



VACCA

Connected by culture

VICTORIAN ABORIGINAL CHILD CARE AGENCY

CONFIDENTIAL

Submission to the Victorian Law Reform Commission's Inquiry into Improving the Response of the Justice System to Sexual Offending December 2020

Executive Summary

1. When Aboriginal people are connected to their culture and community, they are empowered, strong in their identity and resilient.
2. VACCA welcomes the opportunity to provide input into the Victorian Law Reform Commission's inquiry into improving the response of the justice system to sexual offending.
3. Our submission is based on extensive consultation across a wide range of VACCA's programs including residential care, family violence, Aboriginal Children's Healing Team, youth justice, education support, child and family services, mental health and our legal team that support the National redress scheme.
4. While the work we do protects children and families from sexual harm enables us to comment on several issues papers included in this review, we are not best placed to respond to all issues papers. In this submission we provide information for your consideration on issues papers A-C & F-G.
5. The historical context of dispossession, removal and transgenerational trauma is an important part of understanding Aboriginal people's experience of sexual harm. Sexual harm is widespread, and considerably underreported. Aboriginal women and children experience high rates of sexual abuse but offences against them are underreported².
6. We know that some people and groups within the Aboriginal community experience sexual harm at much higher rates than others. We are particularly concerned about the prevalence of sexual harm experienced by Aboriginal children and young people in Out of Home Care (OOHC).
7. Children and young people who have been sexually abused, those using sexually abusive behaviours and their families all require integrated, multi-disciplinary, trauma informed supports. There is not one cause of child sexual abuse⁵ and therefore no one person or service is capable of meeting all the needs of a child and their family.
8. There is a real need for improved service responses across sectors inclusive of family violence and sexual assault systems but also ACCOs, the health, housing and education systems, Child Protection, police and justice systems. A joint, integrated and holistic approach looking at historical drivers and current risk factors associated with the abuse is key with a set of agreed upon principles and framework across all sectors.

About VACCA

9. The Victorian Aboriginal Child Care Agency (VACCA) is the lead Aboriginal child welfare organisation and the largest provider of Aboriginal family violence services in Victoria.
10. As an Aboriginal Community Controlled Organisation (ACCO), we provide a range of services to vulnerable Aboriginal children, families and communities.
11. VACCA's vision is Aboriginal self-determination – Live, Experience and Be. Our purpose is supporting culturally strong, safe and thriving Aboriginal communities.

12. We believe in the principle of the right of Aboriginal people to self-determination, the rights of the child and we commit to upholding Victorian Aboriginal cultural protocols.
13. VACCA brings the expertise of its Cultural Therapeutic Ways (CTW) framework. The CTW is a whole of agency approach to guide VACCA's practice of healing for Aboriginal children, young people, families, Community members and carers. It also frames the way we create a culturally safe and supportive workplace for staff. It is the intersection of cultural practice with trauma and self-determination theories.
14. The core premise of CTW is informed by an understanding of the trauma held by Aboriginal families as a result of ongoing processes of colonisation. It is based upon Human Rights and United Nations Conventions, Victorian Legislation, organisational practice and strengths. Culturally based services that support the social and emotional wellbeing (SEWB) and safety of children, young people and families can minimise involvement in tertiary systems such as Child Protection and justice.

Terminology

15. Throughout our submission VACCA uses the terms sexual abuse, sexually abusive behaviours and victim of sexual abuse. This refers to any unwanted sexual behaviours that make a child or person feel scared, threatened or uncomfortable. The use of these terms covers a range of offences including rape, sexual violence and inappropriate touching.
16. We also use the term 'child or young person using sexually abusive behaviour' and 'child or young person convicted of sexual abuse' instead of sex offender or perpetrator. This recognises that sexually abusive behaviour is a problem of someone's behaviours, rather than of who they are. It also encourages a therapeutic response with consideration of the child or young person's trauma, rather than a punitive one focused on punishment.

Issue Paper A - Working together to respond to sexual offences

Q3. How can the relationship between family violence services and the sexual assault system be improved, so that the justice system responds effectively to sexual harm?

17. Responding to sexual abuse often requires crossing between systems including family violence, Child Protection and justice. Referral pathways and support services are not connected or streamlined. VACCA supports the Royal Commissions recommendation for the sexual assault system to be integrated with the family violence system including joint training.
18. The family violence system prioritises physical abuse and the safety of women and children; but this can often mean that an adequate response to sexual abuse is not provided, particularly for Aboriginal children and families. Sexual abuse, within or outside the experience of family violence must be afforded the same gravitas as all other forms of violence in the justice system.
19. The prevalence of sexual abuse, especially child sexual abuse, where there is also family violence is unclear. It is not uncommon for research and data on sexual abuse to be subsumed by definitions of family violence.¹ Data collection regarding family violence incidents should also record whether sexual abuse has been disclosed as a component of the reported abusive behaviour. This requires a change to the way incidents are investigated and support provided so that disclosures are made.

