Inquiry into Youth Justice Centres in Victoria

Submission paper from the Victorian Aboriginal Legal Service

BACKGROUND TO THE VICTORIAN ABORIGINAL LEGAL SERVICE (VALS)

VALS is an Aboriginal community controlled organisation. It was established in 1972 by committee, and incorporated in 1975. The VALS is committed to caring for the safety and psychological well-being of clients, their families and communities and to respecting the cultural diversity, values and beliefs of clients. The VALS vision is to ensure Aboriginal and Torres Strait Islander Victorians are treated with true justice before the law, our human rights are respected and we have the choice to live a life of the quality we wish.

We operate in a number of strategic forums which help inform and drive initiatives to support Aboriginal and Torres Strait Islander people in their engagement with the justice, and broader legal system, in Victoria. We have strong working relationships with the other five peak Aboriginal Community Controlled Organisations in Victoria and we regularly support our clients to engage in services delivered by our sister organisations. Our legal practice spans across Victoria and operates in the areas of criminal, civil and family law (including child protection and family violence).

Our 24-hour support service is backed up by the strong community based role our Client Service Officers play in being the first point of contact when an Aboriginal or Torres Strait Islander person is
taken into custody, through to the finalisation of legal proceedings. Our community legal education program supports the building of knowledge and capacity within the community so our people can identify and seek help on personal issues before they become legal challenges.

We seek to represent women, men and children who come to us for assistance in their legal matters, and are only hindered in doing this where there is a legal conflict of interest and we cannot act. If this is the case, we provide warm referrals to other suitable legal representatives, which include Victoria Legal Aid, the Aboriginal Family Violence Prevention Legal Service, community legal centres and private practitioners as appropriate.

**EXECUTIVE SUMMARY**

The Victorian Aboriginal Legal Service provides this submission in response to the Inquiry into Youth Justice Centres in Victoria. However, since the call for submissions was issued on 29 November 2016, the landscape of youth justice has undergone significant changes.

The purpose of this submission is to provide the insight into the workings within Youth Justice services’ and centres from the experience and perspective of the Victorian Aboriginal Legal Service. We note that in June 2015, Aboriginal and Torres Strait islander children aged 10-17 were, on average, 26 times as likely as non-Indigenous children to be in detention. As of mid 2015 54% of the population of young people in detention on an average night were Aboriginal or Torres Strait Islander. It has been projected that the population of Aboriginal and Torres Strait islander children aged zero to 14 years will increase by 19-31% by 2026 and young people aged 15 to 24 by 21% and these figures could worsen should the Victorian Government continue to take a more punitive approach rather than looking at reform and greater investment in initiatives that address underlying risk factors and focus on strengthening the young person’s connection to culture and community.

The Victorian Aboriginal Legal Service is extremely concerned about escalating punitive measures targeted towards children and young people in detention. Any policy that promotes the re-traumatization of Aboriginal children and young people should be thoroughly examined and reconsidered, to be replaced with therapeutic options that pursues the twin aims of reducing re-offending and rehabilitation.

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2 Ibid
3 Ibid
It is noted that the management of Youth Justice, including the operations of the Youth Justice Centres, will soon be transferred from the Department of Health and Human Service to Corrections Victoria. Since the announcement of this inquiry, the State Government has also announced that a new, high security detention centre is to be built in the western metropolitan area of Melbourne. VALS notes that these system changes have been undertaken quickly, mostly without any consultation from key stakeholders and experts in the field of youth justice, which is of great concern to our organisation.

VALS are also extremely concerned about the push to detain children and young people in adult prisons. The risks associated with this are numerous, and include the physical safety of the child or young person - including the susceptibility to becoming a victim of sexual abuse - the mental health and well-being of the child or young person, and the increased chances of re-offending.

The Ombudsman has been reporting for over a decade that the conditions in Victoria’s prisons and youth justice facilities are adversely affecting the health, human rights and prospects of rehabilitation of prisoners. In 2012, the Ombudsman made clear and strident recommendations that no child should ever be placed in adult prison, after a group of six children were placed in solitary confinement for up to three months, many continuing to report adverse mental health effects to this day.

Repeated studies have also shown absolutely no deterrent effect on criminal behaviour of incarceration for young offenders. In 2009, criminologists from the Australian Institute of Criminology and NSW Bureau of Criminal Statistics and Research (BOCSAR) completed a study of 400 children who were split into those who received custodial and non-custodial sentences. The study:

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found no significant difference between juveniles given a custodial penalty and those given a non-custodial penalty in the likelihood of reconviction, even after controlling for factors that differ between the two groups.\(^7\)

The literature that informed this study also indicated that, far from reducing crime, in most cases incarceration of children increased their likelihood of reoffending. Overincarceration is not just a disaster for children, and a disaster for the Aboriginal community, but it is a danger to the Victorian community because it fails to address trauma and breeds and entrenches criminal behaviour.

VALS considers the direction of youth justice practices overall in the state of Victoria to be detrimental to offsetting youth offending and stipulates that the punitive measures that are being taken against children and young people is triggering ill mental health, suicidal tendencies and drug and alcohol abuse as well as exacerbating histories of neglect and abuse. Further, rather than meeting the aims of the *Children Youth and Families Act*\(^8\) this response is instead ensuring a new generation of traumatised adult offenders and putting the broader community at risk of sustained crime.

