPD and would be in furtherance of the Royal Commission's recommendations and reform agenda.

How it could work

There are a range of ways that guarantees of non-repetition could work. It should be noted that they do present politically and legally complex processes given various harms identified by consumers and survivors and families, carers and supporters remain legally sanctioned and may prove unlikely to stop in the short term.

Whether called guarantees of non-repetition or named otherwise, actions should be aimed at preventing further harm (as identified by people with lived experience). Some examples include:

- A commitment to eliminate certain practices, such as compulsory mental health treatment, within defined timeframes
- Law reform, including regarding negligence or mechanisms to deal with harm
- Public announcements that certain practices are morally wrong
- Generation of new statutory rights that enhance the protection of consumers and survivors and families, carers and supporters against the harms they identified, and
- Binding obligations to act in partnership with consumers and survivors and families, carers and supporters on key aspects of system stewardship and management.

This latter example, acting in partnership (or with greater consultation), could include the creation of a statutory duty to consult peak bodies and other lived experience bodies (e.g., the Lived Experience Strategic Partnership and/or the Lived Experience Agency) on decisions that carry human rights implications for this group.[333] Such processes have been used elsewhere in Victoria.

Considerations for the Victorian Government

Opportunities	Obstacles	Risks of inaction

Ensure Victoria does world-first structural change between people with lived experience and the state and services Create enduring partnerships between the Victorian Government and consumers and survivors and families, carers and supporters Prevent further harm occurring from the mental health system	Resistance to the cessation of certain practices, such as compulsory mental health treatment A lack of clarity and agreement on what would *guarantee* non-repetition of particular harms	Failure to commit to moving away from harmful practices invites future questions of apologies, truth and reconciliation processes and reparations

MESSAGES FROM THE REFERENCE GROUP

This advice was a collaborative writing process and the recommendations are a product of consensus-based decision-making. Some Reference Group members wished to provide the government, sector and community with a personal message.

Collectively, we have a responsibility - and an opportunity, to acknowledge the harms experienced by people and communities impacted by the overreach or underreach of the mental health system. Reforms will struggle to flourish until these harms are acknowledged, repaired, and remain unrepeated. Be courageous and be accountable.

Caroline Lambert

If we think about what is means to be good ancestors, to act in ways that future generations will benefit from, how might we decide differently? I hope you listen with an open mind, heart and will and allow the presence of lived experience and an alternative worldview change you.

Morgan Cataldo

I believe a real opportunity is presented in the report, for this Government to be a world leader in mental health reform. I urge you to read it with a compassionate lens, and to believe the lived experience consumers and carers of Victoria who have been impacted by our mental health system.

Chris MacBean

Harms to people by the mental health system are not necessary. It is the lack of progression to alternate models of care, continuity of support and lived and living experience-led services that make the harms 'seem' necessary. They are not. We must not wait for hindsight to recognise and give recognition to this.

Sharon Williams

Those of us who have experienced harm within the mental health system know in our bones that these things should never have happened. I hope this report moves us collectively towards a future where these harms are acknowledged, redressed and not repeated. We deserve that. May our collective voices rise!

Flick Grey

REFLECTIONS FROM LIVED EXPERIENCE FACILITATORS

As facilitators of the State Acknowledgement of Harm Project Reference Group it has been an honour to work closely with this group of exceptional consumers and survivors and families, carers and supporters.

They have brought their own unique perspectives and experiences of harm from the mental health system to inform the recommendations presented here.

The Victorian mental health system harms people, by design.

This is a painful and dissonant truth to accept, in part because the harm occurs within a medico-legal framework.

We heard from Reference Group members that sometimes the harm is directly inflicted, sometimes it is indirect. Sometimes it is intentionally inflicted, sometimes it is unintentional. Sometimes it is physical, sometimes it is psychological. But it always hurts recipients in deeply personal and internalised ways. Consumers and survivors are of course most egregiously violated, but families, carers and kinship groups also experience harm caused by inappropriate and inadequate services.

We witnessed this deep pain surfacing again in the Reference Group as members undertook with remarkable sensitivity and care for each other the task of revisiting these experiences in order to recommend mechanisms that will begin the healing for consumers and survivors and families, carers and supporters. We thank them for their courage and commitment.

We commend the advice prepared by the Reference Group. It is a world-first; an important and historic undertaking that we hope will be replicated around Australia and internationally. We believe the acknowledgement is a non-negotiable foundation stone for delivering both the collective healing process and the genuine reform of the system consumers and carers still call for.

