



**Commonwealth Redress Scheme
Submission
Victorian Aboriginal Legal Service
24 January 2018**

The Victorian Aboriginal Legal Service (VALS) makes this submission in response to the proposed Commonwealth Redress Scheme for survivors of sexual abuse.

VALS is an Aboriginal community controlled legal organisation which seeks to represent members of the Aboriginal communities in Victoria across a range of legal responses. This includes criminal, family and civil law divisions, but also with respect to other pertinent issues such as family violence, youth justice and child protection and, since 2013, the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).

As part of the Royal Commission, VALS employed staff to assist and represent Aboriginal community members who were affected by institutionalisation. This was primarily with regard to sexual abuse, but also physical, emotional, psychological and cultural abuse also.

Generally speaking, sexual abuse did not occur in isolation to these other types of abuses, and for Aboriginal community members, the cultural abuse that occurred was as devastating as any other kind of abuse. By this, we mean the denial of language, deliberate suppression of Aboriginal identities, disconnection to family and the severing of traditional ties to land, tradition and custom.

As has been thoroughly identified and documented during the Royal Commission and various other inquiries prior, such as the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* ('Bringing Them Home' 1997) and the Royal Commission into Aboriginal Deaths in Custody (1991), the effects of institutionalisation were devastating for Aboriginal and Torres Strait Islanders individuals, families, and entire communities.

As well as the direct abusive effects and cultural destruction as outlined above, the ongoing effects include, but are not limited to, systemic poverty, high rates of poor physical and mental health, lower life expectancy, lower standard of education and employment, and shockingly high rates of incarceration, youth detention and out-of-home-care.

Given this context, VALS makes the following submissions regarding the proposed Commonwealth Redress Scheme:

The Redress Scheme be expanded to include other types of abuse, including cultural abuse

While understanding that the purpose of the Royal Commission was solely to investigate instances of institutional child sexual abuse as per the Terms of Reference, the Victorian Aboriginal Legal

Service still maintains that any national redress scheme should fulfil an obligation to compensate victim survivors of other forms of abuse. This includes physical, emotional, psychological and for Aboriginal and Torres Strait Islander peoples, cultural abuse.

Cultural abuse is the denial and forced cessation of links to traditions, identities, customs and cultural practices that are inherent to Aboriginal and Torres Strait Islander people and their communities.

This can include the forced cessation of language, dispossession of traditional lands through colonisation, and by creating an environment of forced assimilation where the inability to pass such modicums of cultural practice onto the future generations is disallowed.

Research has proven that cultural abuse can have devastating effects on Aboriginal and Torres Strait Islander individuals, families, and communities. As such, the Victorian Aboriginal Legal Service maintains, and will continue to advocate for, redress for cultural abuse to be provided at both a national and state level.

The Redress Scheme should not exclude victim survivors with criminal records

In VALS' experience working with Aboriginal community members throughout Victoria across a range of capacities, it is clearly evident that the impacts of sexual abuse and institutionalisation of Aboriginal and Torres Strait Islander peoples has contributed to the shockingly high rates of incarceration across Australia.

That the proposed redress scheme may deny those with a criminal record access to redress is a denial of the circumstances that contributed to their offending. All victims of child sexual abuse were children when they were abused. They were not at that time criminals, and as such, should be allowed equal access to redress based solely on their abusive experiences as children, not on their offending as adults.

VALS understands that, while a person's criminal behaviour might be taken into account when seeking forms of redress under a victim's of crime scheme, there are no 'blanket rulings' that exclusively exclude access to justice for people with certain criminal histories.

More so, that a person's abusive experience as a child is likely to have contributed to adult criminal behaviour, means that the proposed Commonwealth redress scheme ostensibly seeks to exclude the very people for whom it is designed to assist.

These circumstances apply even more so to Aboriginal and Torres Strait Islander communities where the rates of offending and incarceration are far greater than for non-Indigenous people. A major contributing factor as outlined in the *Bringing Them Home Report* (1997) and the *Royal Commission into Aboriginal Deaths in Custody* (1991) was the high rates of child removal ('the Stolen Generations'), subsequent abuse, and traumatic effects in adult life underscoring resultant criminal behaviour.

Redress offered should be equal to all survivors

VALS understands that the cap on payments is \$150 000 and that a 'matrix' will be applied to a person's experiences to determine the prescribed amount. VALS strongly advocates that ALL victim survivors be paid an equal amount, being the maximum possible.

