



Victorian Aboriginal Legal Service Co-operative Limited (VALS)

# Protecting Victoria's Vulnerable Children Inquiry

Submission to the Victorian Government on the improved protection and support of vulnerable young Victorians.

**April 2011**

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## About the Victorian Aboriginal Legal Service Co-operative Limited

The Victorian Aboriginal Legal Service Co-operative Limited (VALS) was established as a community controlled Co-operative Society in 1973 to address the over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system. VALS plays an important role in providing referrals, advice, duty work or case work assistance to Aboriginal and Torres Strait Islander peoples in the State of Victoria. Solicitors at VALS specialise in one of three areas of law, being criminal law, family law and civil law. VALS maintains a strong client service focus which is achieved through the role of Client Service Officer (CSO). CSOs act as a bridge between the legal system and the Aboriginal and Torres Strait Islander community.

VALS is actively involved in community education, research and advocacy around law reform and policy development. VALS strives to:

- a) Promote social justice for Aboriginal and Torres Strait Islander peoples;
- b) Promote the right of Aboriginal and Torres Strait Islander peoples to empowerment, identity and culture;
- c) Ensure that Aboriginal and Torres Strait Islander peoples enjoy their rights, are aware of their responsibilities under the law and have access to appropriate advice, assistance and representation;
- d) Reduce the disproportionate involvement of Aboriginal and Torres Strait Islander peoples in the criminal justice system; and
- e) Promote the review of legislation and other practices which discriminate against Aboriginal and Torres Strait Islander peoples.

For further information about VALS, please see our website: [www.vals.org.au](http://www.vals.org.au)



VALS is aware of the broad issue of the intersection between child protection, youth and adult justice systems. Research tells us that the likelihood of an individual becoming involved in criminal activity is influenced by a range of factors - child abuse and neglect is of particular significance (with forced removals being one of the main risk factors).<sup>1</sup> There is also evidence of the “drift” of children and young people from the welfare system into the juvenile and adult justice system. By informing Victoria’s approach to child protection we have the ability to make a positive difference in the justice system.

The question here is what we should do to protect children who are at risk of violence, abuse or neglect. Currently our systems of child protection mistakenly see children as individual victims rather than as member of a family and community, which may also have been victimised, neglected or abused.

VALS advocates for a child protection system that is based on a human rights approach – that is a system that reflects respect for children and young people as human beings and as equal members of society, but also a system that empowers families and communities.

VALS unfortunately has not sought the input of children, young people and their families for the purposes of this Inquiry due to capacity and time constraints. For similar reasons this submission refers to primarily to recently completed VALS submissions. VALS therefore encourages the Panel to the Inquiry to access the following submissions (along with the materials referenced within them) as they relate to Terms of Reference 3,<sup>2</sup> 4<sup>3</sup>, 6<sup>4</sup> and 8<sup>5</sup>

**1. *Review of Victoria’s Child Protection Legislative Arrangements – submission to the Victorian Law Reform Commission (VLRC) (April 2010)***<sup>6</sup>

Best Interests of the Child

In VALS’ *Review of Victoria’s Child Protection Legislative Arrangements: Submission to the Victorian Law Reform Commission April 2010*<sup>7</sup> the best interest principles were examined in a number of ways, with discussions and arguments such as follows:

- The emphasis in Victoria’s child protection system on the best interests of the child, including the cultural connection and safety needs of Aboriginal children, as the paramount consideration in decision-making.

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<sup>1</sup> Homel et al (1998) in Libesman and Cunneen (2002) ‘A Review of International Models for Indigenous Child Protection’ Austlii Indigenous Law Resources [www.austlii.edu.au/au/other/IndigLRes/2002/1/](http://www.austlii.edu.au/au/other/IndigLRes/2002/1/)

<sup>2</sup> The quality, structure, role and functioning of: family services; statutory child protection services; out-of-home-care and what improvements may be made to better protect the best interests of children and support better outcomes for children and families.

<sup>3</sup> The interaction of departments and agencies, the courts and service providers and how they can better work together to support at-risk families and children.

<sup>4</sup> Possible changes to the processes of the courts referencing the recent work of and options put forward by the VLRC.