**Response to Terms of Reference**

**Matters relating to incidents including definitions, numbers and any changes to the reporting of incidents**

VALS has expressed its concerns in regards of Youth Justice Incidents reporting within the wider public media. There is a growing concern that law reform within the State of Victoria is being heavily instigated and directed by media, resulting in rushed legislative or departmental structural changes that have the likely potential to have unintended outcomes and consequences, such as placing additional pressure on a justice system that has reached breaking point with regards to operating and maintaining appropriate correctional systems and facilities.

As it will be highlighted throughout this submission, the current reality for the Youth Justice system, is that the young people involved, for the majority from our experience, are in these facilities un-

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\(^8\) *Children Youth and Families Act 2005 (Vic)*
SENTENCED AND ARE EITHER IN OR HAVE RECENTLY BEEN IN A PROTECTIVE CUSTODY ARRANGEMENT WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

VALS RECOMMENDS THAT IN FUTURE SHOULD INCIDENTS OF GREAT CONSEQUENCE OCCUR RELATING TO THE YOUTH JUSTICE AREA, THAT DUE CONSIDERATION BE GIVEN TO THE APPROPRIATENESS OF ANY MEDIA REPORTING IN THE INTEREST OF PROTECTING DUE LEGAL PROCESS THAT EVERY INDIVIDUAL IS ENTITLED TO, INCLUDING THE PREJUDICATION OF INNOCENCE AND FAIR AND EXPEDIENT TRIAL, PROTECTED UNDER THE SEPARATION OF POWERS BETWEEN THE STATE AND THE JUDICIARY.

A YOUNG PERSON’S RIGHTS MUST BE PROTECTED. VALS IS AWARE OF INCIDENTS OCCURRING BETWEEN STAFF AND YOUNG PEOPLE AT THE CENTRES WHICH ARE NOT REPORTED EXTERNALLY. INDEPENDENT INVESTIGATION AND REVIEW OF INCIDENTS IS CRITICALLY IMPORTANT TO PRESERVE THE RIGHTS OF THE YOUNG PERSON AND THE STAFF OF THE CENTRE. FOR EXAMPLE AN ABORIGINAL YOUTH WAS ACCUSED OF ASSAULTING A STAFF MEMBER AND THEN TRANSFERRED TO PORT PHILLIP WITHOUT AN INVESTIGATION OCCURRING, A FINDING OF WRONGDOING OR ANY CRIMINAL CHARGES BEING LAID. GIVEN THE INVESTIGATION PROCESS WAS CARRIED OUT THE YOUTH HAD LITTLE RECOURSE TO DEFEND HIMSELF AND NO NATURAL JUSTICE WAS AFFORDERED WIDENING THE GAP BETWEEN THE ABORIGINAL COMMUNITY AND THE JUSTICE SYSTEM.

THE SECURITY AND SAFETY OF STAFF, EMPLOYEES AND YOUNG OFFENDERS AT BOTH FACILITIES

The general environment of youth detention centres needs to be critically evaluated and remodelled to allow for a change in culture that will dramatically alter the physical, mental and spiritual levels of staff, management and youth. It has been reported that there is little to no consistency in regular employment at the facility, due to most of the staff being from agencies. For this reason, staff do not connect with other co-workers and cannot form relationships with the youth which if formed, would greatly improve the environment and their ability to carry out their work in a peaceful and collegial environment.

Further working 12 hour shifts, the exhaustion and frustration sets in among the staff and their work soon becomes derivative because they are not working efficiently or effectively. The idea of a break or tea room does not work in this environment for staff because the facilities are chaotic, dilapidated and youths are constantly in distress. It is clear that management need to consider an overhaul of the system in which consideration is given to the effect of carrying out their duties and the emotional, physical and mental impact on the staff member. Primary or vicarious trauma can be incurred, and there is risk to the wellbeing of the staff, and thus the effectiveness of the centre. We recommend a suite of training, debriefing and time out supports for staff to build resilience and support staff in their roles.
Youth justice staff also need to be trained in therapeutic crisis intervention (TCI), so that they have a better understanding of how to react to situations and deal with the youth. This is fundamental to resolving the issue of what has been termed ‘riots’ by the media, in that, such unrest can be dissolved well before it explodes into what amounts to a protest in detention conditions.

Children and young people need to be provided with a more structured routine that keeps them occupied and allows them to learn, create and develop their skills and practices. Without this, a vicious and constant cycle emerges in which the youth rebel against the system because if they do not trust the staff or know that the activities are restricted, then they become aware there is no room for development. There needs to be a desire for fundamental principles and goal setting by children and young people in detention, to be engaged, educated and facilitated in a culturally safe and therapeutic manner.

While VALS remains critical of the manner by which DHHS has managed youth justice centres in the past, their role in managing the facilities is far preferred than the management role being transferred to Corrections Victoria. DHHS has asserted that a greater amount of staff need to be employed, however quality over quantity is also critically important. A rigorous training, coaching and monitoring program to support a highly skilled and professional workforce will enhance any future youth justice models.

VALS is concerned that the focus on rehabilitation and therapeutic engagement of children and young people in detention will instead turn to increased punitive measures. We are already seeing an increase on punitive measures with the gazetting of use of batons, capsicum spray and tear gas. Such methods will only compound the trauma that many children and young people in detention have experienced and will do nothing to rehabilitate, instead, further increasing the likelihood of further offending and adult incarceration.

