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VALS submission to the Drugs and Crime Prevention Committee in response to the 'Inquiry into Strategies to prevent high volume offending by young people' Discussion Paper – sent 23 September 2008

VOICE OF INDIGENOUS AUSTRALIAN YOUTH	1
CONTEXT	1
Ongoing and growing	1
Data	2
Type of over-representation	3
Difference	4
RISK AND PROTECTIVE FACTORS	4
Risk	4
Protective	8
SUGGESTIONS	9
Post-colonial framework	9
Theory	9
Localised	10
Holistic	11
Protective factors	14
Relationship	14
Social capital	14
Culture	14
DIVERSIONARY STRATEGIES	15
Youth Conferences	16
Cautioning	17
Koorie Court	19
Principles	20
CONCLUSION	21
BIBLIOGRAPHY	23
APPENDIX A	26
APPENDIX B	28

INTRODUCTION

Thank you for the opportunity to comment on the “Inquiry into Strategies to prevent high volume offending by young people” Discussion Paper. VALS argues that the experience of the criminal justice system by Indigenous Australians is distinct, and for that reason programs should meet the specific needs of Indigenous Australian youth. VALS highlights the distinct characteristics of youth offending through statistics and a discussion of risk and protective factors.

VALS argues that Indigenous Australian specific responses to youth offending should include the voice of Indigenous Australian youth, be localised, holistic and based on protective factors.

VALS discussed the success of VALS’ Police Cautioning and Youth Diversion Program and suggests some principles for diversion. VALS argues any amended to the youth justice system should take into account the principles in the Charter of Human Rights and Responsibilities Act (2006) and the Declaration on the Rights of Indigenous Peoples.

VOICE OF INDIGENOUS AUSTRALIAN YOUTH

VALS is aware of the need to include the voice of Indigenous Australian youth in any discussion about high volume offending by young people. According to a survey of Indigenous Australian young people, the extent to which Indigenous Australian young people felt that their voice and input on issues and services was being listened by local Aboriginal or Torres Strait Islander community was 55% in the affirmative and 45% in the negative.¹ This survey sends a message to organisations such as VALS not to overlook Indigenous Australian youth, but it sends an even bigger message to the State Government. The survey results for State Governments hearing Indigenous Australian young peoples voice was: 19% in the affirmative and 81% in the negative.²

CONTEXT

VALS agrees with the quote that: *[t]he significant differences in offending related to age, gender, Indigenous status and location confirm the need for specific responses to particular groups of juveniles.*³ The specific nature of Indigenous Australian offending is outlined below. Indigenous Australian youth have a particular relationship with the criminal justice system that is ongoing and growing. Indigenous Australian youth enter the criminal justice system for a number of reasons, including: offence type, age when it was committed, intervention by the criminal justice system and re-offending patterns.

Ongoing and growing

Indigenous Australians have been over-represented in the criminal justice system over an extended period. Incarceration rates for Indigenous Australians continue to worsen more than 20 years after the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) began in October 1987.

Aboriginal and Torres Strait Islander peoples now make up 24% of the total prison population which is an increase from 14% in 1992. In a recent report it was commented that “[t]his statistic is staggering considering that Aboriginal and Torres Strait Islander peoples make up only 2.5% of the total Australian population”.⁴ The proportion of Indigenous Australians in prison in Victoria is 6%, and whilst this is the lowest rate in the country Indigenous Australians are still over-represented in the criminal justice system which is unacceptable.⁵

In Victoria, Indigenous Australian people aged 10–17 years represent a small proportion of the population, as it is only 1%. Indigenous Australian young people are nearly 14 times as likely to enter juvenile justice supervision as non-Indigenous young people.⁶ Only five per cent of Australians between the ages of 10 and 17 are Indigenous and they made up 36 per cent of those under supervision, either in detention or the community during 2006-2007. This means that “..on an average day, over a third of those in community-based supervision and nearly half of those in detention were Aboriginal and Torres Strait Islander young people”.⁷

The following statistic indicates the ongoing and growing nature of the over-representation of Indigenous Australian youth in the criminal justice system: during 2000–01 to 2004–05, the average daily number of Indigenous Australian young people in community supervision increased by 15%, which compares with the 5% decrease for non-Indigenous Australian young people.⁸

There is concern that this over-representation will continue to grow given the distinct age structure of the Indigenous Australian population and fears of what result, in terms of contact with the justice system, if their needs are not met. People over 15 comprise 61% of the total Indigenous population and 49% are under 15 years. This contrasts with 80% of the non-Indigenous Australian population being over 15 and 20% being under 15.⁹

Data

Improved data should be made publically available about youth offending for researchers, policymakers and practitioners. Data is useful as it is used as evidence in funding applications for proposals to address youth offending. The type of data that should be available should:

- Capture whether a person is of Aboriginal or Torres Strait Islander descent.
- Track the progression of offenders from juvenile to adult criminal courts whilst at the same time ensuring privacy of the individual.