<sup>5</sup> The oversight and transparency of the child protection, care and support system and whether changes are necessary in oversight, transparency, and/or regulation to achieve an increase in public confidence and improved outcomes for children.

<sup>6</sup>[http://vals.org.au/static/files/assets/35393702/Review\\_Victoria\\_Child\\_Protection\\_Legislation\\_VLRC\\_Sub\\_Fin\\_al\\_April\\_2010.pdf](http://vals.org.au/static/files/assets/35393702/Review_Victoria_Child_Protection_Legislation_VLRC_Sub_Fin_al_April_2010.pdf)

<sup>7</sup>[http://vals.org.au/static/files/assets/35393702/Review\\_Victoria\\_Child\\_Protection\\_Legislation\\_VLRC\\_Sub\\_Fin\\_al\\_April\\_2010.pdf](http://vals.org.au/static/files/assets/35393702/Review_Victoria_Child_Protection_Legislation_VLRC_Sub_Fin_al_April_2010.pdf)

- contracts must always be in the best interest of the child or young person with the input of the child or young person
- dispute resolution conferences facilitate, where appropriate, the views of the child either through presence at the conference or through representation
- Legal representation, or even legal advice as a minimum, should be provided for the family and/or child participating in the ADR/Family Group Conference to better equip children and families to combat imbalance between themselves, child protection services and other service providers. This is especially important for Aboriginal and Torres Strait Islander and other marginalised groups that are overrepresented in the child protection system.

### Respect for the Views of the Child

In this submission, VALS extensively refers to the work of Tali Gal (2009) who notes that the introduction of a rights-based discourse internationally has had a remarkable impact by making children, for the first time, visible stakeholders in decision making processes.<sup>8</sup> Traditionally the most disenfranchised party in the child protection process, Gal notes a human rights discourse is important not only because it reflects respect for children and young people as human beings and as equal members of society, but can also be a vehicle to structurally empower children.

The Aboriginal and Torres Strait Islander community's role in decision-making has been formalised in the *Children, Youth and Families Act 2005* (Vic). The Aboriginal and Torres Strait Islander Family Decision Making Program (commonly referred to as Aboriginal Family Decision Making or ADFM) is a process that has been evaluated and found successful. It has been expressed by people involved in responding to the VLRC review process and VALS' lawyer, however, that despite support for the use and expansion of this mechanism, ADFM is not being utilised for child protection matters in Victoria in practice. According to VALS' solicitor, he has never appeared at an ADFM conference.

The ADFM program at Rumbalara is an example of a decision-making forum for child protection matters that operates in the spirit of self-determination. Much more than a simplistic solution driven mechanism, this ADFM program settles issues from a whole-of-community perspective where collaboration is key and responsibility for the success of agreed outcomes is shared.

Following the comprehensive evaluation of the ADFM program the following recommendations, among others, were made:

- The program should be funded on a long -term basis. In selecting other geographical areas where the ADFM program may be migrated, capacity building to enhance the capabilities of those Aboriginal and Torres Strait Islander communities should be considered as a prerequisite.
- In migrating the program to other Aboriginal and Torres Strait Islander communities, Rumbalara Aboriginal Cooperative's role should be viewed as an *example*, not as a *model* as each community would require differentiated processes (emphasis added).

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<sup>8</sup> Gal T (2009) 'Restorative Child Protection' Paper presented to the Law Faculty Seminar, The Hebrew University, Jerusalem, 16 December  
[http://law.huji.ac.il/upload/Restorative\\_Child\\_Protection\\_FacultySeminar.doc](http://law.huji.ac.il/upload/Restorative_Child_Protection_FacultySeminar.doc)

- Processes whereby families are notified of the option of using the program should be reviewed in order to improve the take-up of the program.
- The support services that assist the program should be reviewed annually or when case loads increase significantly to ensure their adequacy.
- VACCA representation at the first visit to the family following a notification is critical, and every endeavour should be made to ensure there are sufficient resources to do so.
- Information gathering, handling and storing processes should be audited to ensure they provide appropriate levels of privacy.