Tim Heffernan
Consumer Lived Experience Facilitator

Kerry Hawkins
Carer Lived Experience Facilitator

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- Dr Stephen Winter, University of Auckland
- Dr Sudeep Saraf, Mental Health & Wellbeing Division
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- Eddie Synot, Griffith University
- Heather Pickard, Consultant
- Helen Makregiorgos and Wanda Bennetts, Independent Mental Health Advocacy
- Jacara Egan, Social Worker & Wayapa Practitioner
- Julie Dempsey and Kate Thwaites, Office of the Chief Mental Health Nurse
- Katie Larsen, Lived Experience, LGBTIQ- & Community Mental Health Leader
- Kenton Miller, [Principal Advisor] Commissioner for LGBTIQ+ Communities
- Kerin Leonard, Lionheart Consulting Australia
- Kevin Bell AM KC, Yoo-rrook Justice Commission
- Lee Carnie, Human Rights Lawyer
- Margaret Grigg, Forensicare
- Natasha Swingler, Individual Lived Experience Consultant
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- Peter Lewis, Essential Media
- Priscilla Schmiedgen, BEING
- Professor Alan Rosen, Psychiatrist

- Professor Helen Milroy, University of Western Australia
- Professor Helen Spandler, University of Central Lancashire
- Professor Stephen Duckett, Health Governance Expert
- Richard Keane, Living Positive
- Ro Allen, (former) Commissioner for LGBTIQ+ Communities
- Rowan McRae, Policy Expert
- Sean Kelly, Writer & Political Analyst

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Simon Katterl, Project Facilitator.

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[10] Ibid.

[11] These concepts are defined at page 54 of this document.

[12] The contract asked the contractor to provide 'To provide the Minister for Mental Health an options paper for acknowledging harm, stemming from the views of the lived experience community and best-practice evidence': State of Victoria and Simon Katterl Consulting, Contract between State of Victoria and Simon Katterl Consulting (Options for the public acknowledgment of mental health system harm in Victoria Agreement), Date of Agreement 6 May 2022, Reference No C11124, 2.

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[18] The survey on the terms of reference asked respondents to rank the following priorities: 'prevention and early intervention', 'social isolation, depression, anxiety and trauma', 'accessbility and navigating the mental health system', 'integration between alcohol and other drugs and mental health services', 'community mental health services', 'acute mental health services (mental health assessment and treatment both in hospital and in the community)', forensic mental health services (mental health assessment and treatment both in hospital and in the community)', 'forensic mental health services (mental health assessment and treatment for people in contact with the criminal justice system)', 'preventing suicide', 'workforce development and retention', 'deliverable reform to improve outcomes for people living with a mental illness'. There was an opportunity for 'additional themes': Victoria Government, 'Royal Commission into Victoria's Mental Health System: Engage Victoria' (26 February 2019) <https://web.archive.org/web/20190226174643/https://engage.vic.gov.au/royal-commission-mental-health-terms-of-reference> ('*Royal Commission into Victoria's Mental Health System*').

[19] For example, the background to the letters patent make no mention of human rights or harms from the mental health system. The terms of reference do not mention human rights or the need to investigate harms in the system. The recommendations do include the opportunity to further embed human rights and to make any legislative or regulatory changes: Victorian Government, *Royal Commission into Victoria's Mental Health System - Letters Patent* (Victoria Government, 2019) <http://rcvmhs.archive.royalcommission.vic.gov.au/Terms_of_Reference_signed.pdf>.

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[207] Spandler and McKeown (n 185); Mike Slade, *Personal Recovery and Mental Illness: A Guide for Mental Health Professionals* (Cambridge University Press, 2009) 72.

[208] Confidential Forum for Former In-Patients of Psychiatric Hospitals, *Te Āiotanga: Report of the Confidential Forum for Former In-Patients of Psychiatric Hospitals* (2007) vi <https://d3n8a8pro7vhmx.cloudfront.net/nzhrc/pages/174/attachments/original/1487714414/Report_of_the_Confidential_Forum_for_Former_In-Patients_of_Psychiatric_Hospitals.pdf?1487714414>.

[209] Warwick Burton, *The Encyclopedia of New Zealand* 'Mental health services'.

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[211] Newman (n 179) 81.

[212] Greg Grandin, 'The Instruction of Great Catastrophe: Truth Commissions, National History, and State Formation in Argentina, Chile, and Guatemala' (2005) 110(1) *The American Historical Review* 46; Grandin cited in: Newman (n 179) 83.

