

# Victorian Aboriginal Legal Service

## Royal Commission Submission

### Criminal Justice (September 2016)

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#### Introduction

The Victorian Aboriginal Legal Service (VALS) welcomes this opportunity to provide a brief submission in response to the Royal Commission's Consultation Paper on Criminal Justice.

In particular, VALS will respond generally to issues that arise for Aboriginal and Torres Strait Islander people when in contact with the justice system.

These issues are of course exacerbated when the matter concerns institutional child sexual abuse, and include:

For Victims/ Survivors

- Access to justice
- Fear of reporting/ fear of contact with the justice system
- Lack of cultural support for victim/ survivor

In response to Victim/ Survivor issues, VALS would encourage:

- Better community legal education
- Justice system to be culturally educated
- Comprehensive community support for victim/ survivors provided

For Offenders

- Better justice reinvestment outcomes (for adult offenders)
- Culturally appropriate sentencing/ diversion options (for young offenders)
- History of abuse recognised in sentencing more broadly

## Victims/ Survivors

### Access to Justice

Aboriginal and Torres Strait Islander people generally have greater barriers in accessing positive justice outcomes. These include a range of challenges, including access to legal assistance, knowledge and understanding of legal procedures, and a history of poor relations between the community and the justice system, including police, corrections and the courts.

Aboriginal and Torres Strait Islander people are also more likely to have experienced socio-economic challenges that may prevent access to justice, including low education and employment, poverty, and health issues. As such, the day to day challenges of life – food, housing, healthcare and family obligations – often outweigh and impede the ability to tackle more complex needs, such as reporting and undertaking a legal complaint, in this case for example, around institutional child sexual abuse.

Subsequently, the daily challenges of life will often result in underreporting of serious criminal matters such as institutional child abuse, and as such, Aboriginal and Torres Strait Islander victims and survivors of child abuse are more likely to mask these traumas with alcohol or drug misuse.

Better community services in these areas – health, housing, wellbeing and legal access - would take the pressure off individuals and families and allow for greater space to undertake legal proceedings against their institutional abusers. This is no more pertinent in the child sexual abuse space where resources specific to Aboriginal and Torres Strait Islander people are drastically lacking.

### Fear of Reporting

The legal and historical evidence is clear that Aboriginal and Torres Strait Islander people across Australia have had detrimental experiences with all aspects of the justice system. Whether deaths in custody, high imprisonment and youth detention rates, harassment from police and poor treatment in custody, it is understandable that Aboriginal and Torres Strait Islander people are reluctant to come forward and report on criminal matters.

Underlying fears may be that children might be removed, family members prosecuted, warrants issued or that the victim him or herself will be arrested. This fear is no more placed when dealing with the experience of institutional child sexual abuse, when such reporting was predominantly denied in the first instance by the institution and other authorities.

This fear is also passed down generationally, in that, the lack of justice experienced by parents, grandparents, aunties and uncles sets a precedent, whereby younger members of the family are less likely to report as they think nothing will be done. Essentially, the thinking is ‘if my family went to the police and nothing was done, then why should I?’

VALS supports systemic change in justice system culture, in order to develop and maintain better relationships between Aboriginal and Torres Strait Islander people and the police, and justice system overall. VALS recognises that this will consist of an ongoing going educational process, involving multiple community stakeholders, to ensure system change that is enduring against policy and ‘people’ change. VALS also recognises that this will take some time, but can be achieved by cultural education for workers in the justice system, including first and foremost, the police.

Unless the culture of prejudice against Aboriginal and Torres Strait Islander people in the justice system is eradicated, Aboriginal Australians will continue to face an unfair and discriminatory barrier towards reporting serious matters such as institutional child sexual abuse.

This prejudice ensures that Aboriginal and Torres Strait Islander people are continually denied access to justice and without recompense through the legal system, and will continue to face the challenges of poverty, poor mental and physical health, lack of education and employment, and drug and alcohol dependency.

### **Lack of Cultural Support**

VALS maintains that there is a distinct lack of cultural support across the justice system for Aboriginal and Torres Strait Islander people. This is more pronounced when dealing with matters of institutional child sexual abuse.

Support may be required for translation (for Aboriginal and Torres Strait Islander people for whom English may be a third or fourth language), or it may be that a community member be required to explain lengthy and complex legal procedures into a language and format that can be better understood by the victim/ survivor.

Assistance may also include ongoing culturally appropriate wellbeing support, such as counselling, healing programs, or other suitable support mechanisms to ensure victims and survivors are looked after throughout what is likely to be lengthy, complex, emotionally painful, and often re-traumatising, legal proceedings.

