



**VALS' submission in response to the Victorian Law Reform Commission's 'Community Law Reform: Supporting Young People in Police Interviews Background Paper'.<sup>1</sup>**

The Victorian Aboriginal Legal Service Co-operative Limited (VALS) welcomes the opportunity to participate in this consultation process with the Victorian Law Reform Commission. The support of young people in police interviews is an area of great concern for VALS and we agree with the Commission's aims in the current project. This submission addresses the specific questions outlined in the Commission's background paper, but it also broadens the discussion to areas of concern that are of equal importance in the support of young people in custody that relate highly to the role and purpose of the Independent Person. For example, in addition to addressing the Commission's 13 submission questions, we find it important to include, *inter alia*:

- The views of VALS' Client Service Officers (CSOs) whose role involves some similarities with that of an IP, although CSOs are not IPs. Both roles involve supporting young people in police interviews and custody;
- VALS' involvement in YRIPP training;
- Issues outside of the interviewing room;
- Problematic situation for young persons making complaints against police;
- human rights considerations;
- Vital importance of education to achieve successful operation of legislation;
- The need for YRIPP to operate as an independent organisation and be supported in the long-term as such; and
- Case studies to illustrate some of the above issues.

**Question 1: What should be the role of an IP who is present when the police are questioning a young person in custody whose parents or guardian are not available?**

In preparation for this submission, VALS' CSOs and a YRIPP IP (IP)<sup>2</sup> were interviewed. It is generally agreed that an IP in their role must:

- Speak to the young person before the commencement of the police interview;
- Ask the young person about their treatment under the care of police while in custody;
- Make it clear to the young person the role of a IP or VALS' CSO (i.e. is a support person and not a solicitor);

---

<sup>1</sup> Sent to VLRC 31st August 2009.

<sup>2</sup> From this point on any reference to an IP should be taken to mean an Independent Person trained through the Youth Referral and Independent Person Program unless stated otherwise.

- Talk to the young person about a common ground of interest to put the young person at ease;
- Ensure the young person is aware of their basic rights and has some understanding of what is involved in the interviewing process;
- Explain what a “no comment interview” is and the possible consequences of giving/not giving such an interview;
- Ensure to the best of their knowledge the interview process occurs in an appropriate manner for the young person;
- When there is concern about an occurrence either within a police interview with a young person and/or while the young person is in the police station, CSOs/IPs record concerns and take action if necessary; and
- Make referrals/arrangements for the young person where appropriate.

**Question 2: Should the role of the IP be any different to the role which the parents or guardian should play if they were available?**

VALS believes that an IP should perform a comparable role to a parent or guardian in that they are there to support the young person and protect their rights. An IP could differ from a large number of parents or guardians in that they are trained to understand:

- Basic Victorian law;
- The process of, and processes around, police interviews;
- The rights of young people in custody; and
- Possible indicators that a young person may be affected by drugs and alcohol, mental illness, emotional distress, and compromised physical wellbeing etc.

**Question 3: Should certain people be prohibited from acting as an IP?**

The young person may object to a parent or relative being present in a police interview. If their presence is going to affect the youth during the police interview then this request should be considered.

**Question 4: Is ‘Independent Person’ an appropriate title, or would another title be better?**

There is some confusion about the term ‘Independent Person’ as it is regularly and incorrectly interchanged with the term ‘Independent Third Person’. Having a clearer differentiation between the two should be considered. VALS agrees with Reid’s recommendation that ‘Victoria consider the introduction of legislation and associated guidelines to change the term “independent person” in Section 464E of the *Crimes Act 1958* (Vic) to “Appropriate Adult” (2007:41).

**Question 5: Should the role of an IP be set out in legislation?**

There are numerous reasons why the role of an IP should be set out in legislation. One VALS CSO expressed that there was a substantial grey area about the role of IPs in police interviews with young people and more broadly. Clear definitions of the role and extent of involvement in the interview processes (and other processes that operate when a young person is brought into police custody) would be highly beneficial and could eliminate IP’s hesitation and reluctance to perform certain acts in the interest of the young person in and around police interviews

Interestingly, the IP interviewed by VALS for this submission felt that setting out the role of an IP in legislation may not be the best answer. To paraphrase, the IP felt that in light of the fact that legislation is only as good as those who use it well (i.e. the IP had noted numerous instances where the police were acting outside of legislation such as the *Crimes Act 1958* (Vic) as well as outside their own police manual) education is the key.