¹ McCalman, J., et al. (2014). Responding to Indigenous Australian sexual assault: A systemic review of the literature. *SAGE Open*, pg. 1-13.

20. Research reveals an extensive intersection between experiences of sexual abuse and physical violence by an intimate partner², with Aboriginal people disproportionately over-represented in this cohort.³ The justice system must review how they weight forced and coercive sexual acts within a relationship and not dismiss such acts as lessor in severity and impact than physical or other types of violence.
21. Improved service responses across sectors inclusive of family violence and sexual assault systems but also ACCOs, health, housing and education systems, Child Protection, police and justice systems are urgently needed.
22. The Justice system, family violence and sexual assault systems should adopt a joint, integrated approach looking at historical drivers and current risk factors associated with all forms of violence including sexual abuse.
23. Regardless of which service a person engages in, including family violence, there should be a minimum basic assessment of whether sexual abuse is an issue and what culturally appropriate safety measures should be in place.
24. The sexual assault system, family violence and ACCOs must also adopt collaborative practice, linking families into culturally specific services that are able to respond to the needs of the entire family, and responsive to the specific experiences of sexual abuse.
25. Effective integrated responses to sexual abuse requires coordinated information sharing across the service system including family violence and the justice system. Information sharing needs to be upheld and accessed to help identify early intervention opportunities and to ensure wrap around supports for the child and family.

Q4. How can the relationship between Child Protection and the sexual assault system be improved, so that the justice system responds effectively to sexual harm?

26. The relationship between Child Protection and the sexual assault system needs to be urgently improved as both the justice system, family violence and Child Protection have a duty of care to protect children from sexual abuse and exploitation.
27. In 2015, a stand-alone statutory duty of care was implemented following the Betrayal of Trust: Inquiry into the handling of child abuse by religious and other non-government organisations⁴ under the Wrongs Amendment (Organisational Child Abuse) Act 2017. This must be upheld by the justice and Child Protection systems.
28. The justice system should take care to ensure that any organisation, including the Government and Child Protection, that is responsible for the care, supervision or authority of children take all “reasonable precautions’ to prevent abuse’.⁵
29. With the recent separation of the Child, Youth and Families Act (2005) (CYFA), there is great concern around how the new Youth Justice Act will respond to children using sexually abusive behaviours. Currently Child Protection are working on a Memorandum of Understanding (MOU) with Youth Justice, though it is yet to be revealed as to what this will look like. This work must progress with urgency.

² Australian Law Reform Commission. (2010). *Sexual assault in the family violence context* in ‘Family violence – A national legal response (ALRC Report 114), Canberra: Australian Government.

³ AIHW. (2006). *Family Violence Among Aboriginal and Torres Strait Islander Peoples*, pg. 118–123.

⁴ Family and Community Development Committee. (2013). *Betrayal of Trust: Inquiry into the handling of child abuse by religious and other non-government organisations*, Melbourne, Victoria: Parliament of Victoria.