Cultural support can also come from within the justice system itself. Too often it is left up to an under-resourced Aboriginal community sector to provide adequate cultural supports to victims/ survivors.

Workers across all sectors of the justice system should be better trained and informed as to the variances of Aboriginal cultural practices, languages and histories to be better equipped to support, communicate with and thus ensure better, fairer and more equitable outcomes for Aboriginal and Torres Strait Islander people.

### **Case Study #1**

*A VALS client who we were working with on a range of civil matters (infringements, tenancy) disclosed a history of sexual abuse while institutionalised. It was clear that the abuse had affected the outcome of his life, including contact with the justice system.*

*Due to the ongoing negative contact with the justice system, the client was reluctant to report the abuse to the police, for fear of being picked up for outstanding warrants. This was compounded by the client's complete lack of literacy skills – also due to the abuse and poor education outcomes while institutionalised.*

*This meant the client could not recall specific dates and times, nor could they even read information provided in the Freedom of Information file. However, with VALS culturally appropriate legal support and encouragement, the client is now engaging with both the Royal Commission and police procedures in reporting the abuse.*

## Community Legal Education

VALS endorses more funding and better resourcing for comprehensive community legal education (CLE) programs across the Aboriginal Legal Services (ALSs) in response to criminal justice matters such as institutional child sexual abuse. The CLE program would educate community members as to:

- What is institutional child sexual abuse
- How to report it and to whom
- Staying safe and prevention of institutional child sexual abuse
- Legal procedures
- Where to access help

This is increasingly pertinent in Aboriginal and Torres Strait Islander communities whereby the rates of child removal and out-of-home care are still extremely high (especially in comparison to non-Aboriginal removal rates) and where children and young people are at risk due to foster care, residential home placements and also youth detention.

While institutional child sexual abuse may be seen as a largely historical occurrence, the ongoing and exacerbated rates of Aboriginal child removal and youth detention point to a time in the future where allegations of sexual abuse may continue to arise.

As such, it is imperative that the ALSs are provided with the means and resources to better educate Aboriginal and Torres Strait Islander communities across Australia as to the prevention, reporting and legal procedures concerning institutional child sexual abuse.

## Cultural Education in the Justice System

Too often under-resourced community organisations are burdened with the responsibility of providing adequate and culturally responsive support networks to Aboriginal and Torres Strait Islander victims and survivors of institutional child sexual abuse who wish to report a complaint to the police, and then require ongoing support when the matter proceeds.

VALS maintains that a culturally educated justice system – across all levels – is necessary to ensure greater access and cultural safety for Aboriginal and Torres Strait Islander people within all aspects of the criminal justice system.

VALS recommends that all areas of the justice system undergo cultural training by local Aboriginal community providers, and also ensure that the physical apparatus of the justice system is made culturally safe. This training should be conducted annually, to ensure that capability is current, and there should be specific training those community groups over-represented in the survivor groups, such as Aboriginal and Torres Strait Islander people.

The unconscious bias that Aboriginal and Torres Strait Islander people face within the justice system prevents Aboriginal people from accessing justice. In particular, victims and survivors of institutional child sexual abuse are far less likely to report on their experiences given the adversarial history of Aboriginal people and the police.

A better trained and culturally equipped justice system would provide an entry point for Aboriginal and Torres Strait Islander people into seeking and accessing justice, especially on matters such as child abuse.

## **Community Support Provided**

VALS supports a holistic, wraparound approach to support services for victims and survivors of institutional child sexual abuse. Alongside the need for culturally appropriate legal support, victims and survivors need access to counselling services, health and wellbeing support, healing programs, cultural maintenance and cultural learning services.

VALS understands and recognises that obtaining legal access and a positive justice outcome is just one aspect of the journey of healing that victims and survivors undertake to resolve the trauma that occurs through child sexual abuse. In fact, often the legal procedures – repeating the stories of abuse, cross-examination, and the initial disclosure – can often be as overwhelming and traumatic as the abuse itself.

As such, it is imperative that any response to changes and developments in the criminal justice procedures must be coupled with changes and developments in health and wellbeing support services. VALS argues that these essential and culturally appropriate support services are drastically lacking, no less so from Federal Government funding.

Ensuring comprehensive and culturally competent support across all areas of the healing journey will only further encourage Aboriginal and Torres Strait Islander victims and survivors of institutional child abuse to seek, and have equitable access to, the criminal justice system in these matters.

Furthermore, the Royal Commission have engaged with, and enacted a number of specific support mechanisms throughout the private sessions and public hearings in order to support survivors, such as provision of support people/ counselling (including Aboriginal and Torres Strait-specific counsellors) to ensure that re-traumatisation does not occur through the proceedings.