#### Civil Rights: Preservation of Identity

This submission addressed preservation of identity by way of discussion involving the following:

- The emphasis in Victoria's child protection system on the best interests of the child, including the cultural connection and safety needs of Aboriginal children, as the paramount consideration in decision-making;
- Assessment, decision making and planning processes which utilise the lens of culture, as articulated in the Aboriginal Cultural Competence Framework (which was written by the Victorian Aboriginal Child Care Agency (VACCA) for the Department of Human Services (DHS) and the child and family services sector);
- The need for significant improvements to be made to the child protection system through increased resources to prevention and early intervention services. Specific strategies need to be developed and implemented as a matter of urgency to reduce the overrepresentation of Aboriginal children in the child protection system through an increase in culturally attuned Aboriginal family services and an enhanced Aboriginal Child Specialist Advice and Support Service (ACSASS);
- The need for the implementation of Aboriginal cultural competence standards (as articulated in the Aboriginal Cultural Competence Framework) for all DHS Child Protection staff, lawyers and Magistrates of the Children's Court to ensure a culturally responsive service;
- A systemic guarantee that seeking reunification with family when appropriate will be a priority across the child protection system with adequate resourcing and training for professionals to support this guarantee;
- Discussions with Aboriginal and Torres Strait Islander peoples who practice in the area of child protection the Aboriginal Child Placement Principle and cultural plans are not being implemented consistently. According to Victorian Aboriginal Child Care Agency in its submission to the Ombudsman's review of the child protection system: only 20 per cent of Aboriginal children considered to require a Cultural Plan had one developed" and "[t]he lack of compliance around the development of Cultural Support Plans has been a major concern".<sup>9</sup>
- VALS argues that the principles in the Act that relate to Aboriginal and Torres Strait Islander peoples should be implemented consistency. VALS adds that the principles can be strengthened by requiring that the Aboriginal Child Placement Principle be applied

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<sup>9</sup> Brouwer G E (2009) *Own motion investigation into the Department of Human Services Child Protection Program* Ombudsman's report presented to Parliament 25 November 2009, p. 77.

universally in relation to children, whether at an early stage where alternative dispute resolution is appropriate, or at a later stage, such as at Court. A flow on principle is that cultural plans should be universal and the provision of cultural plans should not be limited to a guardianship to Secretary Order or long-term guardianship to Secretary Order.

**1. *Family Violence: Improving Legal Frameworks* – submission to the Australian Law Reform Commission (ALRC) and the New South Wales Law Reform Commission (NSWLRC) (June 2010)<sup>10</sup>**

The above is a large submission that deals with many areas that impact the lives of children. Family Violence is an extremely complex problem and reservations about the extent to which the criminal justice system can stop or deter violent behaviour are widespread. Research conducted by VALS highlights that the criminal justice system was generally seen by members of the Aboriginal and Torres Strait Islander community as ineffective in responding to each of the following objectives:

- Putting an end to violence;
- Preventing further violence for an individual victim through changing the offenders behaviour;
- Punishing and holding the offender accountable for their violence;
- Sending a message to the community that domestic and family violence is wrong in the hope of altering the attitudes and behaviour of community members;
- Supporting the victims by validating their stories and experiences;
- Repairing the relationship between the offender and the community; and
- Compensation to the victim.<sup>11</sup>

VALS' research indicates that in the view of Aboriginal and Torres Strait Islander women working in the area of family violence in the Aboriginal and Torres Strait Islander community:

- The justice system is generally ineffective in responding to stopping the violence, repairing the relationship between the victim and the offender and the offender and the community; and
- The justice system is not effective in punishing or holding the offender accountable for their actions.

Increased criminal sanctions, having the potential to incarcerate more Aboriginal and Torres Strait Islander men, raises concerns outside of the impact of prison on the individual, but also the failure of prison to achieve little in terms of addressing the causes of family violence as seen by Aboriginal and Torres Strait Islander women.<sup>12</sup> It was disappointing to see an absence of questions and proposals in this particular Inquiry specifically addressing the critical and unique experience of family violence and related legal frameworks on members of the Aboriginal and Torres Strait Islander despite the desperate need for attention on this.