[213] Onur Bakiner, 'Truth Commission Impact: An Assessment of How Commissions Influence Politics and Society' (2014) 8(1) *International Journal of Transitional Justice* 6, 25–30.

[214] Megan Davis, 'Speaking up: The Truth about Truth-Telling' [2022] (76) *Griffith Review* 25.

[215] Bakiner (n 215).

[216] Brandon Hamber and Patricia Lundy, 'Lessons from Transitional Justice? Toward a New Framing of a Victim-Centered Approach in the Case of Historical Institutional Abuse' (2020) 15(6) *Victims & Offenders* 744, 762–763.

[217] Newman (n 179) 83.

[218] Julia Holman, 'Disability Advocates Threaten to Boycott Royal Commission over Conflict of Interest Claims', *ABC News* (online, 15 September 2019) <https://www.abc.net.au/news/2019-09-16/disability-royal-commission-boycott-conflict-interest/11514540>.

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[220] Tribune (n 23).

[221] Agata Fijalkowski, 'Truth and Reconciliation Commissions' in Olivera Simic (ed), *An Introduction to Transitional Justice* (Routledge, 2nd ed, 2021) 97, 106.

[222] Royal Commission into Institutional Responses to Child Sexual Abuse (n 15).

[223] 'Commonwealth Letters Patent', *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (4 April 2019) <https://disability.royalcommission.gov.au/publications/commonwealth-letters-patent>.

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[225] Tribune (n 23); Holman (n 220); Henderson (n 221).

[226] Luke Moffett et al, *Response to Historical Institutional Abuse Consultation* (Human Righs Centre School of Law, Queens University Belfast, 2019) 8–10 <https://reparations.qub.ac.uk/assets/uploads/QUB-Law-HRC-HIAI-Redress-Submission-.pdf>.

[227] Anne-Marie McAlinden and Bronwyn Naylor, 'Reframing Public Inquiries as' Procedural Justice'for Victims of Institutional Child Abuse: Towards a Hybrid Model of Justice' (2016) 38(3) *Sydney Law Review, The* 277.

[228] Hamber and Lundy (n 218). This may also apply to the mental health Royal Commission which heard harms, but only elicited them in the furtherance policy-oriented ends.

[229] Ibid 763–764.

[230] Luke Moffett, 'Victims, Victimology and Transitional Justice' in Hakeem Yusuf and Hugo van der Merwe (eds), *Transitional Justice: Theories, Mechanisms and Debates* (Routledge, 2022) 30, 51–52.

[231] Citing the Royal Commission into Institutional Responses to Child Sexual Abuse: Suellen Murray, *Supporting Adult Care-Leavers: International Good Practice* (Policy Press, 2015) 87.

[232] Andrew Songa, Annah Moyo-Kupeta and Nomathansanqa Masiko-Mpaka, 'Reparations' in Hakeem Yusuf and Hugo van der Merwe (eds), *Transitional Justice: Theories, Mechanisms and Debates* (Routledge, 2022) 143, 144.

[233] Maylea et al, 'Consumers' Experiences of Rights-Based Mental Health Laws: Lessons from Victoria, Australia' (n 31); Victoria Legal Aid (n 50); Knott et al (n 31); Commission (n 28).

[234] Section 39(3) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) expressly limits remedies for individual breaches of that Act. However, this argument is made more broadly that a reading of section 8 of the Act would broadly enable equal protection from the law.

[235] Working Group on Arbitrary Detention, United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, UN Doc. A/HRC/30/37 (2015), para. 25.

[236] UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Res.60/147, 2005.

[237] Convention of the Rights of Persons with Disabilities, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 16 August 2008), art 33(3).

[238] *Charter of Human Rights and Responsibilities Act 2006* (Vic) s7(2); see further: Simon Katterl and Chris Maylea, 'Keeping Human Rights in Mind: Embedding the Victorian Charter of Human Rights into the Public Mental Health System' (2021) 27(1) *Australian Journal of Human Rights* 58.

[239] Maylea et al, 'Consumers' Experiences of Rights-Based Mental Health Laws: Lessons from Victoria, Australia' (n 31); Chris Maylea et al, 'Consumers' Experiences of Mental Health Advance Statements' (2018) 7(2) *Laws* 22; Victoria Legal Aid (n 50); For a deep discussion of the failure of the system to provide care in the least restrictive manner possible, see: State of Victoria, 'Royal Commission into Victoria's Mental Health System, Volume 4: The Fundamentals for Enduring Reform' (n 66).

