



# **Response to Discussion Paper: Inquiry into the operation of the National Redress Scheme**

Aboriginal Family Legal Service WA

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<b>1</b>	<b>Introduction.....</b>	<b>3</b>
<b>2</b>	<b>Lived experiences of AFLS clients and availability of legal support .....</b>	<b>3</b>
	<b>Recommendation 1: Greater investment into Aboriginal Community Controlled Organisations as Redress Support Services to enable better access to the Scheme for Aboriginal people .....</b>	<b>3</b>
	<b>Recommendation 2: Greater investment into Aboriginal Interpreting Services to enable access to the Scheme for Aboriginal people who do not speak English as a dominant language.....</b>	<b>5</b>
	<b>Recommendation 3: Greater access to Aboriginal-controlled counselling services for Aboriginal people interacting with the Redress Scheme.....</b>	<b>6</b>
<b>3</b>	<b>Accessibility and funding for support services.....</b>	<b>7</b>

## 1 Introduction

Aboriginal Family Legal Service (AFLS) welcomes the opportunity to provide a submission on the operation of the National Redress Scheme (the Scheme).

AFLS is an Aboriginal controlled Family Violence Prevention Legal Service (FVPLS), providing specialist legal assistance and non-legal supports to Aboriginal people experiencing or at risk of family violence and sexual assault across seven regions in Western Australia. AFLS offices are located in Broome, Kununurra, Kalgoorlie, Geraldton, Hedland, Carnarvon and Perth, from which outreach services are delivered to over 30 remote Aboriginal townships and communities.

AFLS became a Redress Support Service from July 2022 and has been supporting Aboriginal people to access the Scheme ever since.

AFLS seeks to provide feedback to the Joint Standing Committee on Implementation of the National Redress Scheme Discussion paper: Inquiry into the operation of the National Redress Scheme, due to the importance of this area of practice to Aboriginal people in Western Australia, who face real barriers to accessing the Scheme and to accessing legal assistance to support them to engage with the Scheme more broadly.

AFLS will concentrate feedback within our submission to the experiences of Aboriginal peoples engaging with the Scheme.

## 2 Lived experiences of AFLS clients and availability of legal support

Aboriginal people experience a significant number of barriers to accessing the National Redress Scheme, including greater difficulty in accessing the supports and services required for them to engage with the Scheme. They face language barriers, geographical barriers, cultural barriers, lower levels of education, housing instability, greater rates of mental and physical health issues, disproportionate representation in the prison system, and an entrenched fear of the government institutions offering redress for the offences committed against them.

For Aboriginal people living in any of the more than 200 remote Aboriginal communities across Western Australia, access to services is even more restricted. In these communities, traditional ways of life are paramount; people still go hunting and gather bush tucker, there is limited housing, education and employment opportunities are scarce, access to technology and internet is restricted, and travel to and from these communities can be long and difficult. English is rarely spoken and reading skills are lacking.

In the specific context of the National Redress Scheme, it is AFLS's experience that there is an overwhelming lack of awareness of the operation of the Scheme both in these remote Aboriginal communities and more broadly across the state of Western Australia. Where there is awareness, engagement is limited by the barriers described earlier in this section.

AFLS makes the following recommendations regarding improving access to and operation of the Scheme for Aboriginal clients:

### **Recommendation 1: Greater investment into Aboriginal Community Controlled Organisations as Redress Support Services to enable better access to the Scheme for Aboriginal people**

Aboriginal people seeking Redress have unique needs related to their experiences of institutional child sex abuse, which traverse legal and non-legal spheres. The processes surrounding the Scheme, both

legal and non-legal, are complex and particularly difficult to navigate; this is even more so for Aboriginal people from remote communities.

To support those people to engage effectively with the Redress process and enable better access to the Scheme, there must be greater investment by the State and Federal Governments into Aboriginal Community Controlled Organisations (ACCOs) as Redress Support Services. There are currently three Aboriginal-controlled organisations working as Redress Support Services in Western Australia, all of which have limited funding and resources which creates limited capacity to be able to meet the needs of all the Aboriginal people seeking to access the Scheme in Western Australia.