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<sup>10</sup> [http://vals.org.au/static/files/assets/dd352ce8/Fam\\_Vio\\_Legal\\_Frameworks\\_ALRC\\_sub\\_Final.pdf](http://vals.org.au/static/files/assets/dd352ce8/Fam_Vio_Legal_Frameworks_ALRC_sub_Final.pdf)

<sup>11</sup> Victorian Aboriginal Legal Service (2005) *In Search of Justice in Family Violence: Exploring Alternative Justice Responses in the Victorian Indigenous Australian Community* Melbourne: University of Melbourne and the Victorian Aboriginal Legal Service.

<sup>12</sup> Victorian Aboriginal Legal Service (2005) op cit.

## **2. United Nations Convention on the Rights of the Child – submission on how Australia provides for its children to the Child Rights Taskforce Australia NGO report (December 2010)<sup>13</sup>**

In this submission, VALS spoke to the following points relevant to the current Inquiry, amongst others:

### The Victorian Charter of Human Rights and Responsibilities

The *Victorian Charter of Human Rights and Responsibilities 2006 (Vic)* ('the Charter') represents a positive step forward for the protection of rights for Aboriginal and Torres Strait Islander young people. The Charter includes preambular recognition that human rights have a special importance for 'the Aboriginal people of Victoria, as descendants of Australia's first people, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and waters.'

VALS has urged the new Victorian State Government to fulfil responsibility to conduct review of the Charter in 2011 as provided for in section 44. This review will allow for discussion around the inclusion of the right to self-determination and Economic, Social and Cultural rights.

### Australian Human Rights Consultation

VALS and the Aboriginal and Torres Strait Islander Legal Services (ATSILS) participated in the Australian Human Rights Consultation in 2009. The report that followed recommended the government consider a Bill of rights for Australia. Government ignored this recommendation.<sup>14</sup> This submission also contains information around complaints against police including case study material relating to discrimination, including discrimination by police. Discriminatory practices by police continue for many reasons, one of which is an insufficient police complaints process that exists in Victoria.

### Juvenile Justice and Non-discrimination

VALS noted research being conducted by the Courts and Tribunals Unit, Department of Justice Victoria, concerning the Children's Koori Court (Family Division) Project. VALS suggests the taskforce contact the Courts and Tribunals Department for information on this project.

VALS also encouraged the taskforce to look at the importance of the Youth Referral and Independent Persons Program (YRIPP) in relation to the protection of children's and young people's rights. VALS is concerned about the erosion of the YRIPP program in Victoria due to ongoing funding uncertainty and the changes to stop and search laws in Victoria that bypass the procedure of an independent person's presence for children and young people in police care/custody for questioning.

VALS further noted that the Youth Parole Board (along with the Adult Parole Board) are exempt from the Victorian Charter. VALS is currently doing a review with the Aboriginal and Torres Strait Islander legal services (ATSILS) around natural justice, procedural fairness and parole boards. If research in this area continues in relation to child rights and the Victorian Charter, VALS will, subject to capacity, endeavour to submit this to the CROC in 2011.

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<sup>13</sup> [http://vals.org.au/static/files/assets/a0cf1eb0/CROC\\_for\\_website.pdf](http://vals.org.au/static/files/assets/a0cf1eb0/CROC_for_website.pdf)

<sup>14</sup> [http://vals.org.au/static/files/assets/8d4d74d0/ATSILS\\_National\\_HR\\_Submission\\_2009\\_Final.pdf](http://vals.org.au/static/files/assets/8d4d74d0/ATSILS_National_HR_Submission_2009_Final.pdf)

## Over-policing

Children and young people are unfairly discriminated against because of their age, status as children and young people, and by way of their lawful social practices and assembly, that is, their occupation of public space. VALS argues that this is compounded for some young members of Koori community who may occupy public space for uses that may be *perceived* as inappropriate. There is a failure to recognise public space as cultural space.