Furthermore, there needs to be a willingness and an attitude within the police force that is conducive to working efficiently with IPs and allowing for the upholding the rights of the young person. The same IP suggested that if the police were better informed that IPs receive formal training and are informed of the rights of the child, the role of the IP as outlined in the YRIPP manual, and the polices and the procedures utilised by IPs, there would be an increased likelihood that police would act in closer accordance with the rights of the young person.

**Question 6: If the role of an IP is set out in legislation should it include any of the following things?**

**a. to act in the best interest if the young person?**

Yes. Legislation should refer to the acting in the interest of the young person in line with the United Nations Convention on the Rights of the Child (see Appendix A for select Articles of relevance).

**b. to provide emotional support to the young person?**

Yes, but care needs to be taken here. An IP should be able to speak up on behalf of the young person if they have good reason to believe that there is cause for concern for the young person not being in an appropriate state to give a police interview by way of mental or physical (or other) condition. As stated in the IP Procedure Manual ‘To ensure fairness in interviewing, police must consider a person’s intelligence and literacy and physical and mental state’ (Youth Referral and Independent Person Program 2009:35).

**c. to provide assistance to the young person?**

This question is a bit vague. The IP should be able to convey to the young person their rights under the law, the nature of the interviewing process and the options available to them. An IP has to be extremely careful, however, that they do not give legal advice that should be communicated by a solicitor. An IP can also organise referrals, ensure a safe journey home from the police station etc, however in order to answer this question decisively, the kind of assistance referred to needs to be stipulated.

**d. to observe whether the interview is being conducted fairly and to intervene if it is not?**

This is an area that the IP interviewed thought needed investigation and clarification as to what extent, if at all, it is appropriate to interject during a police interview of a young person if the IP feels the young person doesn’t correctly understand the question, is partaking in gratuitous occurrence<sup>3</sup>, or may need something explained further. While an IP might feel a strong urge to do so in the best interest of the young person it is felt that doing so could hinder the interview process

---

<sup>3</sup> This occurs when an Indigenous Australian agrees with a question because they wish to keep the person asking the question happy:

*...when Aboriginal people say “yes” in answer to a question it often does not mean “I agree with what you are asking me”. Instead it often means “I think that if I say “yes” you will see that I am obliging, and socially amenable and you will think well of me, and things will work out between us* (Eades cited in Calma 2007:2)

by stepping on the police interviewers toes and therefore inadvertently working against the best outcome for the young person.

**e. to identify any communication problems with the young person and help them to understand what is said by the police?**

Community Legal Education is a high priority for VALS as we are keenly aware of the importance of young Aboriginal and Torres Strait Islander People understanding basic rights in order for them to act and respond to police and the system as best they can. While communicating to young people effectively is a challenge unto itself, there may be unique challenges in communication when dealing with young people from certain groups such as the Aboriginal and Torres Strait Islander community. As discussed later in the submission, it is for this reason that VALS' involvement in IP training is of crucial importance.

Clear definitions of roles for IPs would benefit from clarification of when it is appropriate to interject and explain something a police officer has said during the interview that the young person may not understand and would benefit from being explained in different terms. The 2009 IP Procedure Manual deals with this issue well, stating that 'During the interview the IP should remain silent unless:

1. You think that young person does not understand a caution right or question; or
2. Is becoming visibly distressed or upset; or
3. Is no longer fit to be interviewed.

... The IP should never ask the young person questions or re-phrase a police question unless specifically asked to by the police officer' (Youth Referral and Independent Person Program 2009: 36).

**f. to ensure the young person understands their basic legal rights.**

As noted above, this is of paramount importance to VALS. It is especially important to make sure that such information is made clear to young people as they may be unaware of the legal system due to their age and level of education.

**g. to assist the young person to exercise those rights.**

Yes. As mentioned earlier this is primarily achieved when speaking with the young person prior to the police interview and informing them of their rights and how to exercise those rights.

**Question 7: Are there circumstances in which the police should be required to arrange for an IP to be present even when a parent or guardian is available?**

In certain circumstances it would be appropriate for an IP presence to be arranged even when a parent or guardian is present. There might be a family issue that may hinder the interview or distress the young person, the parent/guardian may have language difficulties, the parent/guardian may not understand the rights of their child or their own rights under the law, and the parent/guardian may be disruptive or inhibit the interviewing process some way.