We refer to the Western Australian Council of Social Services and the Noongar Family Safety and Wellbeing Council, which in their report on partnering with Aboriginal Community Controlled Organisations made the following observations about the potential for ACCOs to deliver trusted services with stronger outcomes for Aboriginal people (2019):

*Aboriginal people have a fundamental right to self-determination. Wherever possible, ACCOs should deliver community led solutions and services... based on the recognition that each community and their circumstances are unique. Local community leaders are best placed to determine the 'right mix'; of service type; governance structure; program approaches and measures of success.<sup>1</sup>*

Further, we refer to the National Family Violence Prevention Legal Service Forum's submission to the Australian Law Reform Commission (2018) on the Review of the Family Law System, and their commentary on best-practice support for Aboriginal people requiring legal and non-legal supports:

*Rather than draining resources in establishing new entities for service delivery and system oversight, which will create additional layers of bureaucracy and associated barriers for Aboriginal and Torres Strait Islander people, it is more safe, equitable and effective to invest in existing specialist and culturally safe services like FVPLSs to enable them to expand, build capacity and address unmet need.*

*Mainstream one-stop-shop service delivery models are unlikely to be able to address the many risks and barriers faced by Aboriginal people in the legal system – particularly Aboriginal people experiencing family violence. Indeed, initiatives that aren't centred around the experiences of Aboriginal and Torres Strait Islander women and children may present as yet another system failure.<sup>2</sup>*

In the context of the National Redress Scheme, the same principles apply; it is more safe, equitable and effective to invest in existing specialist and culturally safe, Aboriginal-controlled services as Redress Support Services, to enable them to support Aboriginal clients to access the Scheme and to have their needs met. Making informed decisions about whether to proceed with making a Redress application and when and how to seek legal assistance to commence a court action are core components of a person's engagement with the Redress Scheme, and for Aboriginal people those engagements will be best supported by Aboriginal Community Controlled Organisations. The capacity for ACCOs to recruit and build the capabilities of Aboriginal staff members to engage with clients in

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<sup>1</sup> <https://wacoss.org.au/wp-content/uploads/2019/06/Partnering-with-Aboriginal-Community-Controlled-Organisations-to-deliver-trusted-services-with-stronger-outcomes-Report-1.pdf>

<sup>2</sup> National Family Violence Prevention Legal Services Forum, 'Submission to the Australian Law Reform Commission: Review of the Family Law System Discussion Paper', November 2018, [https://www.nationalfvpls.org/images/files/20181130\\_National\\_FVPLS\\_Forum\\_Submission\\_to\\_the\\_ALRC\\_Family\\_Law\\_Review\\_Discussion\\_Paper.pdf](https://www.nationalfvpls.org/images/files/20181130_National_FVPLS_Forum_Submission_to_the_ALRC_Family_Law_Review_Discussion_Paper.pdf)

culturally safe and trauma informed ways cannot be understated. Greater investment into Aboriginal-controlled Redress Support Services in Western Australia is required to enable Aboriginal-controlled services to effectively support Aboriginal people. That investment must include sufficient funding to enable those organisations to regularly travel on outreach to remote and really remote Aboriginal communities to provide assistance and ongoing support; this would minimise the need for Aboriginal people to find a way to travel long distances and find accommodation to access the Scheme, which are currently significant barriers to access.

**Recommendation 2: Greater investment into Aboriginal Interpreting Services to enable access to the Scheme for Aboriginal people who do not speak English as a dominant language**

There has been a chronic neglect of the need for interpreting and translating services to support service delivery for Aboriginal clients generally across sectors, and specifically those clients located in regional and remote communities requiring access to legal assistance and related non-legal supports. A key foundation in being able to deliver fair and equal administration of justice is effective communication and understanding of language and cultural protocol; this is critical to the empowerment and self-determination of Aboriginal people. We refer to a 2020 study published by the Australian National University, which found that Indigenous language users are significantly more likely than English-only speakers to report that they have been treated unfairly because they are Aboriginal:

*...the probability of reporting experiences of discrimination increases with increased Indigenous language proficiency... This correlation is likely to result from language use increasing the visibility of Indigeneity to non-Indigenous people.<sup>3</sup>*

The same research revealed that speaking Indigenous languages is strongly associated with indicators of wellbeing related to actions over which Indigenous individuals, families and communities can exert agency and self-determination:

*...people speaking languages other than English are less likely to report psychological distress than those speaking only English. More consistently positive results have also been found for physical health and health risk factors... the Australian Bureau of Statistics revealed that Indigenous people aged 15-24 years who speak Indigenous languages are less likely to have shown health risk behaviours such as consuming alcohol at risky levels or using illicit substances.<sup>4</sup>*

In the context of the National Redress Scheme, the use of translating and interpreting services is required to ensure that written and verbal information about the Scheme is available to be communicated to all those who may need it, and that people engaging with the Scheme can do so in culturally safe and supported environments. The services of organisations such as Aboriginal Interpreting Western Australia, for example, should be utilised; the service can translate information into language, develop resources such as radio recordings, pamphlets and talking posters, and provide interpreting services direct to clients to enable their improved access to the Scheme.