VALS argues that the point made in the Discussion Paper about lack of cross-sector, or cross-jurisdictional databases, overlooks the simple fact that the one sector of the Courts has inappropriate data collection. VALS is often approached by various Government Departments for data and the reason given is that the Courts do not record the relevant information about Indigenous Australians. VALS’ funding is limited and we do not have the capacity to record information that the Government should be recording. Data requests are a drain on VALS’ resources.

VALS notes that there will always be problems with data, such as extent to which people identify as being of Aboriginal or Torres Strait Islander descent. However, as long as the shortcomings in the data are highlighted VALS has no issue when using data as a guide as it is better than nothing. Data should be clear and transparent. It should be clear whether it records offences or individuals.

Type of over-representation

There are multiple contributing factors to the over-representation of Indigenous Australians in the criminal justice system. The following distinct trends that increase the chances of Indigenous Australians entering, or re-entering the criminal justice system, should be targeted in a response to Indigenous Australian youth offending.

Earlier

Nationally Indigenous Australian young people experience their first juvenile justice supervision at an earlier age than non-Indigenous Australian young people. 56% of Indigenous young people were aged 14 years or less during their initial supervision compared with 29% of non-Indigenous Australia young people.¹⁰ Evidence exists that entering the justice system earlier increases the chance of further contact with the system.

Gender:

Indigenous young people under juvenile justice supervision include a greater proportion of females than non-Indigenous young people.¹¹

Shorter:

Indigenous Australian young people tend to complete shorter supervision periods than those of non-Indigenous young people.¹² Nearly one-quarter (24%) of Indigenous prisoners at 30 June 2007 had an aggregate sentence of under 12 months, while nearly half (48%) had an aggregate sentence under two years (ABS 2007). In comparison, only 14 percent of non-Indigenous prisoners had been sentenced to less than 12 months and just under one-third (30%) to under 12 months.¹³

Cycle:

“In 2004–05 Aboriginal and Torres Strait Islander young people had a higher proportion of two or more supervision periods during the year than non-Indigenous young people. Around 22% of Aboriginal and Torres Strait Islander young people completed two or more supervision periods during the year, compared with around 15% of non-Indigenous young people.”¹⁴ Indigenous offenders are readmitted to prison sooner and more frequently than non-Indigenous offenders. Indigenous prisoners are nearly twice as likely to have been readmitted to prison within two years than non-Indigenous Australians.¹⁵

Not community based:

In 2004–2005 a lower proportion of the supervision periods of Aboriginal and Torres Strait Islander young people contained episodes of community-based supervision, and a higher proportion contained episodes of detention, than comparable supervision periods of non-Indigenous young people.¹⁶ “In 2004–05, 51% of supervision periods of Indigenous young people contained sentenced community-based supervision compared with around 57% for non-Indigenous young people. Percentages will not add to 100% because each supervision period may contain more than one type of episode”.¹⁷

Remand: In the June quarter of 2005 the remand rate for Indigenous Victorians was approximately 15 times higher than for non-Indigenous Victorians.¹⁸

Difference

Indigenous Australian’s distinct experience of the criminal justice system may be one factor why an early offender who is an Indigenous Australian continues to offend, whereas a non-Indigenous Australian does not.

Indigenous Australians have a particular relationship with police and Courts which is often poor and results in cultural alienation. This is discussed further in the section below on a post-colonial paradigm.

The point can be illustrated by evidence that police use their discretion to arrest rather than caution Indigenous Australian youth in comparison to non-Indigenous Australian youth (see cautioning below). Arguably, underlying racism influences the actions of police to arrest more Indigenous Australians than non-Indigenous Australians. According to a VALS’ Client Service Officer “[f]or some reason the police and the wider community equate blackness with trouble. Because of been over-policed Koori children use up their ‘out of jail cards’ and compile a lengthy juvenile record early in their teens. Every Koori child between 10 and 18 I know of has had a negative experience with the police in Swan Hill”.