VALS' article submitted to the Indigenous Law Bulletin titled '*The Survival of Public Drunkenness Laws in Victoria*' appeared in May 2008 edition (volume 7, issue 5, page 19).<sup>15</sup> In a similar vein, VALS has written about Yarra City Council's Local Law No.8 which is another example of a problematic policing response to the consumption of liquor in public places.<sup>16</sup> This submission also relates to increased police powers that impinge on the ability of Aboriginal and Torres Strait Islander young peoples to occupy public space in a way that fulfils their rights of assembly and association. The *Evaluation Report of Local Law 8* by Turning Point Alcohol & Drug Centre is now available,<sup>17</sup> as is the City of Yarra's response to this above evaluation.<sup>18</sup>

VALS believes the graffiti, weapons and stop and search laws in Victoria discriminate and criminalise children in their use of public space and violate their human rights. VALS refers to the extensive work done in the sector by the Human Rights Law Resource Centre (HRLRC, now known as the Human Rights Law Centre (HRLC)), YouthLaw and others for expert reporting on these issues.

An attempt to provide a window on how the Police-Koori relationship operates was provided by a report titled *Kooris and Jungais* (2000).<sup>19</sup> Four main themes where perceptions vary between the two groups are highlighted in this report:

1. Police generally have very little understanding or appreciation of the historical role of the police in dealing with Aboriginal and Torres Strait Islander people;
2. Kooris perceive high contact levels with police as in part due to unfair police practices and the effects of colonialism while police perceive high crime rates to be due to Koori behavioural problems and poor family structure;
3. Kooris are frustrated at the alleged level of violence against them; and
4. Kooris perceive over policing in the context of racism while police believe that they use their powers fairly.

Significantly, "the increased contact with police by Indigenous people does not translate into increased representation in complaint data" and this is a large problem as in order to change police culture complaints need to be filed and followed through.<sup>20</sup> The Koori Complaints Report recorded that 103 Koori individuals lodged complaints in the 15 year period between 1991 and

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<sup>15</sup> [http://vals.org.au/static/files/assets/92cdd482/VALS\\_Indigenous\\_Law\\_Bulletin\\_article\\_May\\_08.pdf](http://vals.org.au/static/files/assets/92cdd482/VALS_Indigenous_Law_Bulletin_article_May_08.pdf)

<sup>16</sup> [http://vals.org.au/static/files/assets/ebf7704a/VALS\\_submission\\_re\\_Local\\_Law\\_8\\_170909.pdf](http://vals.org.au/static/files/assets/ebf7704a/VALS_submission_re_Local_Law_8_170909.pdf)

<sup>17</sup> <http://www.yarracity.vic.gov.au/DownloadDocument.ashx?DocumentID=2318>

<sup>18</sup> <http://www.yarracity.vic.gov.au/Your-Council/Meetings/DownloadDocument.ashx?DocumentID=2271>

<sup>19</sup> For a copy of this publication, please contact VALS Research Officer, Louise Hicks, 03 9419 3888, [lhicks@vals.org.au](mailto:lhicks@vals.org.au)

<sup>20</sup> Victoria Police & Department of Justice (2008) op cit, p.8.

2006. The largest number of allegations made by Kooris, (almost 40%) related to assaults by police at arrest, followed by racist language or abuse, failure to provide medical assistance and harassment. The only new type of complaint recently identified is the one involving the use of capsicum spray (OC).

The report makes a distinction between complaints of Kooris and the general public. The general public complain either about low-level issues police behaviour such as courtesy, or failures to provide proper service (duty failure) or very high-level accusations of criminal activity. The complaints 'made by Koori people are that they believe they are "over- policed" and are subjected to harassment in the form of constant scrutiny, checks, arrests and surveillance.'<sup>21</sup>

Now that Victoria has a *Charter of Human Rights and Responsibilities 2006*, Victoria Police has publically announced a commitment to the upholding of the rights found in the Charter. It is the job of the OPI to make sure that Victoria Police are observing the Charter. Hopkins argues that each of the reports made from people in Flemington and around Victoria are allegations of Charter violations and indicates that Victoria Police are not compliant with the Charter.<sup>22</sup>

#### Diversion & Cautioning

Research revealed discrimination in police cautioning of youth. Non-Aboriginal and Torres Strait Islander young people were being cautioned at a greater rate than Aboriginal and Torres Strait Islander people. VALS has developed a cautioning a diversion program in light of this finding. For details, see the 2008 *Police Cautioning and Youth Diversion Pilot Project: Final Pilot Evaluation Report* in Appendix A of VALS' CROC submission.<sup>23</sup>