VALS supports these initiatives of the Royal Commission in this area and would like to see these mechanisms more widely implemented in criminal proceedings to ensure the wellbeing and cultural safety of the survivor.

## **Case Study #2**

*An Aboriginal institutional child sexual abuse survivor, upon hearing about the Royal Commission, sought assistance from their local Aboriginal community cooperative.*

*The co-op health and wellbeing worker contacted VALS and we liaised with the co-op to explain the Royal Commission process and other legal flow-ons, such as reporting to the police, and possible civil law claims.*

*Together, VALS and the co-op workers have been supporting the client since 2013, to ensure comprehensive and culturally appropriate justice outcomes for the client.*

*This has been coupled with ongoing counselling support – also based at the co-op – to ensure that together, the Aboriginal community services are working towards supporting the client in a holistic wraparound manner.*

## Offenders

### **Better Justice Reinvestment Outcomes (for adult sex offenders)**

The Victorian Aboriginal Legal Service encounters a number of problematic issues when assisting adult sex offenders when they are released from prison, in particular with regards to housing. It needs to be recognised that there is a state wide housing shortages, including Correction Victoria properties, with large waitlists. If you are a single man, with a criminal record, chances of securing ongoing stable housing through the public system is near impossible.

Although VALS operates a post-release program (Reconnect) we are limited in how we can assist Aboriginal and Torres Strait Islander sex offenders due to lack of resources, and limited resources within Aboriginal Community Controlled Organisations (ACCOS).

Due to zoning restrictions placed on registered sex offenders after release, VALS is unable to house Aboriginal clients as we do not have the range of housing available.

This means that VALS must outsource it's assistance to services such as Jesuit in order to assist Aboriginal sex offenders upon release, where the client may not get the culturally appropriate assistance that they may require.

VALS sees funding of its post-release program of vital necessity, as well as cultural training and support for mainstream services that must pick up where VALS is unable to assist. These services may also include mental health and drug and alcohol sentencing, physical health and hospital care, and employment services, all of which are under pressure at the ACCOS.

### **Culturally Appropriate Sentencing Options (for young offenders)**

Although the state of Victoria offers the Male Adolescent Program for Positive Sexuality (MAPPS) program as a diversionary program for young sex offenders, there are no Aboriginal-specific programs available.

VALS would like to see diversionary programs made available that were based in cultural processes, and were specifically run by and for young offenders in the community. This would include linking in local Aboriginal language learning, reconnecting with cultural practice, including land management and a focus on the family.

VALS strongly believes that diversionary programs for young offenders – including sex offenders – that are based in cultural practice, are at an advantage in reducing offending as adults.

VALS believes that a healthy culture and healthy community reduces offending, and that diversionary programs for young offenders are vital for reducing imprisonment rates for Aboriginal and Torres Strait Islander people across all jurisdictions.

## **Recognising a History of Abuse In Sentencing**

VALS supports the practice of holistic, wraparound assistance to Aboriginal community members who have contact with the justice system, and this includes offenders in any matter – criminal, civil or family.

In particular, VALS recognises the traumatic histories that many Aboriginal and Torres Strait Islander people have, such as child abuses including sexual, physical, emotional, psychological and cultural.

VALS would like to see the historical abusive experiences of child removal – prevalent in Aboriginal communities – as well as the trans-generational traumas of colonisation taken into greater account across all aspects of the judicial system.

This should be further taken into account when the offender is seeking assistance and taking steps to help them on their journey of healing, such as speaking with the Royal Commission in a private session, or attending ongoing counselling.

Therapeutic sentencing options should also be more widely considered and adopted when sentencing Aboriginal people with a history of trans-generational trauma and abuse. It is clear from the findings of the Royal Commission that a person's history of abuse has an influence on their offending behaviour, whatever that behaviour may be.

This needs to be taken into account by the justice system and instead of punitive punishment, therapeutic models of sentencing should be explored and adopted, in order to resolve the traumas experienced by that person from their abuse as opposed to compounding it through punitive sentencing measures.

### **Case Study #3**

*A VALS client with a history of offending presented before the court. However, it had come to VALS' attention that the client had a history of institutionalisation and abuse – including sexual abuse – while in the 'care' of various institutions.*

*The client was also seeking assistance through counselling and spoken with the Royal Commission in a private session. It was clear that not only had the abusive experiences as a child led to the pattern of offending, but also that the client was seeking assistance to resolve the issues that had arisen from the abuse and institutionalisation.*

*These contextual circumstances were brought to the magistrate's attention and were considered in sentencing options. VALS supports the court's consideration of institutional abuse in sentencing options, and would support any means to ensure that the historical context of offending was made known by any legal procedures, at the client's discretion.*