**Question 8: What should happen if the police question a young person in custody without a parent, guardian or IP present?**

The practice of police questioning a young person in custody without a parent, guardian or IP should be treated very seriously. If a substantiated complaint of a police officer acting outside the law and interviewing a young person in custody without a parent, guardian or IP occurs, suspension of the officer should be considered until the matter can be addressed, the incident is recorded in their employment file, and the record taken into consideration when that particular police member is considered for promotion. The culture and operation of the station to which the police member belonged should also be looked at as police member acting in this way may indicate a broader workplace occurrence.

The CSO and IP interviewed both believe that if police stations were equipped with video surveillance in every room (with the exception of rest rooms), there would be an increased likelihood of adherence with the rights of the young person by police in police stations. Citizens in the public realm are subject to video surveillance in private and public spaces for security and law enforcement purposes. The public of Victoria are monitored and surveyed sometimes against their will and without their knowledge and consent. The public should be afforded the same security and knowledge that police are behaving within the law without question.

**Question 9: Should the police be required to provide an IP (or parent or guardian) with a written summary of the detained person's rights?**

The IP should know the basic rights of the detained person. It is this knowledge that underpins them as a support to the young person. It may be appropriate, where an IP or CSO is not available, that a written summary of the detained person's rights be provided to the parent, as they may not themselves know their or their child's rights.

It should not be assumed that information about basic rights cannot be provided to the young person themselves. This may be important while a young person is being detained and is waiting for a parent/guardian or an IP to arrive. VALS has produced a number of different "Know Your Rights" publications communicated in plain English, in a variety of media, and targeted to youth to communicate basic rights if in custody. For the police to provide young people and their parents/guardian with similar information should not be viewed as an onerous undertaking. Something as essential as basic rights for young people (or anyone) should be made available as standard practise.

**Question 10: Should IPs be trained? If so, what should the training involve?**

All IPs must be trained. VALS applauds the current practice of the YRIPP IP training program which involves periodical updates to both personal training and the training manual. It is crucial that cultural awareness training to obtain an appropriate level of cultural competency amongst IPs is provided. This should cover understandings of the diverse cultural communities that reside in Victoria and specifically address the Aboriginal and Torres Strait Islander community. YRIPP currently effectively engage with VALS with this objective for their training.

**Question 11: Should the IP be able to arrange legal representation on behalf of the young person without express permission if they believe it is in the best interest of the young person?**

The IP interviewed for this submission expressed a strong view in response to this question - that an IP absolutely should be allowed to arrange legal representation of behalf of the young person if they believe it is in the best interest of the young person.

The IP role is utilised under the assumption that a young person is not experienced or knowledgeable enough to protect themselves and their rights in a police interview. It cannot be simultaneously viewed, then, that the young person is knowledgeable enough to know, or mature enough to absorb the ramifications of certain situations and the detrimental effect that not having legal advice can have to their lives. As an IP or CSO cannot give legal advice, they should be able to seek legal representation for a young person if they believe it is in their best interests.

**Question 12: Does the YRIPP system work effectively? How could it work better?**

VALS' CSO's are not part of the YRIPP program and as such were not able to comment on its effectiveness from their experience. VALS has however recently had contact with an IP who is part of the YRIPP program and was a valuable resource for the putting together of this submission. The information from an interview with this IP and VALS training partnership with YRIPP were used to formulate the discussion below.

*YRIPP Training and Engagement with VALS*

An area that it is appropriate for VALS to comment on the operation of YRIPP is with respect to VALS' involvement with formulating one of the training modules. VALS became involved in the YRIPP program because it was felt there was need for training of volunteers about Aboriginal and Torres Strait Islanders. It was recognised by the organisers of the program also that there was need for Aboriginal and Torres Strait Islander module in the training content. VALS got involved in the project after being approached by the Program Manager who wanted VALS to contribute to a training module. VALS developed a training module in 2005 and has been delivering it ever since. The content of the training can be summarised into the following areas:

- Information about VALS (let people know VALS exists; how VALS is run; who employed; where offices are; etc);
- Explain why Victoria needs an Aboriginal specific Legal Service;
- Appropriate ways to treat young people and signs to look at/be aware of (i.e. if the young person does not make eye contact it does not mean they are being disrespectful or lazy);
- Emphasising the need to contact VALS and let the youths know that VALS is here for them (VALS assists all Aboriginal and Torres Strait Islander People, male and female, seeking legal advice under the age of 18, i.e. there is no need for a means test or presentation of health care card required);
- Emphasising the need to ask if a young person in custody is Aboriginal or Torres Strait Islander;
- Provide a case scenario and accompanying exercise about a situation where the IP did not act correctly when an Aboriginal and Torres Strait Islander had been injured by the police;

The training sessions occur at least once a month and last between 3.5-4 hours. The frequency of the sessions depends on the intake levels of volunteers and the consequent training requirements. The sessions occur in metropolitan areas and regional areas, the latter being more of a commitment

for VALS in terms of time devoted to the program. VALS is also a member of the YRIPP Reference Group which meets four times a year. VALS feels that this is a very positive partnership and applauds YRIPP for their engaging with VALS to address cultural awareness issues.

### IP Program's Longevity

Program Manager of the YRIPP project, Sally Reid, undertook research in 2007 concerning issues around adults acting as IPs to support young people in custody. Looking within Victoria as well as standards of similar projects in the UK, a number of potential problems for operations in Victoria became apparent. Reid found that in the UK's IP equivalent, the Appropriate Adult (AA) service, stakeholders commented on variable and sometimes less than satisfactory service provision for young people in police custody in different locations.

It appeared that where such services did not meet standards and this was largely attributed to 'lack of adequate local resourcing or lack of knowledge of the standards or priority afforded to these standards' (2007:30). Reid suggests that to overcome these potential problems in Victoria, 'the notion of having a set of broad principles around the wellbeing of young people in custody and a basic minimum standard for the delivery of Independent Person services appears to be a good one' (2007:30). VALS endorses the content of this research.

VALS is concerned about the current situation as well as the future of YRIPP. VALS is acutely aware, as is noted by Reid (2007), of recent changes to the contract management arrangements for YRIPP where departmental restructuring has resulted in the transfer from the Crime and Violence Prevention unit within the Department of Justice. This new arrangement, where management arrangements fall closer to Victoria Police than the Department of Justice, has the potential to be highly problematic.

With YRIPP being funded wholly or in part by Victoria Police, the perception of an "independent" person is heavily diminished. There is already a perception in some sectors of the community that "independent person" is another term for a police officer's friend, and therefore is not truly "independent". If the training of IPs was to fall under Victoria Police management, the perception would be that IPs were being groomed to accord to the will of the police. Even more concerning is the possibility of this perception becoming a reality.

Furthermore, the information gathered by IPs when attending a young person in custody also presents problems around ownership of knowledge. For example, if a IP attends a young person in custody who claims to have been treated badly, the young person may not wish to file a formal complaint. The YRIPP member, however, still holds this information. There exists a huge conflict of interest if YRIPP's funders, Victoria Police, wish to obtain this information. Even if the data doesn't specifically implicate a young person by name, any investigation either within a station or externally conducted by the Ethical Standards Department (ESD) could potentially expose a young person who expressly indicated that they wished not to make a complaint. This potential situation undermines the independence of the YRIPP member, YRIPP as an organisation, and goes against the rights of the child.

YRIPP should be afforded a level of independence to protect the integrity of their training modules and codes of practice. The role of an IP has the potential to be completely diluted if they are seen to be trained by Victoria Police. An "independent person" should provide for the best interest of the young person being interviewed and not to please the expectations set out by Victoria Police themselves. This is not to say that YRIPP should not work in a good-natured partnership with

Victoria Police. On the contrary, every effort should be made to harmonise the role of an IP with the operations of police when interviewing a young person. It has to be emphasised, however, that an IP needs to come across to the young person as legitimately independent, otherwise their presence will be resisted and they will be seen as another opponent in the room.