#### Over-representation and deaths in custody

A recent publication from the Australian Institute of Criminology (AIC)<sup>24</sup> constitutes annual reporting of deaths in custody, covering deaths for the period 1980-2008. Relevant to Aboriginal and Torres Strait Islander young people, this report contains, amongst other things, the following:

- Aboriginal and Torres Strait Islander deaths in both prison and police custody have been generally decreasing in the last decade; however have been on the rise since 2006.
- Aboriginal and Torres Strait Islander peoples are significantly over-represented in all forms of custody compared with the non-Aboriginal and Torres Strait Islander population.
- Aboriginal and Torres Strait Islander peopled comprise less than 2.5% of the Australian population but account for one quarter (28%) of young people in juvenile detention.
- When hangings occur, young Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander prisoners are more likely to hang themselves than older prisoners.

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<sup>21</sup> Ibid, p.19.

<sup>22</sup> Hopkins T (2009) *An Effective System for Investigating Complaints Against Police: A study of human rights compliance in police complaint models in the US, Canada, UK, Northern Ireland and Australia* Melbourne: Victoria Law Foundation.

<sup>23</sup> [http://vals.org.au/static/files/assets/a0cf1eb0/CROC\\_for\\_website.pdf](http://vals.org.au/static/files/assets/a0cf1eb0/CROC_for_website.pdf)

<sup>24</sup> Lyneham M, Joudo Larsen J & Beacroft (2010) *Deaths in custody in Australia: National Deaths in Custody Program 2008: AIC Monitoring Report 10* Canberra: Australian Institute of Criminology.  
<http://www.aic.gov.au/documents/B/2/5/%7BBB25DD4D6-E0CF-4688-99CD-7A4EE3D149B2%7Dmr10.pdf>

- Greater proportions of Aboriginal and Torres Strait Islander prisoners die of natural cause at younger ages than non-Aboriginal and Torres Strait Islander prisoners. This is likely to be associated with the gap in health outcomes for the Aboriginal and Torres Strait Islander population generally.
- The above evidence indicates the need for continued efforts to 'close the gap' in Aboriginal and Torres Strait Islander disadvantage particularly with regard to contact with the criminal justice system.

#### Right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

Early in 2010, the Victorian Ombudsman received allegations from a whistleblower regarding serious misconduct of staff at the Melbourne Youth Justice Centre. The allegation related to staff:

- inciting assaults between detainees;
- assaulting detainees;
- restraining detainees with unnecessary force;
- supplying contraband to detainees, including tobacco, marijuana and lighters; and
- stealing goods and consumables.

The disclosure also included allegations relating to general mismanagement of the Justice Centre, overcrowding, poor adherence to operational procedures and an organisational culture that fostered unethical conduct.

During site visits, the Ombudsman officers observed many design features within the Youth Justice Precinct that did not appear suitable for a custodial environment for juveniles, including hanging points throughout the Precinct and land-fill which results in pieces of glass rising to the surface.

Safety and health concerns identified included:

- mouldy and dirty conditions;
- a high prevalence of communicable infections such as scabies, Staphylococcus Aureus and school sores;
- electrical hazards; and
- unhygienic conditions in food preparation areas.

Investigation also identified the following concerns:

- Overcrowding has resulted in mattresses being placed in isolation rooms with young people having to go to the toilet in buckets.
- The number of beds in the Precinct is not sufficient for the number of remanded or sentenced detainees that the Precinct is required to accommodate. As a result, undesirable mixing of detainees of widely varying ages and different legal status occurs.
- Remanded detainees are being placed in units with sentenced offenders which has presented a significant problem. Mixing of remanded and sentenced detainees of varying ages occurs despite section 22(2) and 23(1) of *the Victorian Charter of Human Rights and Responsibilities 2006* and section 482(1)(c) of the Children, Youth and Families Act (the Act).

Both the Charter of Human Rights and the Act discuss the separation of persons accused of an offence from persons convicted of an offence.

In the Ombudsman's view, the conditions of the Youth Justice Precinct in Victoria reflect little regard for human rights principles for children in custody.<sup>25</sup>

#### Children of imprisoned parents

VALS criminal and family law solicitors and Prisoner Support Officer witness the experience of parents and their children when a parent is imprisoned.

Case Study: access to incarcerated parent.