RISK AND PROTECTIVE FACTORS

Risk

The RCIAIDC report states: *the underlying issues of racism, education, employment and economic status, housing, families and children, health and well-being, alcohol and other substances, community capacity, land needs and cultural survival, and reconciliation all continue to negatively contribute to Indigenous contact with the juvenile and criminal justice systems.*¹⁹

The above list constitutes risks factors for the Indigenous Australian community entering the criminal justice system. The fact that some RCIADIC recommendations have been fully implemented, but others have only been partially implemented, or no progress has been made at all, contributes to the continued risk of imprisonment of Indigenous Australians. Risk factors can operate at individual, parental, family, community and service delivery levels.

The Charter of Human Rights and Responsibilities Act (2006) and the Declaration on the Rights of Indigenous Peoples contain human rights principles which are essential to addressing the underlying causes of the over-representation of Indigenous Australians in the criminal justice system.

According to Willis and Moore “[t]he issues and needs that characterise the lives of many Indigenous people, and contribute to their offending behaviour, also create barriers for Indigenous offenders trying to reintegrate into society and establish lives free from offending”.²⁰ VALS is aware that offending and repeat offending is attributable to multiple contributory factors. Evidence for this argument is in the links outlined below:

- In 2002 maltreated Indigenous Australian children were 4.3 times more likely to subsequently offend than non-Indigenous Australian children.²¹ Indigenous children are 11 times more likely to be placed in out-of-home care.”²²
- Low birth weight is a risk factor with a long reaching impact on school readiness, transition and academic achievement (Huffman et al, 2001).²³
- 47 per cent of Indigenous children live in households with an unemployed single parent and 42 per cent had no employed adult living with them (Daly and Smith, 2005: 46-7). Unemployment and welfare dependency are symbiotic with poverty and stress and may contribute to the high rates of mental health.²⁴

A VIYAC study found the following as issues affecting Aboriginal and Torres Strait Islander young people.

1. Addictions and Substance Abuse;
2. Crime and Justice;
3. Education;
4. Home environment/family;(including physical, emotional and mental well-Being);
5. Health and Well-Being;
6. Cultural Identity;
7. Youth are confused by life;
8. Employment;
9. Nothing to Do;
10. Young Girls Having Babies;
11. Getting Young Aboriginal People off the Street;
12. Community;
13. Bad Influences;
14. Poverty;
15. Having a Say.²⁵

Point 6 above is further extrapolated by a young Indigenous Australian women who took part in the survey (21 year old Kurnai woman): “I guess at times it can be pretty negative, the broader society’s expectations - and I’ve heard this said by many people. This can be a huge weight for Koorie youth to carry. If we don’t have the support around us it can play a huge impact on our identity. If you have people thinking and telling you that you’re something negative, it’s hard to break free from that cycle.”²⁶

Also the YIYAC Report highlights that 68% of young people surveyed felt that there are not adequate programs and services aimed at improving or promoting positive lifestyle choices for Aboriginal and Torres Strait Islander young people.²⁷

The YACVIC Report contains Indigenous Australian youth perspective on culture which highlights the risks that exist if connection to culture is broken. According to a 24 year old Yorta Yorta man:

- “Without our culture we have nothing. Our value is our identity. It’s who we are and what we are. I can’t stress that enough. Without something to put your faith in or to put your value on, you pretty much stand out there on your own.”²⁸
- “Culture is the reason I work so hard, I work to make myself, my family, my Elders and my community proud. I’m very, very proud of my community, I’m very proud of my culture.... I am also very proud of the mistakes that my community has made. You have to struggle through in the dark sometimes before you can find the light switch and, as a broader culture, the Aboriginal people are looking for that light switch, and we’re getting closer. Accepting my culture and living my culture and breathing my culture, and being my culture, as it’s strengthened me to make choices that I’ve had to have and make sacrifices that I’ve had to make along the way”.²⁹

Other sources about risk factors relating to culture, external to the VACVIC report, are:

- Elders, some of whom say that youth are losing their respect for Elders;
- ATSISS 2002 survey which found in exploring 15-24 year old Indigenous young people’s connection to family and culture in Victoria, few identified with a clan, tribal or language group (40.1%) or currently lived in their homelands or traditional country (12.8%).³⁰

Some other factors that VALS is aware of that have been outlined above are:

- Tough on crime trend;
- Systemic/institutional discrimination;
- Poor Koori police relations.

Another factor that is expressed well below is:

- **Trauma:** The intergenerational nature of trauma is apparent through the following: 46 per cent of Indigenous Victorians said they or a relative had been removed. Of those aged 35 years and over, 16 per cent said they themselves had been removed according to the ABS National Aboriginal and Torres Strait Islander Social Survey (2002a).³¹ One response to trauma is anger and violence, which occurs for Indigenous offenders in a culturally meaningful way. As noted in Willis and Moore Daly argues that “[f]or Indigenous offenders, anger was experienced in the context of pervasive community violence and it was often seen as being intergenerational, passed down through communities and families” They continue:
- “..anger among Indigenous offenders was also experienced alongside feelings of powerlessness linked to family trauma and witnessing violence at an early age”.