⁵ Ibid

30. Until recently, responding to Aboriginal children in OOHC displaying sexually abusive behaviours or disclosing sexual abuse was the responsibility of Child Protection. It was a process that did not work well. Now the 'Aboriginal Children in Aboriginal Care' (ACAC) program, under section. 18 of the CYFA has been expanded to include investigative powers, however further protections for Aboriginal children in OOHC are required.
31. Responses for Aboriginal children and young people who engage in sexually abusive behaviours need to occur in a timely, therapeutic, trauma informed and culturally safe manner to minimise harm, and provide opportunities for healing to all family members involved. Priority must be given to placing a child on a Therapeutic Treatment Order (TTO) as an alternative to being charged with a criminal offence wherever suitable.
32. TTOs are an order of the Family Division of the Children's Court, they are a diversion from criminal proceedings so that children aged 10-17 who exhibit sexually abusive behaviours receive therapeutic treatment program. Only recently have TTOs been extended to include 15-17 year olds. VACCA would like consideration or flexibility when assessing suitability of TTO's for Aboriginal young people up to the age of 21.
33. VACCA staff reported instances where Aboriginal children and young people displaying sexually abusive behaviours were deemed ineligible for a TTO. Creating missed opportunities for early intervention and the potential to disrupt the child or young person's behaviour from evolving into more harmful actions and subsequent interaction with the justice system. The eligibility criteria for accessing a TTO must be more inclusive.
34. Access to therapeutic programs for children and young people exhibiting sexually abusive behaviours should not be limited by location. The gaps and critical workforce issues in the current sexual assault system discriminate against children and young people in regional and rural areas.
35. There are not enough specialised, culturally safe services or treatments for Aboriginal children and young people. The reliance on public funded mainstream services, with long wait times discriminates against Aboriginal children and young people as many of our families are highly vulnerable and private providers are not an option.
36. Aboriginal children and young people who have been sexually abused or have engaged in sexually abusive behaviours must be able to access tailored funding packages to access culturally safe, trauma informed services of their choosing in a timely manner. This is to ensure where possible the child can stay in the home, avoiding entering the Child Protection system.
37. All children and young people disclosing sexual abuse need to be taken seriously and believed, particularly children and young people in OOHC. VACCA staff have reported at times that parents, carers or case workers question the legitimacy of disclosures of sexual abuse based on gendered biases, attitudes and stereotypes regarding perceived promiscuity, peer groups and whether the child or young person is engaging in high-risk behaviours such as the consumption of alcohol and other drugs.
38. Initial joint work between VACCA and the Sexual Offences and Child Abuse Investigation Team (SOCIT) when a disclosure is made tend to work well including interviewing and planning with the child. However, as the case progress through the justice system, too often responsibilities to follow up with the child and family are not upheld. This must change.
39. Evidence from the Victorian Ombudsman's recent 'Investigation into complaints about assaults of five children living in Child Protection residential care units'⁶, found that pressures placed on ACCOs and CSOs by Child Protection can lead to children being put in placements that are not a 'match' with other children, jeopardising the safety of all children and young people in the unit. These placements are not in line with either the Department of Health and Human Services (DHHS) Placement

⁶ Victorian Ombudsman. (2020). p.9

Framework⁷ or with the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP)⁸. This must stop. Greater care must be placed on ensuring placements are better matches.

40. Also mentioned in the Victorian Ombudsman report, VACCA has been asked by Child Protection to accept high-risk Aboriginal children into a placement even when they are not matched with other children in the unit.⁹ The report highlights that Child Protection will misuse the ATSICPP in an attempt to coerce ACCOs into agreeing to a placement that is not in the best interests of children.¹⁰
41. Placement of Aboriginal children should always follow the ATSICPP and DHHS Placement Framework to maintain physical safety and cultural safety. The ATSCIPP was developed with the aim to keep Aboriginal children and young people connected to their families, communities, cultures and Country¹¹. The Principle helps to ensure that Aboriginal children's right to be raised in culture is upheld and their needs are met.
42. There is a workforce shortage of qualified, specialist child sexual abuse specialists that are also culturally safe for Aboriginal children and young people.
43. There is a need in the Child Protection system for education and training on sexually abusive behaviours and how to respond to the needs of the children and families involved. This includes both psychoeducation on identifying and talking to young people about sexually abusive behaviours as well as general sexual education for staff to sufficiently educate children and young people on sexual health and building respectful relationships.
44. There needs to be increased capacity of staff to interview children who disclose sexual abuse including forensic interviewing without disrupting a potential police investigation.

Q5. How can we improve how other services and systems work with the sexual assault system, so that people are supported to seek justice?

45. There is an urgent need for adequate resourcing and investment in ACCOs to respond to the needs of Aboriginal children and families who have experienced sexual abuse or are at risk of sexual exploitation; and to build our capacity and responses.¹²
46. While significant steps have been undertaken by the Victorian Government towards progressing self-determination including the transfer of Guardianship of Aboriginal children under s.18, the transfer of resourcing to ACCOs to provide culturally safe services and supports is yet to occur.
47. Unlike the sexual assault system, ACCOs are uniquely placed with strong ties to their communities and therefore with sufficient resourcing are best positioned to provide tailored, culturally strong programs with a focus on early intervention and prevention programs and specialised staff training.
48. The 'Bringing them Home' report outlined the need for new legislation to be enacted, based on self-determination including far greater control by Indigenous people and community over matters affecting Indigenous children and young people including sexual abuse and family violence.
49. Most often, children and young people who engage in sexually abusive behaviours are a highly vulnerable cohort and have experienced their own trauma. The Neither Seen nor Heard report¹³ examined the legacy of trauma affecting Aboriginal children, identifying that models are needed

⁷ DHHS Placement Coordination and Placement Planning Framework (December 2012).

⁸ Rodney Monohan. (2002). *Aboriginal child placement principle- Guide for child protection and care workers*, Melbourne: Community Care Division, Victorian Government Department of Human Services.

⁹ Victorian Ombudsman (2020).

¹⁰ Ibid, p.72.

¹¹ Rodney Monohan (2002).