**Reasons for, and effects of, the increase in the numbers of young people on remand in the last 10 years**

The number of children and young people on remand is unacceptably high, with a key factor of the remand rates being related to acceptable accommodation being able to be secured on behalf of the young person in order for them to be bailed to appear at later date. The Australian Institute of
Health and Welfare found that on any date in 2015, 55% of children in detention were unsentenced and had not been found guilty of an offence. The AIHW explained that:

Most young people in unsentenced detention have been remanded in custody by a court until their next court appearance. In 2013-14, 97% of young people in unsentenced detention on an average day were on remand (excluding Western Australia and Northern Territory) and the remained were detained before their first court appearance.

Delays in the court’s process are also a contributing factor and although the offences may at times begin as minor, the gradual increase in frequency that a youth may commit these crimes demonstrates a need to be recognized and assisted in the courts at a faster rate. Issues such as drug and alcohol abuse, care issues, and homelessness all contribute to offences being committed and thus higher numbers in remand. Inability of family and community to support at risk youth results in high reoffending rates.

Filling youth justice centres with young people on remand has many consequences. Due to the high levels on remand, the system inevitably becomes mixed up with those on detention and creates a sense of chaos between those that are waiting to be sentenced, and those that are unsure what is happening and what rights they have. The people that are in remand do not have the same access to the services, nor are they deemed necessary to rehabilitate because they have not yet been sentenced.

Uncertainty and indefinite time periods are difficult for children, particularly given their lack of developmental maturity. This is compounded by high rates of mental health concerns and trauma experienced by many young people. The mental state of children and young people begins to worsen due to their lack of mental stimulation and development resulting in boredom, stress, anxiety and acting out and the lack of services results in separation from family and education and a normalisation of incarceration takes effect.

Accessibility is an issue for families and lack of family support compromises rehabilitation. It also compromises human rights and is a breach of Indigenous cultural rights (Section 19.2 of the Victorian Charter of Human Rights, as discussed later in this paper). Remand also has an effect on

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10 Ibid
sentenced children as resources are stretched, and the increased chance of not only re-offending, but committing a more serious offence.

**IMPLICATIONS OF INCARCERATING YOUNG PEOPLE WHO HAVE SIGNIFICANT EXPOSURE TO TRAUMA, ALCOHOL AND OR OTHER DRUG MISUSE AND OR THE CHILD PROTECTION SYSTEM, OR WHO HAVE ISSUES ASSOCIATED WITH MENTAL HEALTH OR INTELLECTUAL FUNCTIONING**

VALS is extremely concerned about punitive measures targeted towards children and young people in detention. Any policy that has the potential to re-traumatisation of Aboriginal children and young people should be thoroughly examined and reconsidered, to be replaced with therapeutic options that pursues the twin aims of reducing re-offending and rehabilitation.

VALS has continually, and will continue into the future, to express our concerns regarding the detaining of children and young people in gazetted adult prisons such as the Grevillea Youth Justice Centre. The risks associated with gazetting of police stations and adult correctional facilities are numerous, and include the physical safety of the child or young person - including the susceptibility to becoming a victim of sexual abuse - the mental health and well-being of the child or young person, and the increased chances of re-offending.

It is VALS’ view that the current Government policy towards youth detention in no way deters recidivism. Instead, the overwhelming evidence confirms these methods simply commit any Aboriginal or non-Aboriginal child or young person to a life of trauma and offending and yet another generation of Aboriginal people behind bars.

**Underlying Factors To Youth Offending**

**Family violence**

The Youth Parole Annual Report stated that the greatest factor in substantiation of a protection order is family violence. Again, family violence is more prevalent in Aboriginal communities in Victoria, which attributes to the higher rates of substantiation. The causes of family violence in Aboriginal communities are complex, as are the ways in which violence manifests.

The major underlying causes of family violence in Aboriginal communities is trauma and social inequality. As such, the Victorian Aboriginal Legal Service is strongly of the view that tackling the underlying causes of trauma and social inequality in Aboriginal communities in Victoria is the first step in tackling the over representation of Aboriginal children and young people in detention.
Intergenerational Trauma

Historical trauma is a type of trauma transmitted across generations - that is, intergenerational trauma. Originally studied in Holocaust survivors, historical trauma is thought to be a pervasive, cumulative, intention, massive trauma, affecting a specific group and transcending generations through family transmission.

Traumatic events exact an enormous psychological and physical toll on survivors, and often have ramifications that must be endured for decades. This includes emotional scars, and in many cases, standards of living are diminished, often never recovering to levels that existed prior to the trauma.

These traumas can occur at a personal level (car accident, or rape) or at a collective level (war, natural disasters, or genocide), and the responses to such events are not identical. In the latter instance, there is now considerable evidence that the effects of trauma experiences are often transmitted across generations, affecting the children and grandchildren of those that were initially victimized.

Recent studies concerning intergenerational trauma demonstrate that the effects of institutional child abuse are not simply carried by the victim, but their family and community as well. This has been exemplified in Aboriginal families and communities in Victoria whereby the high rates of current Aboriginal children in out-of-home care can be attributed to their parent’s removal as well. This is also highlighted in Bringing Them Home, which states that ‘for individuals, their removal as children and the abuse they experienced at the hands of the authorities or their delegates have permanently scarred their lives. The harm continues in later generations, affecting their children and grandchildren’. Not only did people suffer from physical trauma they have also suffered psychologically. As Bringing Them Home also noted:

Separated people were twice as likely to suffer psychological distress in adulthood than the remainder of the participants: 90% of participants who had been separated were psychologically distressed for most of the three years of the study, compared with 45% of the participants who had been brought up within their Aboriginal families. Depression accounted for nearly 90% of diagnoses. Factors offering protection against the development of depression and other distress included a strong Aboriginal identity, frequent contact with one’s Aboriginal extended family and knowledge of Aboriginal culture.
Studies show that those people who were removed and suffered child abuse may have far lower outcomes across a range of indicators, including mental and physical health, employment and education opportunities and housing. Within the Aboriginal community, these low social indicators are compounded by the legacy of colonisation and dispossession. Further there are direct links between institutionalisation and removal and subsequent incarceration. The Royal Commission into Aboriginal Deaths in Custody revealed that, of the 99 deaths that were investigated, 44 had been removed as children.