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<sup>3</sup> [https://caepr.cass.anu.edu.au/sites/default/files/docs/2020/8/CAEPR\\_WP\\_no\\_137\\_2020\\_Dinku\\_et\\_al.pdf](https://caepr.cass.anu.edu.au/sites/default/files/docs/2020/8/CAEPR_WP_no_137_2020_Dinku_et_al.pdf)

<sup>4</sup> [https://caepr.cass.anu.edu.au/sites/default/files/docs/2020/8/CAEPR\\_WP\\_no\\_137\\_2020\\_Dinku\\_et\\_al.pdf](https://caepr.cass.anu.edu.au/sites/default/files/docs/2020/8/CAEPR_WP_no_137_2020_Dinku_et_al.pdf)

### **Recommendation 3: Greater access to Aboriginal-controlled counselling services for Aboriginal people interacting with the Redress Scheme**

The lack of investment by State and Federal Governments into local, Aboriginal-controlled counselling services in regional communities across Western Australia is disappointing, and if addressed would form part of an effective effort to improve Aboriginal people's access to the Redress Scheme.

Aboriginal people's experiences of systemic racism and discrimination since colonisation, including dispossession of land, removal of children, interrupted cultural practices, disproportionate rates of criminalisation and incarceration, economic exclusion and poverty, continue to manifest in the intergenerational trauma experienced by Aboriginal people in this current lifetime. Across the country, there is ongoing demand for access to Aboriginal-led healing programs, to assist Aboriginal families and communities to recover from and manage the impacts of their traumatic experiences. Blagg et al. (2020), for example, suggest that Aboriginal Law and Culture must play a significant role in healing, noting that Law and Culture "form the basis for maintaining social order and harmonious relations and ensuring cultural continuity".<sup>5</sup> They suggest that cultural models should underpin work with Aboriginal victims and offenders to assist with health issues, trauma, healing and other issues that impact their wellbeing and their ability to function to their full capacity within their communities.

In the context of the National Redress Scheme, we are concerned that there is little to no Aboriginal-controlled counselling infrastructure across regional Western Australia, which is not only critical to the healing of Aboriginal people from the impacts of intergenerational trauma, but also specifically the impacts of institutional child sex abuse, and the ongoing support required to relive that trauma.

The following case study provides insight into the experiences of Aboriginal people accessing counselling services in regional Western Australia:

#### **Case Study:**

Client A is living in a remote community in the Midwest. It takes her three hours to travel to Geraldton to access Redress Support Services. She does not own her own car and has to borrow one to travel. She would like to access counselling support, but there are no counselling services near where she lives. She could travel to a closer regional town which is 2 hours travel time, where a male counsellor travels to twice a week; however, she doesn't feel comfortable talking to a male. Her only option to see a female counsellor face to face is to borrow a car and travel three hours to Geraldton. This is difficult to sustain on a regular basis and is costly.

Client A is middle aged and speaks English well. There are many Aboriginal people who live remotely, who are elderly and who do not speak English very well. They may also not have the ability to travel as easily as client A. Accessing counselling for people in these circumstances, and on an ongoing basis, would be very difficult.

There is an obvious demand for greater investment into Aboriginal-controlled counselling services across Western Australia, which could specifically offer culturally appropriate, trauma informed support to Aboriginal people engaging with the Redress Scheme. Regarding access to counselling in remote Aboriginal communities, adequate investment is required to ensure that those Aboriginal organisations providing services can travel and provide outreach services in those communities.

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<sup>5</sup> <https://anrowsdev.wpenginepowered.com/wp-content/uploads/2020/07/Blagg-RR-LawCulture.1.pdf>

### **3 Accessibility and funding for support services**

The general accessibility of Redress Support Services for Aboriginal people specifically is limited by the fact that there are a limited number of Aboriginal-controlled services currently funded to provide this support around Australia, and further a lack of investment in Aboriginal interpreting services across the state. In Western Australia, there are only three Aboriginal-controlled Redress Support Services, and 8 services in total. The overwhelming demand for those services has meant they are operating almost always at capacity, with long waiting lists of people seeking support to access the Scheme.

Further, the requirement for those services to provide outreach to regional, remote and really remote communities has left gaps in service delivery for Aboriginal people in particular, as has the lack of access for people in prison to the services required to assist them to engage with the Scheme.

In AFLS's personal experience, due to the limited amount of funding available to us to deliver Redress Support Services, we have only been able to engage two staff members to undertake Redress Support work for AFLS across the Midwest, Gascoyne and Perth Metropolitan (Belmont and Victoria Park) regions. We have found that the best way to assist our clients in accessing the Scheme is to provide services face to face; however, the amount of funding allocated to our service makes it difficult to provide the kind and level of support required where it is most needed, in regional and really remote areas.