¹² Davis, M. (2019). *Family is culture: Final report- Independent review into Aboriginal out-of-home care in NSW*, Sydney: Family is Culture.

¹³ Commission for Children and Young People, (2016). *Neither seen nor heard – Inquiry into issues of family violence in child deaths*. Melbourne: Victorian Government.

which attend to the intergenerational effects of colonisation, as well as the cumulative effects of poor health, alcohol and drug misuse, unemployment, gambling, poor education, pornography, unstable housing, and general disempowerment on children's social and emotional wellbeing and behaviour.¹⁴

50. The recent Ngaga-Dji Report (2019) written by the Koori Youth Council highlights the demand for early intervention models, calling for support for children 'who are victims of crime with access to justice and early, community-centred services to address trauma resulting from removal, family violence, homelessness and other abuses. Majority of children who have contact with the justice system are victims of crime themselves'¹⁵. Where children do not receive therapeutic supports specific to their healing journey, there is a likelihood of sustained risk-taking behaviours including sexually abusive behaviours and increased likelihood of involvement with police and the justice system.
51. Trauma should be assumed as a sentencing consideration for all offences as recommended in the Victorian Aboriginal Legal Services (VALS) submission to the Victorian Law Reform Commission¹⁶. Alternative sentencing measures must be considered for Aboriginal peoples with the purpose of addressing underlying disadvantages and traumas caused by colonisation and legacies of child removal policies.
52. A child specific response is required across all systems working with child sexual abuse. Models from the adult system should not be applied, in particular when responding to children using sexually abusive behaviours and treatment as a perpetrator. It is important to understand how a child or young persons' trauma impacts their circumstances, decision making and rehabilitation. Whilst the Children's Koori Court exists, how it interacts with the sexual assault system and the sexual offences list needs to be re-modelled to be therapeutic and trauma informed. The Koori Court model should be drawn on, embedding culture and tradition throughout the system as promising practice.
53. Pathways for children to report sexual abuse need to be improved with children and young people often deterred to disclose abuse due to fear, threats, grooming, responsibility and loyalty to family. Not only does this discourage children and young people, but it also often leads to children retracting their claims throughout proceedings. Improvements must include safety measures and intensive supports to enable more opportunities for children and young people to feel comfortable to disclose abuse.
54. Integrating therapeutic, Aboriginal models of healing across all systems including sexual abuse, family violence and Child Protection will help to ensure Aboriginal children, young people and families can access culturally appropriate services whilst being linked in with other necessary services such as education, housing, and counselling.

Q6. Is there a need for a stronger focus on governance or shared outcomes in the response of the justice system to sexual harm? If so, what should this look like?

55. Yes, there is need for a strong focus on governance with dedicated ACCO involvement due to the over representation of Aboriginal people across the justice, Child Protection, family violence and sexual assault systems. To ensure and maintain the safety of Aboriginal children in OOHC, external auditing is required with Aboriginal governance.

¹⁴ Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse. (2007). *Little children are sacred: Report of the Northern Territory Board of Inquiry into the protection of Aboriginal children from sexual abuse*. Northern Territory.

¹⁵ Koorie Youth Council. (2018). *Ngaga-Dji, Young voices creating change for justice*. Koorie Youth Council.

¹⁶ VALS. (2019). *Australian Law Reform Commission- Response to consultation paper*. Retrieved from <https://www.alrc.gov.au/wp-content/uploads/2019/08/39._victorian_aboriginal_legal_service_vals.pdf>.

56. There needs to be an accreditation process that involves Aboriginal organisations focussed on cultural awareness and training to increase understanding and improve engagement across systems.
57. Standards need to be developed and regular audits undertaken that assess compliance with the developed standards. The DHHS Services Standards Evidence Guide Culturally Informed addendum has been developed by VACCA for use alongside the existing Human Services Standards and Human Services Standards evidence guide to help organisations prepare and participate in internal and external reviews against the Human Services Standards. The addendum incorporates and builds on the former Department of Human Services Aboriginal Cultural Competency Framework (ACCF) 2008 and the seven key access criteria for effective service design detailed in the Victoria Aboriginal Affairs Framework (VAAF).
58. Sexual abuse can occur in both a highly audited and under audited setting given offenders are usually very skilled at the grooming process and in maintaining secrecy. The justice system needs to ensure that there are multiple avenues and opportunities for children to speak out and for staff and carers to be adequately informed so they can notice any grooming behaviours or changes in the child or young person's behaviour.
59. Auditing and visiting OOHC facilities are necessary in providing incentives to compliance, especially where there are consequences for non-compliance¹⁷. It can also provide timelines and reminders of responsibilities and expectations. Without these, it is easy to allow planning and other processes to drift, and compliance can be assumed without any evidence to justify it.
60. Greater oversight is needed to ensure the most vulnerable children and families involved with Child Protection are safe and protected.