Identity and culture are important to positive mental health outcomes. Research demonstrates that a strong correlation exists between social exclusion and higher rates of suicide.\(^{11}\) Social exclusion is an issue particularly relevant to populations vulnerable to discrimination and racism, including Aboriginal and Torres Strait Islander Australians. This is a health factor further compounded for Aboriginal survivors of institutional abuse who may lack a sense of clear cultural identity due to their experience. This could lead to further social exclusion and a sense of not belonging to any community.

Persons of Indigenous background are currently 2.5 times the general population dying by suicide. This rate would likely be compounded for persons also with a history of institutionalisation. Survivors of child abuse have an increased risk of developing various mental illnesses in adulthood. Researchers conclude this may lead survivors to access psychological services for a range of mental health issues, including suicidal ideation and self-harm. These circumstances also of course lead to increased offending and incarceration.

*Overrepresentation of Aboriginal Youth in Youth Justice*

The Youth Parole Annual Report (2016/2016) reported that 16 percent of the total number of young people who received youth residential and youth justice centre orders during 2015-2016 were Aboriginal. This number is grossly over representational of the population of Aboriginal people in Victoria and is reportedly growing, with an increase of 73 per cent, as compared with 53 per cent increase in non-Aboriginal orders.

The Australian Institute of Health and Welfare’s December 2015 report on Youth Detention reported that 54 per cent of juvenile detainees between the ages of 10 and 17 in Australia are of Aboriginal or Torres Strait Islander descent. On an average night, 34 in every 10,000 Indigenous young people are in prison, compared to just 1.3 per 10,000 non-Indigenous young people. Aboriginal and Torres Strait

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Islander youth are currently 26 times more likely to be detained than their non-Indigenous counterparts.

This over representation is attributable to a number of factors, not least the ongoing trauma resultant from colonisation, child removal, and social inequality. Closing the Gap statistics still demonstrate that Aboriginal and Torres Strait Islander people continue to suffer from a range of gross inequalities in education, health and wellbeing, employment and life expectancy, all of which contribute to offending.

*Overrepresentation of Aboriginal Adult Incarceration*

The Youth Parole Annual Report also stated that 40 per cent of children and young people in detention have a family member in prison. This number is higher in the instances of Aboriginal children and young people, for whom the rates of incarceration in community are proportionally far greater than the non-Aboriginal population.

On average, 10 558 Aboriginal and Torres Strait Islander adults are in prison each day nationally, which is an increase of 7 per cent since the number was calculated at the same time in 2015. 34 per cent of the national women’s prison population are of Aboriginal and Torres Strait Islander descent. 20 per cent of people in community-based correctional facilities being Aboriginal and Torres Strait Islander, an increase of 11 per cent since March 2015. In the 25 years since the Royal Commission into Aboriginal Deaths in Custody, the number of Aboriginal and Torres Strait Islander people in prison has doubled.

*Out of Home Care, Juvenile Detention and Adult Incarceration*

The VALS notes that there are identified links between the rates of children placed in State out-of-home care, the rates of those children that eventually become involved in youth detention and then progress into to adult correctional services and facilities. The Youth Parole Annual Report (2016/2016) states that ‘45 percent of young people in youth justice centres had been subject to a child protection order and 19 percent of young people in custody were currently clients of child protection and youth justice services.’

Following on from the above example, an Australian Institute of Health and Welfare publication released on June 30 2014 provided evidence that at any given time, the rate of Victorian Aboriginal children in contact with child protection services is over 60 per 1000 persons. Which is a drastic overrepresentation in comparison with an average of around 5 per 1000 non-Aboriginal Victorians.
The report also noted that Aboriginal children in Victoria were over 12 times more likely to come into contact with child protection services than non-Aboriginal Victorians which is the highest rate of substantiation of Aboriginal and/or Torres Strait Islander children of any state or territory, this data was also substantiated by the Productivity Commission who reference the link to lack of adequate housing, financial security and education within Aboriginal communities. These statistics demonstrate that Aboriginal children and young people in Victoria are at a far higher risk of entering youth justice and detention, and then progressing to adult prison.

Victorian Legal Aid published their research paper ‘Care Not Custody’ on January 25th 2017 which outlined the links between out-of-home care and juvenile incarceration. The paper outlined that child protection client data from 2011 to 2016 found that, of those aged 11–17 who are placed in out-of-home care, almost one in three young people later returns to Victoria Legal Aid for assistance with a criminal matter. The problem appears to be particularly acute for children placed in residential care. The report showed that “one clear factor pushing children from care into custody is an over-reliance by at least some residential care facilities on call-outs to police to manage challenging behaviour. This means that – for example – property damage of a residential facility can lead to a criminal record at a very young age, and that these practices are entrenching children, often from a very young age, in a cycle of involvement with the police and the courts.”

**ALTERNATIVE OPTIONS TO INCARCERATION**

There are many existing intervention actions that have the ability to direct people away from crime and being placed in youth justice centres.