"Joel" is a male Aboriginal youth is removed from his mother's care and placed in a youth group home between the ages of 11-14 after unsuccessful foster care placement. Joel's father is in prison and Joel has no contact with his mother. Joel's father calls Joel regularly from prison.

In order for Joel to visit his father, the Department of Human Services (DHS) has to arrange a prison visit and a case worker has to ensure Joel is mentally prepared to see his father in a prison environment and cope with going to a prison himself. Both Joel and his father reportedly have a positive and calming effect on each other.

Joel is moved from one group home to another. Joel's father has no knowledge of where his son has gone and is unable to speak to Joel on the phone for 2 weeks. Unable to contact his son, Joel's father becomes increasingly agitated and displays aggression. As a result, Joel's father is moved to a higher security prison. As a result of this relocation, all links and support networks between the child, DHS caseworker and the prison need to be reconstructed and further delay Joel's access to his father. This is an extremely onerous task considering Joel's fathers poor literacy and subsequent trouble fulfilling the paperwork requirements to gain telephone and face-to-face contact with his son. This results in considerable time passing before Joel and his father can have visitation.

One VALS employee involved in this case expressed that Joel and his father better cope with their lives when in contact/company with each other. The difficulty of Joel to access time with his father made life extremely stressful for both parties. It a common perception that prison visits are the bottom of the priority list for DHS workers. This manifests in violations of the right of the child where Joel is deprived of family life through his only parent, his father.

### ***3. Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs in response to Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system.***<sup>26</sup>

The above submission relates to the preservation of identity by way of discussion concerning protective factors (as opposed to risk factors) relating to juvenile contact with the criminal justice system. The submission notes theories of crime prevention and intervention that resonate with Aboriginal and Torres Strait Islanders are those that emphasise building the capacity of protective

<sup>25</sup>[http://www.ombudsman.vic.gov.au/resources/documents/Investigation\\_into\\_conditions\\_at\\_the\\_Melbourne\\_Youth\\_Justice\\_Precinct\\_Oct\\_20101.pdf](http://www.ombudsman.vic.gov.au/resources/documents/Investigation_into_conditions_at_the_Melbourne_Youth_Justice_Precinct_Oct_20101.pdf)

<sup>26</sup>[http://vals.org.au/static/files/assets/2012a37c/High\\_Level\\_Indigenous\\_Juv\\_Crim\\_Justice\\_System\\_Final.pdf](http://vals.org.au/static/files/assets/2012a37c/High_Level_Indigenous_Juv_Crim_Justice_System_Final.pdf)

factors rather than addressing deficits role, importance of “relationship” and the theory of social capital.

The following strengths were identified by the Victorian Aboriginal Health Service Co-operative Limited’s *Strengths of Young Kooris* (2000). The Report contained information collected from focus groups, surveys and peer interviews with young Koori people and other community members.

1. Strong family links, including extended family;
2. Friends;
3. Connection with the Koori community and culture;
4. Sense of identity;
5. Aspirations;
6. Responsibility; and
7. Sport and creative activities.<sup>27</sup>

1, 2, 4 and 7 strongly resonate with preservation of identity rights for children and young people. This submission also deals with the following elements:

- Alcohol and substance abuse
- Health and justice authorities working together
- Ineffectiveness of alcohol free zones and examples of alternative best practice
- Arrest as a last resort
- Zero tolerance policing
- *Summary Offences and Control of Weapons Acts Amendment Act 2009 (Vic)*
- youth conferences
- Koori Court
- Cautioning
- Cultural appropriateness

#### **4. VACCA Forum Speech**

VALS also encourages the Panel to access a speech recently given at a Victorian Aboriginal Child Care Agency (VACCA) forum, delivered by VALS CEO, Wayne Muir. This will be uploaded to the ‘presentations’ section of our website in the near future.<sup>28</sup>

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<sup>27</sup> VIYAC (2006) Victorian Indigenous Youth Advisory Council (VIYAC) (2006) *Voices Telling It How It Is: Young Aboriginal Victorians on Culture, Identity and Racism* Melbourne: VIYAC and the Youth Affairs Council of Victoria, p. 46

<sup>28</sup> <http://vals.org.au/law-reform-and-policy-development/presentations>