



# Victorian Aboriginal Legal Service Co-operative Ltd.

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The Hon John Thwaites MP  
Chair  
Social Development Committee of Cabinet  
Level 3  
1 Treasury Place  
East Melbourne  
Vic 3002

March 8th, 2005

Dear Minister,

Victorian Aboriginal Legal Service supports the issues of concern raised in the letter sent to you on March 2nd 2005 from VCOSS and other non government organizations about proposed reforms to the Children and Young Persons Act 1989 and Community Services Act 1970.

In the past six months DHS has consulted with Indigenous organizations about these reforms and has amended some aspects of the original proposals. VALS believes there are some valuable proposals to improve Indigenous input and control of some of the Child protection system.

VALS is concerned to expand on the issue of 'stability' which is enmeshed with the issue of mandatory permanency time limits. The rationales for stability are to avoid what has been termed 'placement drift' where a child remains in a 'short term' placement for many years and to respond to research findings about the importance of a stable (and stimulating) environment in a child's first few years.

This has been conceptualized as responding to child development needs. DHS has interpreted 'child development needs' as a green light for faster removal of children. Apart from the introduction of mandatory timelines for permanency there are plans to start permanency planning at almost the same time as family reunification planning.

There has been remarkably little attention to what obligations the child development theories may have on government for better resourcing of child protection, alternative care and prevention programs more generally. There is no ceiling placed on how long DHS can take to provide services or operationalise a case plan. There are no minimums in relation to resources that must be provided to birth parents while their child is in care. There are no commitments to improve how DHS works with birth parents and foster parents. There are no commitments to improve early intervention programs and prevention across the board.

The DHS interpretation of child development needs is unbalanced. This lack of balance in policy development and presumably in resource allocation will lead to more children being

removed from more birth parents faster. DHS documents, DHS comments and some service providers clearly consider this development is desirable as it 'shifts the balance away from parent's rights to children's rights'. VALS believes that in many cases the lack of relevant and accessible services to assist parents has caused delays and contributed to children's needs being inadequately met by DHS. To attribute long delays in achieving stability for children to the court or the legislation without recognizing the very significant contribution of the Department is again, in our assessment, an unbalanced view of the situation.

The positing of replacing parent rights with child rights is an unhelpful dichotomy. In practice the first question should be how the child's right to know its parent can be reconciled with the parent's capacity to provide support and care. The capacity to reconcile cases where these rights are in conflict will be influenced by the availability of services and income and the flexibility of legislation, courts and welfare providers. In practice today many parents give up on getting their children back when DHS gets involved. In practice many parents who no longer have guardianship are limited to a few visits a year with their children.

The Department has made changes in relation to fast tracking children into permanent care. The original proposal was to introduce mandatory permanency timelines. For example if a child spends 12 months, out of their first two years, in out of home care it is proposed that they will then have to go into permanent care. Such a proposal would disadvantage Indigenous children and families disproportionately because informal out of home care is more likely to occur in Indigenous families and because Indigenous children are already significantly over represented in child protection statistics.

Indigenous organizations have been told that these mandatory permanency time frames will not apply to Indigenous children.

VALS is concerned that by having two apparently different standards it will only be a matter of time before the more formalistic time limit approach will be used on Aboriginal children as well. VALS believes that the use of mandatory time frames is contrary to the best interests of children. In some cases the time limits will be too short and in other cases they will be too long.

VALS believes that aggrieved non Indigenous parents will use the different time rules to criticize the system. If the basis for adopting a permanency order rested on substantive issues, including cultural issues then case planning and court decisions about permanency could be based on the best interests of the child rather than arbitrary timelines.

VALS believes that using an indicator such as 'time in out of home care' as an arbitrary indicator of the need for permanent care prejudices time in out of home care as a handicap. This arbitrary and formalistic indicator ignores the substantive issues such as:

- The quality of the care (for the child directly and also taking into account the quality of relationship with the birth parents),
- the progress of the child and
- the cultural context.

DHS is trying to take discretion away from the Children's Court in exactly the same way that the Northern Territory Government did by introducing mandatory sentencing in criminal matters.

Other states of Australia which have had detailed independent reviews of their Child protection system such as Queensland have not found it necessary to have mandatory permanency time limits. In the USA a similar approach to what is proposed in Victoria has been tried since 1997 and the time taken to achieve permanent placements has increased. Special payments to states who exceed their quota of adoptions and legislation to enable interstate and overseas families to adopt the 'stockpile' of unwanted adoptees has not worked

VALS urges the removal of mandatory permanency timelines and a more balanced approach to meeting child development needs. A more balanced approach would also include recognising the need for independent oversight of DHS via a Children's Commissioner.

Yours sincerely

**Frank Guivarra**  
**Chief Executive Officer**  
Victorian Aboriginal Legal Service Cooperative