



Victorian Council for Civil Liberties Inc  
Reg No : A0026497L

GPO Box 3161  
Melbourne, VIC 3001  
t 03 9670 6422  
info@libertyvictoria.org.au

**PRESIDENT**  
George A Georgiou SC

**SENIOR VICE-PRESIDENT**  
Jessie E Taylor

**VICE-PRESIDENTS**  
Jamie Gardiner  
Michael Stanton  
Thomas Kane

**IMMEDIATE PAST PRESIDENT**  
Jane Dixon QC

**PATRON**  
The Hon. Michael Kirby AC CMG

www.libertyvictoria.org.au

**28 May 2015**

Committee Secretariat  
Senate Finance and Public Administration Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

[fpa.sen@aph.gov.au](mailto:fpa.sen@aph.gov.au)

To the Senate Finance and Public Administration Committee

### **Aboriginal and Torres Strait Islander experience of law enforcement and justice services Inquiry**

Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. It is concerned with the protection and promotion of civil liberties throughout Australia. Liberty Victoria is actively involved in the development and revision of Australia's laws and systems of government. Further information on our activities may be found at [www.libertyvictoria.org.au](http://www.libertyvictoria.org.au).

Liberty Victoria has had an opportunity to consider the Senate Inquiry into *Legal Assistance Services: Aboriginal and Torres Strait Islander experience of law enforcement and justice services*. We fully endorse the submissions of the *National Aboriginal & Torres Strait Islander Legal Services (NATSILS)*, the *National Family Violence Prevention Legal Services (NFVPLS)* and the *Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS)*. In doing so, Liberty Victoria acknowledges the unique position Aboriginal Community Controlled Organisations hold in the provision of legal services to Aboriginal and Torres Strait Islander communities across Australia.

Liberty Victoria acknowledges that those organisations providing frontline legal services to Aboriginal and Torres Strait Islander communities are best placed to address the terms of reference. It is the knowledge and expertise of these organisations that should guide policy and law reform in respect of law and justice issues for Aboriginal and Torres Strait Islander communities.

Whilst the importance of the terms of reference cannot be undermined, the prevalence of materials available in answer to the information sought is noted. Even as early as the *Royal Commission into Aboriginal Deaths in Custody (1991)* the matters referred to have been identified and recommendations for solutions raised. Close attention ought to be had to those reports, including but not limited to: *Access to Justice Arrangements, Inquiry Report Overview (2014)*; *Overcoming Indigenous Disadvantage Report (2014)*; *Doing*

*Time – Time for Doing (2011); The Australian Productivity Commission, Overcoming Indigenous Disadvantage - Key Indicators 2014; Indigenous Legal Needs Project (2015).*

Liberty Victoria would like to bring the following additional information to the Committee's attention:

In 1988, the *Royal Commission into Aboriginal Deaths in Custody* (the Royal Commission) was announced by the then Prime Minister, Bob Hawke. The Royal Commission set down 339 recommendations to address the alarming rates of Aboriginal and Torres Strait Islander deaths in custody and called for whole of government systemic reform to address the underlying issues resulting in Aboriginal and Torres Strait Islander peoples' increasing contact with the justice system. The issues identified included intergenerational trauma, poverty, poor education, unemployment, drug and alcohol use, mental illness, housing, homelessness and health concerns. More recently the *Doing Time - Time For Doing: Indigenous youth in the criminal justice system* report reiterated these precursor factors and made a broader connection between child protection reports and the issues identified by the Royal Commission almost 25 years ago. We note that many of the recommendations made by the Royal Commission are yet to be implemented.

The most recent *Australian Indigenous Legal Needs Report (2014)* identifies unmet legal need in civil and family law in Aboriginal and Torres Strait Islander communities across Australia. The particular needs identified include housing, debt, discrimination and child protection. There is a clear correlation between the failure to provide adequate resources in these areas and the over-representation of Aboriginal and Torres Strait Islander people in the justice system. In its recent report, *Access to Justice Arrangements* the Productivity Commission stated that civil law needs will often escalate to the criminal jurisdiction if left unassisted. Liberty Victoria calls for an increase in funding to legal and support services to ensure civil and family legal needs are met and services can be accessed regardless of remoteness.

There is clear evidence that ATSILS and FVPLSs are underfunded in comparison to legal aid commissions across the country. Recent threats to the provision of legal services to Aboriginal and Torres Strait Islander communities highlight the ongoing and increased demand on these services and the gross lack of funding provided to services in the context of increasing numbers of clients. Lack of adequate funding, increasing demand and ongoing funding uncertainty leave clients, staff and organisations unable to plan effectively for future service delivery. Liberty Victoria calls on the Government to implement the Productivity Commission's recommendations, which call for an immediate \$200 million funding boost to all four legal assistance services. In relation to FVPLSs, the interim report of the *Senate Inquiry into Domestic Violence* supports that position.