- Local government support is critical and the knowledge and experience of youth workers, directly correlates with the resources that they can build on from the government.
- A greater support for teaching certificates and suitable pathways into education is needed, as certificates give a sense of achievement and hope. There needs to be funding for this.

One-on-one interventions are a powerful and proven method, demonstrating that intensive individual support is more effective and less costly as seen through the bail support program in Tasmania.

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13 Victorian Legal Aid, 2017, Care Not Custody, p1

14 Victorian Legal Aid, 2017, Care Not Custody, p3
- Workers at the Children’s Court linking young people to education programs creates a positive relationship between the youth and government and allows for synergy, mechanic training and career pathways. An importance of youth justice diversion programs that are sustainable- e.g. City of Melbourne, intensive work with at risk youth and pathways available from first contact with police.

- Access to education is a human right and the importance of keeping young people engaged cannot be stressed enough. It is important that they are educated not only in the technical form, but in the education of themselves- feeling empowered and motivated. If youth workers were able to run programs both within schools and externally at various locations, there would always be avenues of learning. The ‘Doctors in School’s program is a good example that youth program could base their work off, or alternatively a ‘Lawyers in Schools’ program would facilitate resources and access to the children.

- A focus on pre-charge diversion tactics, not just pre-bail, should start as early as possible. Attaining data on young people involved with police and family violence is also preventative. Therapeutic methods such as neighbourhood justice centres also have benefits. This type of support, assistance and acknowledgment for families can have a big positive impact on their general personal relationships and interaction with the law.

Strategies, policies and programs that not only address the underlying issues of offending but also support cultural connection, expression and identity are not only integral to reducing the overrepresentation of ATSI youth in the justice system but are also in accordance with the International Covenant on Social, Cultural and Economic Rights 1996 and the UNESCO Declaration on Cultural Diversity 2001. Where a child is able to develop, create and imagine a life that is connected to culture and that is free from anxiety of housing, hunger and discrimination that will be able to look towards educational and employment opportunities rather than offending out of the need to survive.

An example of this is the Barreng Moorop program, ran by Jesuit Social Services, for Aboriginal children aged 10 to 14 years old and their families across north east and western metropolitan Melbourne. One of the key ingredients to the success of Barreng Moorop is its understanding that trauma reaches across generation and as such rehabilitation of the young person requires an aligned service delivery approach that focuses not only on the young person but their family. There are also
culturally appropriate services such as Baroona15 and Bunjilawarra16 who provide effective culturally centred presentence diversion and transition options for young people with drug and alcohol issues. These services are provided with a framework of healing and cultural strengthening.

*Justice Reinvestment, Diversion and Therapeutic Sentencing*

Justice reinvestment is an active method of preventing crime in youth at the earliest intervention and applying diversionary approaches to offending and becoming adult prisoners in the future. The overrepresentation of Aboriginal people in prison demonstrates that alternative methods need to be assessed to find the cause behind their overrepresentation and what preventative methods can be achieved. Through justice reinvestment programs the money spent on prison is re-directed to community based initiatives which aim to address the underlying causes of crime and prevent these same offences occurring again, and ultimately save money for the taxpayers.

Similarly, diversion aims to reduce the likelihood of re-offending with the youth by implementing programs for young people prior to entering the justice system or having negative contact with, for example, police services. In the case of Aboriginal children and young people, the high rates of out-of-home care and residential care ensure that contact with systems related to youth justice are at times unavoidable, even from a very early age. We are aware that there is a direct link between child protection systems and youth justice; as such, diversion programs – that target even the extended family, for example to address family violence – are necessary in reducing Aboriginal youth offending.

Therapeutic sentencing is a form of rehabilitation, rather than a traditional sentencing of imprisonment, youth detention or community service, methods where the individual is less likely to develop any skills or education. The ideal behind therapeutic sentencing ensures that children and young people are being given the opportunity to address the underlying factors that cause offending – such as trauma or neglect – and to encourage rehabilitation.

All efforts of Victoria’s youth justice system should be diverted to address the underlying factors that result in youth offending. As such, therapeutic sentencing measures must be introduced as best practice and utilised at all stages of offending in order to combat the exacerbation of offences and prevent engagement with the adult justice system. These include court mandated drug diversion programs, drug treatment orders, mental health diversion program, and for Aboriginal and Torres Strait Islander children and young people, cultural programs that reinforce identity and connect and

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16 http://bunjilwarra.org.au/#service_model
strengthen their ties to their community. In these instances, it is not only the legislation that must be amended, but funding provided to the appropriate services to ensure that such programs can and do exist.

It is clear from the evidence that therapeutic options are necessary to rehabilitate and support children and young people in youth detention. The Youth Parole Annual Report states that 63 per cent of young people in youth justice were victims of abuse, trauma or neglect. VALS would surmise that this figure is under-representational, and that the actual figure – at least for Aboriginal children and young people – would be much greater.

VALS believes that for the Victorian Government to reduce Aboriginal incarceration (and reoffending) trauma informed, therapeutic models of youth justice must to be implemented as soon as possible. As per RCIADIC, jail should be a last resort, and all other options must be exhausted as a check and balance before a custodial sentence becomes the only remaining choice. VALS would include home detention options as a diversion point that is yet to be tested in youth justice. No child should have detention as an option in sentencing. VALS supports a contemporary youth justice system that reflects contemporary research and evidence based outcomes – a youth justice system that takes the commitment to rehabilitation seriously, and underpins any policy review. Such models are required in order to divert Aboriginal children and young people from offending, assist them to work through inter-generational traumas, and provide life skills and an approach which will ensure re-offending is reduced significantly.