Issues Paper B - Sexual Offences: Key Issues in the Criminal Justice System

Q1. Is there a need to improve attitudes towards victim survivors or the understanding of sexual harm within the criminal justice system? If so, how?

61. While the criminal justice system has had a number of reforms aiming to improve its response to sexual abuse, there is still a long way to go.
62. The increased awareness of the prevalence and impacts of family violence in recent years has improved reporting and attitudes towards violence against women and children, however there remains stigma within the mainstream and Aboriginal community around sexual abuse.
63. There is a misconception that because of the over representation of Aboriginal women affected by family violence and sexual abuse that their partner, or the person using violence or sexual harm against them is also Aboriginal. Anecdotal data suggests that violence against Aboriginal women and children is perpetrated by non-Indigenous men around 85% of the time.
64. We need more accurate data collection on the cultural background and identity of those who use violence and/or sexual abuse.
65. There are significant barriers for Aboriginal women and children to report incidents of sexual abuse. The lack of cultural safety and systemic racism and bias that both clients and staff report, make the criminal justice system inaccessible. This reflects a failure of the system to protect those most vulnerable, and provides limited opportunity for not only justice but healing for all parties.
66. Research indicates that when Aboriginal community members habitually observe unsuccessful prosecutions where the complainants are released back into their communities, this reinforces a lack

¹⁷ Victorian Ombudsman (2020).

of confidence in the criminal justice system to deliver just outcomes and contributes to underreporting.

67. As reflected in VACCA's submission to the Royal Commission into Family Violence, our family violence workers continue to report that in their experience working with Aboriginal women affected by violence, the majority of them want to stay in the relationship, they do not want the relationship to stop, just the violence.
68. Systemic racism and bias permeate the criminal justice system. Research shows concerning attitudes held by police towards Aboriginal women and children who are victims of crime. Police often fail to prosecute in cases of sexual abuse against Aboriginal women and drop charges. This is especially true for Aboriginal children in OOHC.
69. Community members interviewed by VACCA felt that police do not take cases of sexual harm against Aboriginal women as seriously as other offences, and that the sexual abuse of Aboriginal children and Aboriginal women is a serious problem but "the system is not interested in them as victims". The CCYP Taskforce 1000 Inquiry also highlighted this issue when detailing a case where Victoria Police did not follow up an allegation of abuse for three years. This speaks to the systemic failure of a system to protect those most vulnerable.
70. VACCA staff reported that when Aboriginal women and young people are not believed, whether by service providers, the police or community members, this has significant ongoing impacts on their social and emotional wellbeing and contributes to a sense of helplessness.
71. In reviewing former VACCA client case files, there is ample evidence that not respecting and not believing women and children when they reported sexual was an endemic issue throughout the justice system. If police reports were filed, there was no follow up, case files may have noted disclosures of abuse by the child or young person, but limited support was provided. These concerns were echoed in Taskforce 1000 as well as the "...as a good parent would" inquiry which detailed limited if any access to counselling, or acknowledgement of the abuse.
72. Aboriginal children, young people, women and men who have experienced sexual abuse must be seen, heard, believed and supported to heal. Significant reforms that address systemic racism are needed for all processes and systems to improve responses.
73. The criminal justice and family violence systems including police, courts and mainstream family violence services must improve their awareness of the drivers of sexual abuse in Aboriginal communities and the specific experience of those abused and harmed. This includes recognising the impacts of colonisation and intergenerational trauma on both those affected by, and those using sexually abusive behaviour.
74. Aboriginal cultural awareness training must be implemented across the justice system to create a culturally consistent and appropriate response. ACCOs must be involved in this process, ensuring that police and the justice system are responsive to the needs of the Aboriginal people affected by sexual abuse and recognise the history, culture and strength of Aboriginal peoples.
75. Culturally safe responses must be embedded across mainstream organisations to ensure Aboriginal people affected by sexual abuse are appropriately and adequately supported. The mainstream sector must acknowledge the role of culture as a critical protective factor when responding to sexual abuse among the Aboriginal community. Strengthening connections to culture, family and community can support victim of sexual abuse to heal and feel supported.

Q7. What other issues affect the criminal justice process as a whole, and what should be done to address them?