Liberty Victoria highlights the gross over-representation of Aboriginal and Torres Strait Islander women and children in family violence data and child protection rates. Nationally, Aboriginal and Torres Strait Islander women are now 34 times more likely to be hospitalised due to family violence related assault and are 10 times more likely to die as a result of that assault. In Victoria, as of February 2015 there had been a 42 percent increase in Aboriginal children in out-of home placements in the previous 12 months. Aboriginal and Torres Strait Islander children represent 35 percent of all children in care but only 4 percent of the general population. The work of the Victorian Royal Commission into Family Violence should be viewed in the context of past learnings of state interventions.

The timing of the Victoria Royal Commission into Family Violence allows reflections in response to the learnings of the Royal Commission into Institutional Responses to Child Sexual Abuse. The correlation between family violence and children being placed in out of home care by state intervention is clear. In Victoria, the Commissioner for Aboriginal Children and Young People has found that family violence has been a driving factor in up to 95 percent of cases of removal of Aboriginal children from their families. In Aboriginal communities the risks then for those children, and communities is greater.

Family Violence Prevention and Legal Services (FVPLSs) provide culturally safe, holistic legal and non-legal services to Aboriginal and Torres Strait Islander victims/survivors of family violence, including community legal education and early intervention and prevention activities. FVPLSs were established to address the gap in access to legal services for Aboriginal and Torres Strait Islander women and the high rates of family violence in Aboriginal and Torres Strait Islander communities. FVPLSs have been consistently recognised as essential in assisting victims/survivors of family violence and have played a complementary role with other legal assistance services. Often FVPLSs are the only culturally safe option for victims/survivors of family violence, due to legal conflicts within Aboriginal and Torres Strait Islander Legal Services (ATSILS).

Aboriginal and Torres Strait Islander people remain vastly over represented in the criminal justice system. In states where mandatory sentencing exists there has been a direct correlation between these laws and an increase in Aboriginal and Torres Strait Islander imprisonment. Victoria has the fastest growing Aboriginal and Torres Strait Islander prison population in the country following a suite of law and order reforms introduced by the former government. Mandatory sentencing rails against long held principals of taking into account an accused's circumstances in sentencing and the value of judicial discretion. This will have a particularly deleterious effect on those impacted by mental health issues and histories of gross disadvantage. Further, mandatory sentencing disproportionately affects Aboriginal and Torres Strait Islander people both as a result of the over representation of these groups in the justice system but in terms of the prevalence of ongoing systemic and social disadvantage leaving these communities on the very fringes of society. There is little to no evidence to suggest that high police presence reduces rates of crime, yet Aboriginal communities continue to experience greater policing. Further, there is no evidence to support the deterrent effect or the beneficial impact of mandatory sentencing. Liberty Victoria remains opposed to mandatory sentencing.

In 2013, Victoria acknowledged the positive impact of the specific recognition of the histories of Aboriginal and Torres Strait Islander people before the courts – in the introduction of s3A of the *Bail Act 1977 (Vic)*. However, in mandatory sentencing regimes this cannot be taken into account by the judiciary. The effects of mandatory sentencing regimes flow on to the wider Aboriginal and Torres Strait Islander community, including increasing rates of out of home for Aboriginal and Torres Strait Islander children.

Between 2004 and 2014 the Aboriginal and Torres Strait Islander imprisonment rate has increased by 88 percent as compared to 28 percent in the broader community. Aboriginal and Torres Strait Islander people are imprisoned at a rate 13 times greater than other Australians, Aboriginal and Torres Strait Islander children are 24 times more likely to end up in detention and Aboriginal and Torres Strait Islander women make up over one third of the female prison population.

Liberty Victoria looks to the report of the *Royal Commission into Aboriginal Deaths in Custody* (1991), *Doing Time - Time For Doing: Indigenous youth in the criminal justice system* (2012), Productivity Commission's *Access to Justice Arrangements* (2014), *Australian Indigenous Legal Needs Report* (2014), and numerous other reports that highlight poverty, mental health issues, homelessness, health, education, drug and alcohol issues, discrimination, over-policing and inter-generational trauma as impacting on Aboriginal and Torres Strait Islander communities at an undiminished rate since white settlement. There is a clear correlation between these factors and entry to the criminal justice system.

Further, the correlation between family violence, poverty, homelessness and imprisonment is clear. The impact then on future generations of Aboriginal children through imprisonment of parents is deleterious and documented as such.

Liberty Victoria supports the proposition that an urgent increase of funding is required to service Aboriginal and Torres Strait Islander communities in respect of legal needs, access to civil, family law and criminal law services and to support services that will assist in reducing contact with the justice system and will enable diversion from prisons. An urgent reform is sought in Victoria in respect of sentencing options and post release transitional programs.

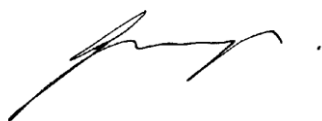
Liberty Victoria endorses the Change the Record campaign in its aim to end the over-representation of Aboriginal and Torres Islander people in prisons in a generation through justice reinvestment and increasing resources to communities.

Thank you for the extension of time granted to make this submission.

Should you wish to discuss any aspect of this submission further please contact Liberty Victoria President, George A Georgiou SC, or Liberty Policy Committee member, Jillian Prior.

This is a public submission and is not confidential.

Yours sincerely



George A Georgiou SC  
President  
Liberty Victoria