The Minister for Police and Emergency Services recently provided official advice that YRIPP will be funded for a 12 month period from 1/7/09 – 30/06/210. These 12 months is to ‘enable a more fulsome evaluation of the potential service delivery models.’<sup>4</sup> In this 12 month period, YRIPP will be taking a 20% cut in funding from the previous year resulting in possible implications for service delivery. Handing over control of management operations to YRIPP will require long-term investment in a monetary and policy sense. And while management needs to be centralised, there needs to be recognition for support in certain regions that may need resources in order to achieve the basic standards for service delivery. Local training may also prove crucial in some areas and can increase the effectiveness of local referrals and processes.

### Feedback and Monitoring

As noted in item 57 of the Background Paper, YRIPP does not currently collect feedback information on the IP’s performance from the young person. The possibility of feedback should be explored, especially in light of case studies such as the following.

#### **Case Study 1**

An IP attended an interview with a 15 year old Aboriginal who confided in private with the IP that he had been assaulted by police. Although the IP recognised the seriousness of this allegation, they did not act on this information when the young person was put through the attendance register, nor did they bring the allegation to the attention of any senior police officers or other authority. When asked if they thought it was important to bring to the attention of senior police this allegation, the IP replied that they explained to the young person the correct course of action and added ‘...I could see absolutely in my own mind nothing that substantiated the claim’

This IP had been acting in this role for numerous years. The IP expressed that they felt their role was to be an independent witness, and to maintain that they are ‘not there to act as an advocate’. The IP advised the young person about a course of action to take in making a complaint and when the IP was asked if they thought a 15 year old was in a position to make a complaint to senior police, the IP simply replied ‘yes’. At the time the IP didn’t think it the matter should have been investigated.

Case Study 1 raises a number of serious concerns. The first and most obvious concern is what the IP considers their role to be, that is, *not* as an advocate for the best interests of the young person. Secondly, it can be inferred that the IP did not report the alleged assault on the young person to an authority on the basis of their own personal moral or social judgement call when stating that in their mind there was nothing to substantiate the young person’s claim and therefore didn’t think it should be investigated. Such a serious judgment was not one for the IP to make. In this instance, the assault victim was viewed as a young offender, and not a young person with rights.

In the judgment following an investigation into the young person’s allegations, His Honour commented on the role the IP played in the chain of events. His Honour expressed that in this case the IP had a very poor understanding of just what his role was as an IP. His Honour further

<sup>4</sup> Reid S, correspondence to YRIPP reference group, 4<sup>th</sup> June 2009

expressed that if the IP had done his moral or legal duty to report the complaint to an appropriate senior officer, then this matter may have not attracted the angst that it did.

Case Study 1 also calls for some sort of feedback or monitoring of IP's performance. As it becomes apparent through the positive and negative case study information, the role of the IP can be pivotal to a potentially serious outcome for either the young person in custody or the officers in a position of care and responsibility for that young person. As noted in Case Study 1, this IP had been acting in this role for many years, and for the duration felt that remaining passive when given information about police assaulting a young person was accepted within their role.

With the potentially weighty ramifications attached to the actions attached to the role of an IP, VALS supports the consideration and exploration into a mechanism whereby young people can give feedback on an IP. The exploration of other performance monitoring practices should also be considered to ensure that the right people are protecting the rights of young people in custody.

It should be noted that Case Study 1 occurred a number of years ago, and the YRIPP program has taken cases such as the above very seriously and used them to draw lessons and adapt training of their volunteers. VALS has recently had an intern who is part of YRIPP and expresses high praise of the YRIPP program in terms of thorough training, periodical re-training, providing comprehensive regularly updated manuals, and most of all providing support around the clock for volunteers if they need advice, guidance or clarification. When interviewed in regards to the above Case Study 1 (and the like) the IP VALS spoke with was appalled. It was clear to this IP that her training, which commenced more recently than the IP in the case study, was very strong and obviously geared to prevent anything close to the events that occurred in the case study.

### Complaints Against Police

The reluctance of a young person to make a complaint against a police member(s) is a big problem. There is a fear that doing so will attract more trouble for the young person and that their claims will not be believed against the word of a police officer. This issue is further complicated by the act of police requiring the young person who has been in custody to sign the attendance register upon leaving the station to state that they were satisfied with their treatment.

Young people leaving the custody of police are inclined to be cooperative at this point in order to not further delay their release from the station. They may also be inclined to sign that they were satisfied with their treatment while in the care of police, even if this was not the case, due to fear of ramifications either at the time, or fear of being targeted by the police in the future. Furthermore, if a young person signs the attendance register to say that they were satisfied with their treatment while in police care to fulfil the above mentioned objective, this can seriously reduce the young person's chances of filing a successful complaint against police at a later time.