Given the majority of children and young people in detention are currently on remand VALS would also like to see other remand options – such as bail hostels, or a remand farm – be implemented for first offenders or those detainees who are not able to return home. This approach would tie into any therapeutic model and would ensure a trauma-informed justice system.

Rehabilitation

The Children Youth and Families Act 2005 requires rehabilitation to be a focus of youth justice. The VALS submits there are principles which should underlie any youth justice program, to ensure it is anchored in the focus of the Act:

- Youth focussed and centred rehabilitation models;
- Appropriate rehabilitation setting;
- Collaborative rehabilitation coordination;
• Evidence based rehabilitation programs;
• Multidisciplinary rehabilitation teams; and
• Program measures which effectively support achieving outcomes.

Diversionary strategies and options are required to begin a change in the mentality of not only the youth, but of the staff. Training and prevention methods would allow for greater results with the possibility of diversion options for the Children’s Court aiding this. The role of staff must also be expanded to assessing and helping the children, they are the true specialists and it is not the role of the corrections officer to rehabilitate traumatised children.

Identifying the children’s needs and creating action plans to achieve their goals, with the assistance of peer and community mentoring would rehabilitate to great effect. Parkville College is a prime example of education, early intervention and developing relationships with the children that results in a positive atmosphere.

A better understanding of the system and the reason behind incarcerating young people would allow for positive growth among children and young people. There must be a clear articulation of the purpose, the plan as to how the system will meet those purposes; either through education, rehabilitation and desirably coming out with a new skill set and outlook. Trauma informed approaches have not been tested, and there is a risk of throwing them out.

Youth workers should be given broader responsibility to offer post release support- not just while in detention. Creating meaningful, trusting relationships that go beyond the system would allow for greater results in the future and deter the children from re-offending. Around 30-40% of children get post release support but this is not enough.

There needs to be strategies that prevent criminalisation of children in OOHC. Joint efforts are needed between Victoria Police, government agencies, disability services, substance abuse services and mental health services as this is an area of critical funding. Incorporating the unions into these discussions to support this change and provide their ideas and what sort of measures are required to improve the relationship between client and worker would be highly beneficial. Implementing a referral system so the people with cognitive impairment are able to access the Independent Third Person (“ITP”) program in interviews would also assist general well-being and rehabilitation.
CULTURE, POLICIES, PRACTICES AND REPORTING OF MANAGEMENT AT CENTRES

Reforms in the Youth Justice Sector need to address the additional resources, infrastructure and professional support assistance required to children ensure that young people offending are released on bail and actual support in youth workers, education and controlled monetary assistance to ensure that they do not re-offend and return to detention.

Early intervention programs are required as they not only benefit the individual, but the community by allowing for less crime and allows disadvantaged youth to break the cycle that leads to offending. Counselling and support network needs to address the trauma that leads to offending.

For Aboriginal children and young people, specific cultural programs need to be provided. The courts also need to operate quicker, since many of the stresses by the youths come from waiting around and not knowing what the outcome is or where they are heading to next.

Young people with a history of trauma, mental illness, cognitive disability, and/or AOD misuse

The Youth Parole Board annual report demonstrates that a large contingent of children and young people in detention are victims of abuse and neglect, suffer from mental illness, have drug and/or alcohol dependencies and have suicidal and self-harm ideation. Youth detention in its current form in Victoria creates further trauma and the preconditions for mental illness. It is a fast track to adult prison and instead of rehabilitating the individual, youth detention in its current form instead becomes an entrenchment and expansion of their disadvantaged circumstances.

Upon leaving the justice systems, the young people who are already disengaged from education, have no real chance of fitting back into the school that they left for jail. They leave the system no better educated than when they arrived. The lack of resources such as counselling, case management and staff result in poor growth among those in detention. The staff do not know enough about backgrounds of the children and so without creating common ground in which they can establish a relationship, the staff are presented with tough choices about how to respond appropriately to their behaviours. The culture does not support staff creating relationships with the co-workers or children.

Preconditions for offending are established at around 5-6 years of age. There is no early intervention to undo this and then the children end up in youth justice centres.

People with cognitive impairment often breach bail conditions due to the lack of understanding and then the police are often called in for minor incidents at disability supported accommodation;
leading to an overrepresentation of people with cognitive impairment in youth justice, when they could be helped out in a different manner.

Case Management

VALS strongly recommends that DHHS should make an overarching program management framework that includes risk management at critical decision points. The Victorian Aboriginal community demands that our young ones in care are still connected to family and community wherever possible and technical/regulatory barriers used appropriately.

VALS strongly recommends a structure that is committed to ensuring a child leaves their custody in a better life position than when they entered. As a child enters DHHS custody (and thus responsibility) they should have a comprehensive individual management plan that is signed off by Dep Sec or above, and a quality management team to the side of their programs that evaluates programs for effectiveness and monitors them (a heartbeat or pulse team about the ethical, program and process health of the programs).

This would include any personal relationships and sexual health policies that will have an impact on anything they build, so would the guidelines for review of (presumably decisions made) for children in out of home care. VALS would like to see heightened transparency, to see that a plan is in place, the risks that have been identified by DHHS and other parties and/or organizations, the actions that are to take place, and how the child AND its family members are to be supported.

