



## Introducing the Bugmy Justice Reports

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The Bugmy Justice Project creates Bugmy Justice Reports for pre-sentencing and bail hearing matters to provide background information to a court for consideration when sentencing an Aboriginal<sup>1</sup> person.

When the High Court of Australia handed down its decision in *Bugmy v The Queen*,<sup>2</sup> the court affirmed the effect of a person's background of social disadvantage may vary, but it does not diminish over time;<sup>3</sup> that a person's background of social disadvantage may mitigate the sentence;<sup>4</sup> that deprivation is relevant to the determination of an appropriate sentence;<sup>5</sup> and that "[i]n any case in which it is sought to rely on an offender's background of deprivation in mitigation of sentence it is necessary to point to material tending to establish that background".<sup>6</sup>

Bugmy Justice Reports (the reports) are produced to assist judges to contextualise the circumstances of the person who is being sentenced following a conviction. They may be offered as evidence to assist the judge in fulfilling their duties under ss 3A and 21A *Crimes (Sentencing Procedure) Act* 1999 (NSW) and ss 16A and 17A *Crimes Act* 1914 (Cth).

The process of writing the reports is complex, with no created structure, national approach, guidelines or policy concerning the production or delivery. To arrive at our current format, we created a working group comprising Aboriginal community members, particularly those with lived experience, academics, psychologists, legal practitioners, representatives of Legal Aid NSW and the Aboriginal Legal Service, and current and retired judges.

Deadly Connections Community and Justice Services (DC) is an Aboriginal community-controlled organisation. Staff and management are grounded in the communities we work within. This foundation and focus provide staff with inherent cultural expertise and culturally informed, trauma-aware frameworks to elicit a complete picture of the circumstances of the person for whom we are writing the report. Deadly Connections also offers a range of justice-related services, including caseworker or court worker services, aftercare support, healing, and transformative justice programs.

Currently, the reports are put before the court by the defence. Current eligibility is:

- Aboriginal and/or Torres Strait Islander
- at least 18 years of age
- have been previously incarcerated (more than once)
- the matter is set for the District Court of NSW or higher
- there is at least 8–12 weeks minimum before the next court date.

DC Bugmy Justice Project staff assess suitability. When writing the reports, DC staff spend time interviewing the person and 2–3 other family/community members.

The reports are written in the words of the person we interview. We use their language; we don't edit. We provide their story so the judge hears the voices of the person, their family and their community. The report writer provides the context within the Report to enable the judge to understand cultural considerations and potential opportunities for rehabilitation and healing. The context may include an investigation of complex historical and cultural issues unique to that person's life and community.

The report weaves the participant's entire life story from interviews with them, their families, Elders and community members. It will present their history to the present day, spanning them, their family, culture, strengths, community and Country. It will seek to encompass all those known markers of systemic racism, trauma and disadvantage that are too common among Aboriginal people and as summarised in the *Bugmy Bar Book*.<sup>7</sup>

It may propose sentencing options that aim to ground the person on a pathway of healing to address the challenges they face and the factors that continue to bring them before the courts and for the Bench to consider. A report is about 10 to 20 pages long and takes six to eight weeks to write. Currently, reports are only available in NSW and there is no fee for their preparation.

The report intends to provide background and context as to why a person may continue participating in criminal behaviours. It seeks to enable an understanding of particular indicators of disadvantage that allows thoughtful consideration of the "background of deprivation".

For more information on Deadly Connections Community and Justice Services, please phone 1800 487 662 (free call) or email [info@deadlyconnections.org.au](mailto:info@deadlyconnections.org.au) or visit our website [www.deadlyconnections.org.au](http://www.deadlyconnections.org.au).

### Endnotes

- \* Project Lead, Bugmy Justice Project.
- 1 Aboriginal inclusive of Aboriginal and Torres Strait Islander peoples.
- 2 (2013) 249 CLR 571.
- 3 *ibid* at [42]–[43].
- 4 *ibid* at [44].
- 5 *ibid* at [43].
- 6 *ibid* at [41].
- 7 The Public Defenders, *The Bugmy Bar Book*, accessed 24/1/2023.