76. Aboriginal people affected by sexual abuse face additional barriers to accessing legal services. Aboriginal women are often fearful that involving authorities could result in the removal of children.
77. VACCA staff were concerned that sentencing does not acknowledge the needs and trauma of Aboriginal children and families and that improvements to the process must be made. Such reform is not something that can be retrofitted. Responses must be designed with community from the ground up to ensure accountability.
78. A significant challenge for both children and young people who have experienced sexual and for those who have committed sexual abuse remains the lengthy court processes and delays when progressing the matter to trial. VACCA staff reported that the failure of the system to respond in a timely matter placed a significant toll on our clients. We heard cases where a victim survivor had waited four years before they could begin giving evidence, having a significant impact on how the victim's everyday life and feelings of safety in society in the lead up to giving evidence. Likewise, staff also reported concerns about the long timeframes for those who have committed sexual harm, where one client waited eight months for a TTO to be put in place.

Issues Paper C - Defining Sexual Offences

General comments

79. Within this Issues Paper the issue of consent and definition of sexual abuse is raised. We will refer to the expertise of VALS for specific responses around proposed changes and reform to current sexual offences however we feel it is important to reflect on the issue of consent as it pertains to respectful relationships and developmental understanding of rights and responsibilities. Please refer to our response in Issues Paper F; Q3.
80. A child may exhibit sexually abusive behaviours by using their power, authority or status to engage another child in sexual activity that is unwanted or where, due to the nature of the situation, the other child is not capable of giving informed consent (this may include sexual behaviour with a family pet or other animal, or sexual behaviour involving a child who is younger or who has a cognitive impairment).
81. Physical force or threats may sometimes be involved but it is not a required feature. Sexual activity may include exposure, peeping, fondling, masturbation, oral sex, penetration of a vagina or anus using a penis, finger or object, or exposure to pornography. This list is not exhaustive.
82. Justice Gibson reflected that in this case there had not been an abuse of power but that the actions of the young person were abusive to both themselves and the other children involved, that it was the harmful effect of the behaviours rather than the description of the young person exhibiting the behaviours. The complexity of young people using sexually abusive behaviour against one another, whether it be in a home or care scenario requires a highly skilled, trauma informed, culturally based therapeutic intervention.

Issues Paper F - People who have committed Sexual Offences

Q1. Do responses to sexual offending sufficiently address the diverse needs of different people who have committed sexual offences? If not, what more is needed?

83. There is a gap in the service for those with complex needs.

84. When working with children and young people who are using sexually abusive behaviours it is critical to understand that in the vast majority of cases, they too themselves are victims. Too often we see a punitive response to children and young people who are using sexually abusive or violent behaviours, rather than looking at the pattern of behaviour through a trauma lens.
85. As previously identified, the recent Ombudsman Report and the CCYP's Always Was Always Will Be, Koori Children and "...As a good parent would"; we know that children and young people in Residential Care are particularly vulnerable to sexual harm and exploitation. It is noted that this submission will contribute to the fourth inquiry relating to similar concerns. How many more reports, investigations or inquiries need to be undertaken to see systemic reform?
86. VACCA strongly believes that holistic, trauma informed therapeutic models of care and support not only for the child or young person, but their whole family are needed to provide an opportunity to heal and learn appropriate and safe behaviours and interactions.
87. VACCA staff reflected on the challenges of incidents where it is both a young person affected by and using harmful, violent sexual behaviours. Again, the immediate punitive or risk adverse response does little to address the trauma that is being enacted and experienced.
88. Many young people who have experienced trauma and abuse and go on to use violent or abusive behaviours have cognitive developmental delays. We propose that children aged 17-21 years should also be able to access the supports and interventions provided through at TTO rather than punitive measures or convictions as the first response.
89. There is no Aboriginal governance or commitment to embedding Aboriginal knowledge and understandings into the service provision model. This should be rectified.
90. There needs to be investment allocated to ACCOs to develop their own specialist services to support Aboriginal people affected by sexual abuse where cultural approaches and understanding are embedded and valued in a therapeutic, trauma informed model of care, specific to the needs of children and young people, women and men.
91. Taskforce 1000 recommended that DHHS should support ACCOs to provide "culturally appropriate and timely counselling and wrap around services ... for children, their families and cares who have been victims of family violence and sexual abuse." This is yet to occur.
92. There needs to be information sharing with VALS to provide better support for Aboriginal people who disclose abuse and for those who display sexually abusive behaviours.

Q2. How well are rehabilitation or reintegration measures for people who have committed sexual offences working? How can they be improved?

93. A specific rehabilitation and reintegration measures response for children and young people is needed.
94. VACCA is concerned that there is not a trauma informed, developmentally appropriate, therapeutic response to support Aboriginal children and young people who have used sexually harmful behaviour.
95. Any response needs to include cultural healing programs not only for the child or young person but also their family, particularly where there has been sibling abuse. We know that with cases of sibling abuse there is a distinct need for trauma informed, therapeutic interventions that are age and developmentally appropriate.
96. VACCA should be resourced to provide specialised support as part of the Aboriginal Children's Healing Team to connect and work with children and young people who use harmful sexual

behaviour. We understand the complex issues that intersect and the need to apply a holistic model of care and support.