[240] Hamish Spence, 'What Made Woman Feel like a 'monster'', *news.com.au — Australia's leading news site* (online, 15 June 2022) <https://www.news.com.au/lifestyle/health/mental-health/seclusion-and-restraint-still-prevalent-in-victorias-mental-health-services/news-story/4d34fd50f4da954f5d48de0c994f2bfc>; 'Victoria's Mental Health Wards Are Putting More Patients in Seclusion and the Impacts May Be Long-Lasting - ABC News' <https://www.abc.net.au/news/2020-07-29/victorian-mental-health-wards-increasingly-using-seclusion/12500352>.

[241] For similar argument, see: Linda Steele and Kate Swaffer, 'Reparations for Harms Experienced in Residential Aged Care' [2022] (Online) *Health and Human Rights*.

[242] Newman (n 179) 51.

[243] 'Stolen Generations Reparations Package | Victorian Government' <http://www.vic.gov.au/stolen-generations-reparations-package>.

[244] Ibid.

[245] Stolen Generations Reparations Committee, *Stolen Generations Reparations Steering Committee Report* (Stolen Generations Reparations Committee, 20 July 2021).

[246] Natasha Cortis and Ilan Katz, 'Waiting for Redress: Child Sexual Abuse Survivors' Experiences of Australia's National Redress Scheme' (2022) 129 *Child Abuse & Neglect* 105657.

[247] Songa, Moyo-Kupeta and Masiko-Mpaka (n 234) 204.

[248] Cortis and Katz (n 248); For a lived experience account of this, see: Eddie Synot, 'Living with Abuse', *Edward J Synot* (21 April 2021) <https://www.edwardjsynot.com/news/2021/4/21/living-with-abuse>.

[249] For example of a state reasoning that is should not establish redress scheme on this basis, see: Maeve O'Rourke, 'Prolonged Impunity as a Continuing Situation of Torture or Ill-Treatment? Applying a Dignity Lens to So-Called 'Historical'Cases' (2019) 66(1) *Netherlands International Law Review* 101, 28.

[250] Matthew Doran, 'More Staff to Be Hired for National Redress Scheme in Aim to Clear Backlog as Applications Grow - ABC News', *ABC News Online* (online, 9 November 2022) <https://www.abc.net.au/news/2022-11-08/national-redress-scheme-extra-staff/101628654?utm_campaign=abc_news_web&utm_content=twitter&utm_medium=content_shared&utm_source=abc_news_web>.

[251] Kathleen Daly, 'Inequalities of Redress: Australia's National Redress Scheme for Institutional Abuse of Children' in *Examining the Past and Shaping the Future* (Routledge, 2021) 68.

[252] Sunneva Gilmore and Luke Moffett, 'Redressing Forced Sterilisation: The Role of the Medical Profession' (2020) 127(8) *International Journal of Obstetrics & Gynaecology* 923.

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[254] Newman (n 179) 51.

[255] Sam Szoke-Burke, 'Not Only Context: Why Transitional Justice Programs Can No Longer Ignore Violations of Economic and Social Rights' (2015) 50 *Tex. Int'l LJ* 465, 486.

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[258] Jacqueline Z Wilson, Andrew Harvey and Philip Mendes, 'Changing Lives: Improving Care Leaver Access to Higher Education' (2019) 45(4) *Oxford Review of Education* 573.

[259] UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Res.60/147, 2005, Art 6.

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[261] Rosemary Nagy, 'Transitional Justice as Global Project: Critical Reflections' (2008) 29(2) *Third World Quarterly* 275.

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[263] Lino (n 171).

[264] Ibid.

[265] Pamina Firchow, 'Must Our Communities Bleed to Receive Social Services? Development Projects and Collective Reparations Schemes in Colombia' (2013) 8(3) *Journal of Peacebuilding & Development* 50.

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[267] Lars Waldorf, 'Anticipating the Past: Transitional Justice and Socio-Economic Wrongs' (2012) 21(2) *Social & Legal Studies* 171.

[268] Guillerot and Moffett (n 268) 27–30.

[269] Maria Suchkova, *The Importance of a Participatory Reparations Process and Its Relationship to the Principles of Reparation* (Essex Transitional Justice Network, University of Essex, 2011).

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[272] Newman (n 179) 54.

[273] Swain, Wright and Sköld (n 197).

[274] Royal Commission into Institutional Responses to Child Sexual Abuse (n 191).