In our research and professional experience, VALS notes that an inequality and disparity of *ex gratia* payments in redress and similar schemes can re-traumatise victim survivors and prove to be divisive in what can be already-fractured Aboriginal and Torres Strait Islander communities.

VALS also views the redress scheme as a way in which responsible religious and government institutions can rectify the harms enacted on victim survivors within the community, one of which is causing and maintaining systemic and sustained poverty.

Redress should be enacted to alleviate such poverty; as such, VALS again advocates that the maximum amount be offered to all survivors of institutional child sexual abuse, and that any amount offered be accompanied by appropriate financial advice and assistance.

The 90 day period to accept any offer of compensation should be extended

As per the draft legislation, successful applicants will have 90 days to respond to, and accept, any offer of redress. However, VALS strongly believes that this time period is too short.

In the first instance, many Aboriginal and Torres Strait Islander people lead transient lives, often with no fixed address and due to family obligations, medical appointments and periods of incarceration, addresses and points of contact can change frequently.

As such, correspondence is not always received by the intended recipients (if at all), especially in remote communities where distance and accessibility is an issue, and where English is not the first language.

Furthermore, that applicants will have only 90 days to gain the required legal advice to make a considered decision of acceptance, is not enough time for many Aboriginal and Torres Strait Islander people, particularly in areas which have little access to legal services.

As per the draft legislation, that any offer will be made null and void after 90 days without a response is a punitive and pointlessly harsh gesture that has the potential to seriously compound the trauma of child sexual abuse survivors.

It may also exclude survivors from accessing the required legal advice, and lead people to make uninformed, rushed decisions out of a fear of missing out on their redress offer.

Any legal advice provided should not simply be about the compensation on offer, but about the scheme itself and also about other legal avenues and options for victim survivors

The Victorian Aboriginal Legal Service advocates that legal advice provided to any claimant be not limited simply to the terms and conditions attached to the offer of compensation, but comprehensively cover all avenues concerning redress and civil litigation, and provide advice on alternative legal options.

Applicants should be able to request an outside, independent review

Should a survivor's application be rejected, any review process should be provided by an outside entity, and any review should include new and relevant information that may not have been included in the original application.

A reasonable amount of time should be provided for applicants to assess the quality and reasonability of any redress offer made, and allow time for correspondence to reach the applicant, as many people may relocate frequently or have other life issues that cause them to move residence, such as incarceration, family and funeral business.

Assistance in the form of dedicated phone lines, outreach administrators and community workers should be provided to assist victim survivors to understand the scheme and fill out the necessary application forms

Given the potential for language and literacy barriers – especially in Aboriginal and Torres Strait Islander communities – culturally appropriate outreach and communication avenues should be made available that allow for the maximum amount of possible claimants are made aware of the scheme, and have the ability, capacity and opportunity to apply for the scheme.

The Commonwealth should ensure that buy-in from the states and relevant institutions is provisionally confirmed prior to opening the scheme

This is necessary to ensure maximum amount of possible claimants can apply, and should the Commonwealth not be successful in confirming support from states and other institutions, the Commonwealth should be the funder of last resort regardless of responsibility.

Aboriginal and Torres Strait Islander Legal Services (ATSILS) should be funded to provide legal advice as per the Redress Scheme and other legal avenues and options

With regard to legal advice offered to claimants, the Victorian Aboriginal Legal Service advocates that ATSILS be funded to provide outreach and legal support to claimants in their communities.

Understanding that the percentage of Aboriginal and Torres Strait Islander peoples coming forward as part of the Royal Commission, and subsequently potentially eligible for redress, it is vital that these members of the community are supported and provided with the option of obtaining that support via their relevant ATSIL.

As such, VALS advocates strongly for funding for the ATSILS for the following reasons:

- There will certainly be a high percentage of possible Aboriginal and Torres Strait Islander claimants requiring assistance

The Royal Commission estimated that there will be a potential 60 000 survivors of sexual abuse that will be eligible for the scheme.

Of the 6 875 private sessions held during the Commission, 985 were of people who identified as Aboriginal and/or Torres Strait Islander – around 14 percent.

For the majority of people who spoke at the Commission in a private session, this was the first instance where they had spoken about their abuse to anyone.

This demonstrates a potential reluctance for people to come forward, with the Royal Commission final report acknowledging that there may be many more Aboriginal and Torres Strait survivors who did not come forward during the Commission.