97. For women and children affected by sexual abuse, they may still wish for the family unit to remain. Dr Kelly Richards speaks to the importance of Cultural Mentoring Programs to support reintegration, where Aboriginal men were able to connect back with culture, community and identity and learn about cultural protocols and practice.
98. There needs to be additional resourcing for ACCOs to provide specialised Aboriginal mentoring programs for young people displaying sexually abusive behaviours. For adults that have used sexual violence, there again needs to be a focus on the needs of the family unit (where appropriate) to address the behaviour but also provide opportunities for healing.
99. Connection to culture and community for those affected by sexually abusive behaviours is also integral. Isolation from community and culture because of the stigma and shame associated with sexual abuse is an important part of a healing model, for both the person affected by and the person using sexually abusive behaviours.
100. It should also be noted the needs of young people who are engaging in sexually abusive behaviours in a residential care. In the case *DoHHS v J* [2015] VChC1 which involved children engaging in sexually abusive behaviours towards each other, only one of the young people involved was old enough (10 years old) to be charged. The case discussed a number of pertinent issues, firstly the fact that Justice Gibson was clear that although Jonathon (not his real name) “has been charged with criminal offences and treated as an offender. It is my firm view that he should have been regarded (and treated) as much as a victim as the other children...”. This case also highlighted the inadequacy and lack of safety in placement of highly vulnerable children with complex issues. Justice Gibson identified the therapeutic intervention needs of the Jonathon and the other children, “it is imperative that Jonathon and his co-residents are given the opportunity to process what occurred to them in the Unit and learn from it so that, individually, they can go on to have sexually appropriate relations in the future.”
101. This case also looks at the definition of sexually abusive behaviours (see section c). This case is significant for the argument about how young people who have used sexually abusive behaviours with other young people should also be considered victims, and the therapeutic interventions that are required to ensure that they do not go on to offend as an adult, these are important considerations.

Q6. What is working well in responding to harmful sexual behaviour in children? What improvements can be made?

102. More work is needed in the early intervention, prevention and diversion parts of the system.
103. Violence is not part of the Aboriginal cultural way. To meet the needs of Aboriginal communities, responses to sexual and family violence must be designed, developed, led and evaluated by ACCOs.
104. There needs to be policy responses that focus on culturally specific prevention and therapeutic support with a holistic understanding of the drivers of sexual abuse and violence amongst Aboriginal communities.
105. There is a need for culturally appropriate education programs to be developed and delivered by VACCA on preventing and responding to harmful sexual behaviours in children. While some education programs are delivered at school, we know that some children and young people are disengaged from school, so they may be missing out on this critical resource.
106. Social media and technology have fundamentally changed the way in which children and young people are learning about norms and behaviours regarding sex and consent. Technology is providing

unprecedented access by children and young people to sexualised content. There are a wide range of social media platforms and apps used by children and young people with varying degrees of security and exposure, placing children at risk of sexual exploitation and breaking laws governing child pornography protections. It is very clear that the justice system cannot keep up with appropriate provisions of regulation, oversight, control and protection, particularly given that many of these platforms are based overseas.

107. The normalisation of porn and the age of exposure years before any sexual activity sets unrealistic expectations about sex, consent and respectful relationships. The normalisation of the violence portrayed in pornography and the negative treatment of women it glamorises is incredibly damaging and dangerous. We may have limited success in curtailing the consumption of porn; however with appropriate education, young people can learn what is normal, respectful and safe in the real world.
108. The nature of consent also needs to be addressed. For children and young people who have experienced trauma and past sexual abuse, consent will look and feel very different. Whether they are cognitively able to understand and give consent due to the trauma they have experienced is of significant concern and has broad implications in society and the justice system. How consent is given within an Aboriginal cultural understanding also needs to be considered.
109. An integral part of any sexual education program about health and respectful relationships needs to support Aboriginal children and young people who identify as part of the LGBTIQ + community.
110. Part of this education model needs to also include a clear understanding of the rights, responsibilities and consequences if children and young people engage in behaviour that is not only damaging, but illegal.
111. Sexual exploitation through social media is of great concern for those most vulnerable in our community. Young people need to be informed and educated about what grooming behaviours look like, and what support services are available if they are concerned or affected. Gender specific programs that are culturally based and informed would need to be created. VACCA and other ACCOs are uniquely placed to deliver these programs with a cultural and trauma informed approach.
112. The eSafety Commissioner has developed a 'Be Deadly Online' resource for Aboriginal and Torres Strait Islander peoples which explores cyberbullying, digital reputation and respect for others, through short videos and posters, this resource could be integrated into an education program.