What is also revealed in Case Study 1, is the perception of the IP that because the information relating to the course of action to be taken by the young person in reporting the assault, the IP in this case had fulfilled their role and this information was enough for the young person to pursue justice. The idea that an Aboriginal youth as young as 15 was considered equipped sufficiently, via the knowledge of the complaints procedure, to pursue a complaint of police assault to another police officer is outrageous.

The Koori Complaints Reports (2008) contained data involving 64 complaints of assault by a police officer on an Aboriginal or Torres Strait Islander person between 1991-2000 and almost half were

handed by the direct line manager. Only 1.2% of the most serious and most common type of complaints – assault by police – were ‘substantiated’ as a consequence of a police investigation. After the complaint was investigated, a Koori complainant was not informed in any manner of the outcome of their complaint in 26.2% of files reviewed.

It is apparent that the system for complaints against police is inherently and drastically flawed. VALS agrees with a quote from the Australian Law Reform Commission in 1995 that Hopkins (2009) included in a report: ‘[t]o ask the police to investigate complaints against their own places them in a hopeless conflict of interest position. Police investigators, whether consciously or otherwise, will tend to be sceptical of complainants and will be ‘softer’ on the police concerned. The Aboriginal community has no faith in police investigating police.’

Aside from reforming the police complaints system in Victoria itself, it needs to be recognised that young people must be afforded support in pursuing complaints against police. VALS applauds the information and documentation card YRIPP is providing to young people in order to assist this process.

#### *IP Protecting the Rights of Young People at Police Stations outside the Police Interview*

An area of considerable concern is the treatment of young people in custody before a CSO or IP can attend the police station. In the Victoria Police Manual (VPM) it is stipulated that where a young person identifies to police that they are of Aboriginal and Torres Strait Islander decent, the police have to contact VALS within the hour to notify the instance and nature of the arrest. It does not, however, state anywhere how much time VALS has to be contacted before the commencement of a police interview or if VALS has to be contacted prior to an interview. Concerns around the amount of time a young person spends in police custody before an interview and before an IP can attend the station is also a big concern, as highlighted in the case study below.

#### **Case Study 2**

An IP attended a police station and witnessed, on arrival, police setting up for a 14 year old female to be fingerprinted. The IP asked that the police officer to stop. When the police officer asked why, the IP explained that officer was not allowed to fingerprint someone or her age. The officer questioned the IP’s knowledge on this matter. The IP produced the YRIPP independent person’s manual and referred the police officer to it. The IP believes that the officer either knew what they were doing was wrong and was therefore ‘playing dumb’, or alternatively was negligent in their knowledge to perform their role as a police officer.

Either explanation the IP provided as to why the police officer in Case Study 2 was attempting to fingerprint the young person is unacceptable. This is a clear example of what can potentially happen before an IP arrives to support the young person. Unless the police inform the young person themselves, it can be assumed that the majority of young people, especially when aged as young as 14, would be unknowing or unclear on their rights and in turn would not know that to object to their fingerprints being taken is well within their rights. A similar account of an IP attending a police station ‘in the nick of time’ is outlined in Cast Study 3.

### **Case Study 3**

An IP attended a police station and on arrival noticed that the recording equipment was being moved for the obvious purpose of starting an interview with a young Aboriginal male who the IP clearly identified as being heavily intoxicated. The IP expressed to the police that this was inappropriate. It was the IP's experience that the police were openly displeased with the objection.

CSOs and IPs commonly get in contact with a young person in custody via telephone. Both the IP and CSO interviewed expressed concern at the possibility that when speaking to a young person in custody over the telephone, there may be a police officer in the room or within earshot and this may limit the ability of the young person to speak freely and frankly about their concerns or discuss the instance of anything that may be cause for complaint against a police officer.

### **Question 13: Is there anything else you would like to tell us?**

#### *Bail Justice Hearings*

While consulting with one of VALS CSOs about the issues within the Background Paper, issues involving after-hours attendance when a Bail Justice attends a police station were raised. There are times when a CSO or IP are the only support person present for a young person when the Bail Justice attends a police station to make determinations about appropriateness of bail or remand.