[275] Ann Genovese, Trish Luker and Kim Rubenstein, *The Court as Archive* (ANU Press, 2019) 74; see also: Tjandra (n 15).

[276] Wright and Swain (n 15).

[277] Jack Volpe Rotondi and Nir Eisikovits, 'Forgetting after War: A Qualified Defense' in Claudio Corradetti, Nir Eisikovits and Jack Volpe Rotondi (eds), *Theorizing Transitional Justice* (Routledge, 2016) 27.

[278] Jeremy Waldron, 'Superseding Historic Injustice' (1992) 103(1) *Ethics* 4, 5.

[279] Rotondi and Eisikovits (n 279) 20.

[280] Lea David, *The Past Can't Heal Us: The Dangers of Mandating Memory in the Name of Human Rights* (Cambridge University Press, 2020).

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[282] UN General Assembly, Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: Memorialization processes, A/HRC/25/49, 2014.

[283] UN General Assembly, Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: Memorialization processes, A/HRC/25/49, 2014, 1.

[284] UN General Assembly, Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: Memorialization processes, A/HRC/25/49, 2014, 11-12.

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[286] UN General Assembly, Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: Memorialization processes, A/HRC/25/49, 2014, 14-15.

[287] UN General Assembly, Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: Memorialization processes, A/HRC/25/49, 2014, 9-10.

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[289] David Rieff, *In Praise of Forgetting: Historical Memory and Its Ironies* (Yale University Press, 2016).

[290] Naomi Roht-Arriaza, 'Measures of Non-Repetition in Transitional Justice: The Missing Link?' in Paul Gready and Simon Robins (eds), *From Transitional to Transformative Justice* (Cambridge University Press, 2019) 105, 110; Mégret defines it as 'a commitment made by the State to never engage again in the practices that led to violations, backed by a number of reforms and restructuring initiatives to make good on that promise': Frédéric Mégret, 'The International Criminal Court Statute and the Failure to Mention Symbolic Reparation' (2009) 16(2) *International Review of Victimology* 127, 130.

[291] Roht-Arriaza (n 292) 110.

[292] Ibid 113–114.

[293] Lars Waldorf, 'Expanding Transitional Justice' in Olivera Simic (ed), *An Introduction to Transitional Justice* (Routledge, 2nd ed, 2021) 311, 318.

[294] Ibid.

[295] UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Res.60/147, 2005, art 23.

[296] Dinah Shelton, *Remedies in International Human Rights Law* (Oxford University Press, USA, 2015) 397.

[297] Minkowitz (n 259).

[298] Shelton (n 298) 398.

[299] Victorian Mental Illness Awareness Council, *Mental Health and Wellbeing Act Submission* (Victorian Mental Illness Awareness Council, 2021) 14 <https://www.vmiac.org.au/wp-content/uploads/RC-Report-Act-on-the-Act-Sub.pdf>.

[300] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 8 August 1989), Art 4.

[301] Brianne McGonigle Leyh, 'A New Frame? Transforming Policing through Guarantees of Non-Repetition' (2021) 15(1) *Policing: A Journal of Policy and Practice* 362, 364.

[302] Similar obligations have been set out to consult Traditional Owners and Aboriginal Victorians when making water management decisions: *Water Act 1989* (Vic) s 22C(3). see further: Victoria Government, 'The Aboriginal Water Program', *Victoria State Government* (4 November 2022) <https://www.water.vic.gov.au/aboriginal-values/the-aboriginal-water-program>.

[303] Minkowitz (n 259) 53.

[304] Moffett (n 232) 51.

[305] Ibid.

[306] For example, regarding police-violence: McGonigle Leyh (n 303).

[307] Waldorf (n 295) 320.

[308] Ibid.

[309] UN General Assembly, Report of the Special Rapporteur on truth, justice, reparation and guarantees of non-recurrence. A/77/162, 2022, 14.

[310] Roht-Arriaza (n 292) 114.

[311] Yoorrook Justice Commission, 'Injustices in the Victorian Child Protection and Criminal Justice Systems to Be Investigated by Yoorrook' (8 November 2022) <https://yoorrookjusticecommission.org.au/individual-articles/injustices-in-the-victorian-child-protection-and-criminal-justice-systems-to-be-investigated-by-yoorrook/>.

[312] Spandler and McKeown (n 185).

[313] Colleen Murphy, *The Conceptual Foundations of Transitional Justice* (Cambridge University Press, 2017).