Issues Paper G - Sexual Offences and Restorative and Alternative Justice Models

Q1 Do you support adopting a restorative justice model for sexual offences? Why or why not?

113. This question of support for adopting restorative justice models is complex and requires multiple responses.
114. Alternative approaches to justice model such as rehabilitation and healing still face resistance, even though the justice system's reliance on punishment has done little to address sexual abuse and sexual offending.
115. The restorative justice process as currently designed requires an admission of guilt at the outset, which defence attorneys don't like; prosecutors worry the offender could retraumatise the victim; judges don't want to sign off on something that they consider unproven.
116. Victims have many justice needs that are currently unmet by conventional justice. Restorative justice can provide sexual abuse victims power and input that they might not otherwise have in the justice system. It is important to focus on what victims themselves want and must be victim driven.

117. Restorative justice can help stop cycles of violence and keep communities intact and this is something we strongly believe in.
118. In current models, if the offender does not accept responsibility for their actions or refuses to participate then restorative justice cannot take place. If they are diagnosed with a serious mental health condition restorative justice is also unlikely to be possible.
119. Legal categories such as “rape” and “sexual assault” play an important role in naming behaviour and organising community responses. However, these terms cover a wide range of experiences. The challenge for law reform is to look beyond categories and engage with the real lives of those who experience sexual harm.
120. There needs to be an alternative and complimentary process as many Aboriginal peoples find it hard to trust the police and the justice system because of how sexual abuse victims have been treated in the past.
121. Some of the notable evidence of resistance to change in this justice system includes the lack of a positive trend despite dedicated activism and education/training in increasing reporting or conviction rates in sexual abuse. In other jurisdictions, even when restorative alternatives are made available, the status quo or punitive approaches frequently prevails.
122. There is a credible argument that sexual assault service providers, advocates, and policy makers can take leadership in the development of restorative options both in parallel with and independent from the justice system. Meeting survivor/victims' justice needs and fostering accountability is preventative and bolsters the primary prevention messages that are central elements of sexual abuse prevention and education programs.
123. Innovation from both inside and outside the justice system would benefit all parties.

Q2 If a restorative justice model is adopted, what should its features be?

124. The voice of the victim must be central. Someone who has experienced sexual harm can explain how it affected them and how they want the person responsible to make amends. Other people who were affected and the person responsible could also have a voice in the process. The person responsible has an opportunity to take responsibility for what they have done, express regret, and commit to making amends.
125. Restorative justice can only be considered when initiated by the victim/survivor. If the offender is known to the victim it may add additional risk factors. No one should ever be expected or in any way pressured to take part.
126. To make sure the process is safe, restorative justice should only happen when there is a facilitator with the right skills and experience available. They must have completed suitable training and have specific expertise in sexual harm. They in partnership with the victim/survivor will decide whether the process is appropriate and, if it goes ahead, make sure that the victim/survivor is kept safe.
127. The current Intermediary program is a good example of the use of independent therapists to support victims when reporting abuse at Police stations. However, this should be broadened and include other sites given the traumatic relationship Aboriginal peoples have with police and the justice system.
128. Sufficient workforce and access to qualified, culturally safe people to facilitate a restorative justice process is remarkably difficult and requires significant investment.

Q4 Is there a role for new initiatives to enable people who have experienced sexual harm to tell their stories and have them acknowledged? Why or why not?

129. Yes. This should be built into all aspects of the justice system and community education programs.

Q5 Are there Aboriginal justice models that you think should be considered for sexual offences? If so, what are their strengths and weaknesses?

130. Just Reinvest NSW – In 2018, the KPMG Impact Assessment of the Maranguka Justice Reinvestment Project. Key findings of the report included improvements in:
- Family strength: 23% reduction in police recorded incidence of domestic violence and comparable drops in rates of re-offending
 - Youth development: 31% increase in year 12 student retention rates and a 38% reduction in charges across the top five juvenile offence categories
 - Adult empowerment: 14% reduction in bail breaches and a 42% reduction in days spent in custody.
 - As a result of these achievements, and achievements in other areas, KPMG estimated an economic impact of \$3.1 million in 2017 – and if just half of the results achieved in 2017 continued, an additional impact of \$7 million.
 - Of this, approximately two thirds relate to impact to the justice system and one third is broader economic impact to the region.
131. Wulgunggo Ngalu Learning Place is a community-based, residential program in Gippsland for Aboriginal men. The program aims to divert men from the justice system by addressing offending behaviours and contributing risk factors. An evaluation was conducted on the program by Clear Horizon Consulting & Research and Evaluation Branch, Strategic Policy and Planning, Corrections Victoria in 2013.