Previously, VALS has had the need to raise issues regarding the child protection system in Victoria, most particularly the vulnerability of children within that system. For example, a review of records demonstrates the number of times that VALS has had to attend court processes to gain common sense outcomes for young people, ranging from a 4-year-old being isolated in a residential unit by themselves, and provided with a dot painting as cultural support, to the ever present issue of young people in care being disengaged from their communities and at risk of losing their identity.

In addition, it was a major finding of the Commission for Children and Young People in their report ‘As any good parent would..’ that children have a fundamental need to talk to someone independent and to receive accurate legal information about their rights. These are part of a systems process that VALS envisions for the better treatment and outcome for Aboriginal children and young people in Victoria.
Rehabilitation

At every point in the system, the steps that are being taken to ensure the young person has opportunities to address fundamental life issues they have experienced should be tested. Have the Department done enough? What else could be done?

DHHS polices require residential staff to contact Victoria Police when a child in residential care commits an alleged offence. VALS are notified by Victoria Police if the child is taken into custody and at that point we step in to provide legal support to the young person. However, VALS has concerns that from time to time, it has been our observation, that the DHHS officer attending the Police Station as the independent third person or guardian is the person who initially reported the alleged offence. For example, diversion should be a blanket repeated requirement in the legislation. No child should have detention as an option in sentencing. VALS supports a contemporary youth justice system that reflects contemporary research and evidence based outcomes – a youth justice system that takes the commitment to rehabilitation seriously, and underpins any policy review.

VALS understands that the child has committed a crime but what is the backstory to the offending? Are they offending for the sake of offending? Are they acting out because they are in the residential system? Are there historical traumas – such as intergenerational child removal – that has impacted on the young person’s life? These and other questions need to be asked and addressed prior to punitive sentencing measures.

Funding schemes should now be beyond ‘pilot programs’. Funding for programs and service provision needs to be secured to periods of three to five years. Secured ongoing funding will allow for programs to be properly established, staffed appropriately, trust in the program to be established with the community and the building of an evidence base to show the impact of the program to the clients, community and funding agencies.

Role of Departments In Overseeing Youth Justice Services And Centres

VALS strongly recommends the following:

1. That any government department that is overseeing Youth Justice services and centres should make an overarching program management framework that includes risk management at critical decision points. The Victorian Aboriginal community demands that our young people that are in care are still connected to family and community wherever possible and technical/regulatory barriers used appropriately.
2. Departmental structure overseeing the Youth Justice space is commits to ensuring a child leaves their custody in a better life position than when they entered.

VALS takes the opportunity to remind the State Government and DHHS that any government organization is mandated to underpin any policy framework by the Victorian Charter of Human Rights and Responsibilities. In this instance, VALS invokes Sections 19 (2) Aboriginal Cultural Rights and Section 23, Children in the Criminal Process.

**Children’s Rights**

Section 23 of the *Victorian Charter of Human Rights and Responsibilities* - Children in the criminal process - states that:

1. An accused child who is detained or a child detained without charge must be segregated from all detained adults.
2. An accused child must be brought to trial as quickly as possible.
3. A child who has been convicted of an offence must be treated in a way that is appropriate for his or her age.

VALS is concerned that practices within the current youth detention process are not appropriate for the age of the sentenced youth offender, and are more akin to practices utilized in the adult incarceration system. VALS is also concerned that the number of children and young people subject to punitive incarceration practices – including lockdowns, separation and isolation – are on remand. Statistics show that on average, 80 per cent of all children and young people in detention are on remand. As such, the State of Victoria remains non-compliant with its own instrument of human rights – the Charter – which stipulates that children ‘must be brought to trial as quickly as possible’.

VALS would suggest that this lag in sentencing – and lack of bail options – that contributes greatly to behaviour that results in children and young people being subject to the punitive use of lockdowns, isolation and separation as punishment. In this regard – and again, with respect to rights prescribed in the Charter, VALS is also deeply concerned with the push towards placing juveniles in adult prison particularly as this push is directed towards re-offenders, of which Aboriginal young people are in highest proportion.

The evidence is overwhelmingly clear that, once a juvenile offender arrives in an adult prison, they are essentially sentenced to a life in and out of correctional facilities. Any such policy that places Aboriginal children and young people unfairly at risk of a life of incarceration, hence the need for the State Government to conform with international children’s rights practices as outlined in the Charter, and other international documents.
Cultural Rights

VALS strongly recommends that any policy framework needs to consider Aboriginal cultural rights as the basis for any youth justice approach which involves Aboriginal children and young people.

VALS also views the incarceration – including lockdowns, separation and isolation within detention – as completely adverse to the nature of Aboriginal and Torres Strait Islander cultural practices, and only serves to further contribute to the breakdown and decimation of cultural practices that began with the onset of colonisation.

Section 19 of the Victorian Charter of Human Rights and Responsibilities – Cultural Rights – specifically protects the cultural rights of Aboriginal people within the state of Victoria:

1. **All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy his or her culture, to declare and practise his or her religion and to use his or her language.**

2. **Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community—**
   2.1. to enjoy their identity and culture; and
   2.2. to maintain and use their language; and
   2.3. to maintain their kinship ties; and
   2.4. to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

VALS takes such cultural rights very seriously and believes that the ongoing, punitive incarceration of Aboriginal children and young people – without any therapeutic recourse to resolve and address underlying trauma – continues to separate and disengage Aboriginal children and young people from all aspects of their cultural rights. The most effective way to respect the cultural rights of Aboriginal children is to provide them with access to therapeutic services that are grounded in community where access to cultural support and guidance is on hand and the community is invested and engaged in the process of the rehabilitation of at risk Aboriginal children. This not only ensures children have the ability to enact their right to identity but their inherent right to heal, thrive and prosper within our community.