Furthermore, Knowmore Legal Service reports that around 24 percent of their clients during the 4-year life of the Royal Commission identified as Aboriginal and/ or Torres Strait Islander.

It is clear then, that out of a potential 60 000 possible claimants, between 14 – 25 percent will potentially be Aboriginal and Torres Strait Islander, demonstrating a high demand for service provision to those communities.

- Aboriginal and Torres Strait Islander communities require options

The proposed Commonwealth Redress Scheme makes provisions for claimants to access legal advice in order to understand the legalities and requirements of accepting any redress offer made, particularly around deeds of release.

Alongside the obvious high numbers of Aboriginal and Torres Strait Islander people who may be eligible for the scheme, and Torres Strait Islander communities require the option of local ATSILS in order to access culturally specific requirements such as interpreting services.

Unless the ATSILS are funded to provide legal and community outreach assistance to their communities, it is likely that many Aboriginal and Torres Strait Islander will miss out on accessing the redress provided by the scheme.

- The Royal Commission made recommendations for the legal services to be funded for these roles

The Royal Commission recommended that the redress scheme should fund community legal centres to assist applicants to apply for redress (Rec 52) and that the scheme should select community legal centres to cover a broad range of likely applicants including Aboriginal and Torres Strait Islander survivors (Rec 53).

Also, the Royal Commission recommended that a redress scheme should fund at a fixed price a legal consultation for an applicant before the applicant decides whether or not to accept the offer of redress and grant the required releases (Rec 64).

- To provide comprehensive legal advice about their offer and possible civil litigation opportunities - not just about the deed of release

ATSILS will require funding to provide culturally appropriate and expert legal advice concerning any offer of redress given the requirement to sign a deed of release. If ATSILS are not equipped to provide this advice and support, many Aboriginal and Torres Strait Islander survivors will not be in a position to assess whether they should make an application.

Furthermore, as well as advice around the nature of the application, any potential offer and the details regarding deeds of release, Aboriginal and Torres Strait Islander survivors should also be provided with comprehensive advice as to other civil litigation and redress scheme options. This will ensure that the applicant is in a position to make the most informed decision possible.

- Assist with accessing records to ensure their application is comprehensive

As per the draft legislation and indications from correspondence regarding the redress scheme, applicants will be given only one opportunity to apply for redress. Any internal review undertaken will not take into account any additional documents or information made accessible after the application has been submitted.

As such, it is imperative that Aboriginal and Torres Strait Islander survivors are provided the assistance to access the necessary documents and have their applications for redress completed with all of the necessary information about every instance of abuse prior to submission.

This will ensure that the person is provided the best opportunity to access the redress scheme and have the possibility to be granted the maximum award possible.

- ATSILS to act as a potential point of correspondence

Under the proposed redress scheme, any applicant will have only 90 days to respond to their offer of redress before it becomes null and void.

Given that many Aboriginal and Torres Strait Islander people do not have stable accommodation, or are at times homeless, incarcerated, at medical appointments or attending to funeral or other family business, it will be necessary for ATSILS to act as a potential point of correspondence for clients.

Localised community networks are a major asset held by the ATSILS that will prove vital to ensure that Aboriginal and Torres Strait Islander survivors will have the highest chance of accessing redress by receiving and understanding any correspondence related to their application.

- Outreach and assistance to and Torres Strait Islander people in jail

Given the evidence that demonstrates that many sexual abuse survivors end up in prison, and the high rates of Aboriginal and Torres Strait Islander people in jail, means that assistance and outreach will need to be provided to community members who are incarcerated.

Again, ATSILS will be able to perform that function, and ensure that both men and women in prison will be assisted to access the Redress Scheme.

- Applying for redress is a painful process for which survivors need support

Lastly, it is clear that applying for redress for such horrific and traumatic life events will be a painful process for survivors. Aboriginal and Torres Strait Islander people will require not only legal support, but administrative and interpretive supports as well which only the ATSILS can provide.

Furthermore, for Aboriginal and Torres Strait Islander community members to have the option of being supported by a local legal service in a culturally appropriate and community-minded manner, will ensure that this cohort will have the best possible opportunity to access redress and therefore, access the justice that is owed to them.

For further information please contact:

**Alister McKeich
Senior Policy and Project Officer
Victorian Aboriginal Legal Service**