This is a critical point in time for a young person in custody. One VALS CSO feels that an IP's role in this situation is extremely unclear. On occasion the CSO has felt that there were certain things that could be mentioned to the young person, and to the Bail Justice about the young person, that would be helpful in the Bail Justice's arrival at an appropriate determination. In this situation, however, the CSO is most commonly removed from the immediate area where the Bail Justice does the after hours hearing. In this way a CSO/IP is not in an optimal position of support to the young person.

#### *Miscellaneous*

Other elements to be addressed in order to achieve the sound support for young people in police interviews (and around the time of police interviews) include the following:

- The harmonisation of the VPM and Victorian legislation;
- Wide and in depth consultation in order to determine definitions of roles and responsibilities for IPs, and an awareness of these by Victoria Police ;
- As suggested by Reid (2007:39) there be a shift towards seeing young people in custody as "children in need" rather than "young offenders" and in this way moving away from the adult system upon which the police system is based. This represents an appropriate move in light of the *Convention on the Rights of the Child*, and particularly for Victoria through the *Charter of Human Rights Act 2006* (Vic);
- The legislation currently allows for anybody to perform the role of IP regardless of their level of training, if at all, or conflict of interest. In Victoria the police are advised to use the YRIPP program however there is nothing within the legislation that instructs this;

- Amend the VPM Instruction 113-1 (taking a person into custody) section 4.3.5 to read (suggested change italicised):

‘Where a person who identifies as being of Aboriginal or Torres Strait Islander descent is taken into custody for any reason the police member responsible must:

- complete the Attendance Module as required. This *must* be done within 60 minutes of arrival at a police station. This will create a notification to the Victoria Aboriginal Legal Service (VALS)’;
- Amend the above VPM to include how long before an interview commences that VALS is notified of a young person in custody and state that notification must occur before the interview commences;
- Amend the VPM to include how long before an interview commences that an IP is notified to make a call out to the station;
- Broaden the area of enquiry in future Background and Consultation Papers to explore the role of IPs in supporting young people outside the police interview i.e. what happens before and after the young person enters the police interview.

## References

- Calma T (2007) *Submissions of the Aboriginal and Torres Strait Islander Social Justice Commissioner on the common difficulties facing Aboriginal witnesses* Federal Court of Australia, Queensland District Registry: Australian Human Rights and Equal Opportunity Commission [online] [www.hreoc.gov.au/legal/submissions\\_court/amicus/giblet\\_aboriginalwitnesses20mar07.htm](http://www.hreoc.gov.au/legal/submissions_court/amicus/giblet_aboriginalwitnesses20mar07.htm) [accessed 12th August 2009].
- Hopkins T (2007) 'Policing the Public: The role for human rights in exploring the acceptable limits of police practice', *Flemington and Kensington Community Legal Centre* [online] <http://www.eoc.vic.gov.au/conference/Material/default.htm> [accessed 22 May 2009]
- Reid S (2007) *Independent Persons or Appropriate Adults? Supporting Young People in Police Interviews* Carlton: Centre for Multicultural Youth Issues and the Winston Churchill Memorial Trust of Australia.
- United Nations General Assembly (1990) *Convention on the Rights of the Child* [online] [www2.ohchr.org/english/law/pdf/crc.pdf](http://www2.ohchr.org/english/law/pdf/crc.pdf) [accessed 11<sup>th</sup> August 2009].
- Victoria Law Reform Commission (2009) *Community Law Reform: Supporting Young People in Police Interviews Background Paper* Melbourne: Victoria Law Reform Commission.
- Victoria Police & Department of Justice (2008) *Koori Complaints Project 2006-2008: Final Report* Melbourne: Ethical Standards Department, Victoria Police & Indigenous Issues Unit, Department of Justice.
- Youth Referral and Independent Person Program (2009) *Independent Person Procedure Manual* Melbourne: Centre for Multicultural Youth; Youth Affairs Council of Victoria.

## **Appendix A**

### **Articles of the United Nations *Convention of the Rights of the Child* to be referred to in considering Victorian legislation regarding young persons in police custody.**

#### *Article 3 -*

- (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration;
- (2) States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures;
- (3) States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision;

#### *Article 5 –*

- States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention;

#### *Article 37 –*

- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time’;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; and
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action (United Nations General Assembly 1990).