That the majority of children and young people in detention are currently on remand demonstrates that any system must ensure that ‘accused children’ are brought to trial in an expedited manner.
VALS would also like to see other remand options – such as bail hostels, or a remand farm – be implemented for first offenders or those detainees who are not able to return home. This approach would tie into any therapeutic model and would ensure a trauma-informed justice system approach.

VALS is also concerned that practices within the current youth detention process are not appropriate for the age of the sentenced youth offender, and are more akin to practices utilized in the adult incarceration system. VALS also reminds the State Government and DHHS that other human rights instruments stipulate that detention should be a last resort for children and young people, and that other options should be considered in the first instance.

Other relevant considerations

*International Indigenous Peoples’ Rights*

Australia’s endorsement of the United Nations Declaration on 3 April 2009 is a noteworthy advancement in the rights of Indigenous peoples. At the time, the Australian Indigenous Affairs Minister Jenny Macklin made clear that Indigenous claims for self-determination contained in the Declaration, as for other rights, ‘are not legally binding and will not affect Australian laws’. Despite this, the Special Rapporteur on the Rights of Indigenous Peoples has recommended that a review of all laws, programs and policies affecting Aboriginal and Torres Strait Islander peoples both directly and indirectly should be a first step in ensuring compliance with the Declaration.

This accords with the recommendations made by the Aboriginal and Torres Strait Islander Commissioner in the *Social Justice and Native Title Report 2011*, which calls on the Australian Government to ‘work in partnership with Aboriginal and Torres Strait Islander peoples to develop a national strategy to ensure the principles of the Declaration are given full effect’. Implementation of, and effective compliance with, the Declaration must be pursued as both a moral and legal imperative.

The right to self-determination is the central right of the Declaration, which makes reference in Article 3 to the specific rights of ‘indigenous’ peoples to ‘freely determine their political status and

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freely pursue their economic, social and cultural development’. Related to the right to self-determination is the principle of respect for and protection of culture, which is articulated in Articles 11-13 of the Declaration specifically, whilst cultural rights form part of 17 of the 46 articles in the Declaration more generally.

Cultural rights are provided for in Article 27 of the International Covenant on Civil and Political Rights by virtue of the right to self-determination, which includes the right to use one’s own language.\textsuperscript{21} Article 27 of the Universal Declaration of Human Rights states that ‘everyone has the right freely to participate in the cultural life of the community’.\textsuperscript{22} This is reflected in Article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights, which recognises ‘the right of everyone to take part in cultural life’.\textsuperscript{23}

The Committee on Economic, Social and Cultural Rights acknowledges that in relation to the right of everyone to take part in cultural life Indigenous persons and communities require ‘special protection’.\textsuperscript{24} Furthermore, the International Convention on the Elimination of All Forms of Racial Discrimination guarantees the ‘right to equal participation in cultural activities’, without distinction as to race, in Article 5(e)(iv).\textsuperscript{25}

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

VALS welcomes the announcement that the Federal Government will ratify OPCAT, in order to ensure that the standards of both youth and adult detention facilities abide with international law. According to Amnesty International, no agency in any Australian state or territory monitors youth detention facilities and police lock-ups in a way that fully complies with OPCAT. VALS has been concerned that it has been observed that in some cases cruel, inhuman or degrading treatment and/or punishment has taken on an ethnic persecution\textsuperscript{26}, which given the rate of overrepresentation

\begin{footnotesize}
\begin{enumerate}
\item \textit{International Covenant on Civil and Political Rights}, 1976.
\item \textit{Universal Declaration of Human Rights}, 1948.
\item Articles 36 and 37 Committee on Economic, Social and Cultural Rights, General Comment No 21: Right of Everyone to Take Part in Cultural Life, E/C.12/GC/21, 21 December 2009.
\end{enumerate}
\end{footnotesize}
of Aboriginal youth there is reasonable concern that there has been discriminatory outcomes for our youth.27

However, as with the inclusion of Cultural Rights in the Victorian Charter of Rights and Responsibilities, which has its basis in the United Nations Declaration on the Rights of Indigenous Peoples, VALS encourages both state and federal governments to enshrine the fundamental principles of OPCAT in domestic law. This would then give the principles of OPCAT unprecedented legislative power and would result in actual, not just aspirational, oversight.

In particular, VALS welcomes the oversight of independent mechanisms to ensure that youth detention facilities operate under the provisions and guidelines as stated in OPCAT. It is also hoped that international oversight mechanisms are also employed to ensure that the standards of treatment of children and young people in detention as per the articles outlined in OPCAT are adhered to. We refer to the OPCAT implementation manual published by the Association for the Prevention of Torture to provide – as an example - guidelines as to how OPCAT should be implemented in Australia.

According to the Australian Human Rights Commission, Australia currently does not have a federal Charter of Rights which protects the rights set out in the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment OPCAT or the prohibitions on torture and cruel, inhuman or degrading treatment or punishment contained in the International Covenant of Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC).

While the offence of torture is criminalised in some Australian States and Territories, other States and Territories do not have specific offences of torture although acts of torture may be criminalised under the provisions of other criminal offences (for example, assault). However, ratification and the introduction of a Charter of Rights – or enshrinement under domestic law - could provide people in detention with opportunities to seek redress for violations of their rights under OPCAT. It could also help foster a human rights culture in government departments and ensure both public authorities and private companies contracted to provide detention services provide those services in a human rights framework.