[314] Peter Beresford, 'Introduction' in Peter Beresford and Jasna Russo (eds), *The Routledge International Handbook of Mad Studies* (Routledge, 2021) 1, 1.

[315] *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 8.

[316] Working Group on Arbitrary Detention, United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, UN Doc. A/HRC/30/37 (2015), para. 25; C. Devandas, *International principles and guidelines on access to justice for persons with disabilities* (Geneva: United Nations Office for the High Commissioner for Human Rights, 2020), T. van Boven, C. Ferstman, M. Goetz, and A. Stephens, "Victims' rights to a remedy and reparation: The New United Nations principles and guidelines," in *Reparations for victims of genocide, war crimes and crimes against humanity: Systems in place and systems in the making* (Leiden: Brill, 2009).

[317] Paulo Freire, *Pedagogy of the Oppressed* (The Continuum International Publishing Group, 1970).

[318] Susan M Andersen and Serena Chen, 'The Relational Self: An Interpersonal Social-Cognitive Theory.' (2002) 109(4) *Psychological review* 619; Barbara Groot, Annyk Haveman and Tineke Abma, 'Relational, Ethically Sound Co-Production in Mental Health Care Research: Epistemic Injustice and the Need for an Ethics of Care' [2020] *Critical Public Health* 1.

[319] State of Victoria, 'Royal Commission into Victoria's Mental Health System, Volume 3: Promoting Inclusion and Addressing Inequities' (n 67) 72–73.

[320] Tessa-May Kristina Zirnsak, 'Objective Violence: A New Collaborative Philosophical Project' (2019) 13(2) *International Journal of Žižek Studies*.

[321] Australian Human Rights Commission (n 193); Royal Commission into Institutional Responses to Child Sexual Abuse (n 15).

[322] Legal and Social Issues Committee, *Inquiry into Responses to Historical Forced Adoption in Victoria* (No PP No 261, Session 2018-2021, Parliament of Victoria, August 2021) <https://www.parliament.vic.gov.au/images/stories/committees/lsic-LA/Inquiry_into_Responses_to_Historical_Forced_Adoptions_in_Victoria_/LALSIC_59-03_Responses_to_historical_forced_adoption_in_Vic.pdf>.

[323] Victorian Equal Opportunity and Human Rights Commission, *Proud, Visible, Safe: Responding to Workplace Harm Experienced by LGBTI Employees in Victoria Police* (Victorian Equal Opportunity and Human Rights Commission, 2019) <https://www.humanrights.vic.gov.au/static/ffa678eb2c463534eb48e347d146b77c/Resource-Report-Proud_Visible_Safe-Victoria_Police-2019.pdf>.

[324] For early examples, see: Spandler and McKeown (n 185).

[325] Similar calls have been made regarding the foundational harms inherent to the Victorian state and colonisation. Specifically that truth is needed so that treaty or structural change can occur: Adeshola Ore, 'Yoorrook: The Fight for Victoria's Truth-Telling Commission to Achieve Its Groundbreaking Goals', *The Guardian* (online, 8 July 2022) <https://www.theguardian.com/australia-news/2022/jul/09/yoorrook-the-fight-for-victorias-truth-telling-commission-to-achieve-its-groundbreaking-goals> ('Yoorrook').

[326] *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 15(2).

[327] This may be referred to the Mental Health and Wellbeing Commission under s 415(x) of the *Mental Health and Wellbeing Act 2022* (Vic). A range of functions under s 415 empower the Mental Health and Wellbeing Commission to undertake this process.

[328] The Reference Group considered other possible bodies to administer such a process. These included the Victorian Ombudsman, the Victorian Equal Opportunity and Human Rights Commission, the forthcoming 'Lived Experience Agency' or a non-governmental organisation. Such a task requires certain inquiries powers and public standing within the community, as well as lived experience and statutory forms of expertise as they relate to mental health. For this reason, the Mental Health and Wellbeing Commission appeared to be the best body to fulfill these requirements.

[329] Though there may be value in ensuring, for example, young people are represented on this group.

[330] Kevin Rudd, *Apology to Australia's Indigenous Peoples* (text, Parliament of Australia, 13 February 2008) <https://www.aph.gov.au/Visit_Parliament/Art/Exhibitions/Custom_Media/Apology_to_Australias_Indigenous_Peoples>.

[331] Morrison (n 165); Victorian Government (n 164).

[332] And the *Mental Health and Wellbeing Act 2022* (Vic), depending on the timing of the redress scheme.

[333] For example, if the decision(s) engage human rights within the meaning of section 38(2) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).