- "...discrimination and loss, both at a personal level and at an institutionalised level linked to intervention by family and community services bodies, were major triggers for anger and violence.³²
- **Cautioning:** Indigenous Australians are less likely to be cautioned than non-Indigenous Australians (see below). One reason for the success of VALS' Cautioning Pilot Project is that it attempts to address risk factors (see below).
- **Economic disadvantage:** Only 12 per cent of adult Indigenous Victorians report fully owning their own home without a mortgage, compared to 41 per cent of non-Indigenous people.³³ 'Victoria had the largest difference between Indigenous and non-Indigenous rates of homelessness, with the rate of Indigenous homelessness more than five times the rate for non-Indigenous people' Figures show a disproportionately high level of homelessness within the Victorian Indigenous community, making up 5% of SAAP clients in 2003-04, but only 0.5% of the general population.³⁴
- **Unemployment:** The unemployment rate of Victorian Aboriginal and Torres Strait Islander young people was 26.4%, more than double that of overall Victorian young people at 12.8%.³⁵
- **Stressors:** A West Australian study on Aboriginal health and wellbeing found that a typical family with indigenous children had in the past year experienced seven of the 14 recognised "major stress events", which include a death in the family, violence, a close family member's drug or alcohol problem, a close family member going to prison, a close relative losing their job or being admitted to hospital, a family breakup or financial difficulty.³⁶
- **Schooling and education:** The school retention rate of Indigenous Victorians to Year 10 is 81.1%, compared to 97.5% for all Victorians, and drops markedly in the senior years to 36.5% for retention to Year 12, compared to 81.4% for all Victorians. The level of attainment of a Year 12 certificate for Indigenous Victorians was almost half that of the non-Indigenous population at 44.6%, compared to 82.7%.²² (The Victorian Government Indigenous Affairs Report July 2004 – June 2005.)³⁷

**Daily Average Number of Prisoners in Victoria
- Highest Education Completed, Corrections Victoria**

2006-7	Indigenous Australian	Non-Indigenous Australian
No Formal Schooling	0	6
Part Primary	4	28
Completed Primary	12	80
Part Secondary	192	3,183
Completed Secondary	6	200
Technical/Trade/Apprenticeship	0	2
Tertiary	0	103
Unknown	7	123

- **General and mental health issues:** Babies of Aboriginal mothers are more at risk of perinatal death (stillbirths and neonatal deaths) than babies born of non-Indigenous mothers. In addition, the proportion of Aboriginal low birth weight babies (born at less than 2500 grams) has increased from 11 per cent in 1996 to 15 per cent in 2002, compared to a relatively stable 6-7 per cent for non-Aboriginal babies.³⁸ Racism towards indigenous people undermines their health, a new paper says. Studies show that three out of four Aborigines experience racism in everyday life, and that racist experiences are associated with depression, psychological distress and substance abuse.³⁹
- **Alcohol and other drug abuse:** In 2001 57.1% of Indigenous Australians reported ever using illicit drugs, whereas 37.7% of non-Indigenous Australians reported this.⁴⁰

Protective

Indigenous Australian communities should define their own strengths.⁴¹ The following strengths were identified by the Victorian Aboriginal Health Service in 2000 (*Strengths of Young Kooris*). The Report contained information collected from focus groups, surveys and peer interviews with Koorie young people and other community members.

1. Strong family links, including extended family;
2. Friends;
3. Connection with the Koorie community and culture;
4. Sense of identity;
5. Aspirations;
6. Responsibility;
7. Sport and creative activities.⁴²

The Report drew an interesting comparison between the experiences of Koorie and non-Koorie young people when it comes to cross-generational relationships within family and community networks. The Report notes “spending most time with people of the same age is a characteristic of adolescence in Western society. Aboriginal young people tend to spend time with a wider range of age groups”. The Report acknowledged the special importance of the cross-generational relationship between Elders and young people: “Respect for Elders, and listening to the stories of Elders, is an important source of strength and learning for young Kooris”.

The young people in the survey reported that “they are stronger when they know who their family is, who their community is, and where their country is”.⁴³ Also, having responsibilities within the community was viewed as a protective factor that helped young Koories to develop skills and knowledge: “Koorie young people do tend to grow up more quickly than non-Aboriginal kids, and are given responsibility at an earlier age.”⁴⁴

Other protective factors are

- Self determination.

SUGGESTIONS

Post-colonial framework

It is smart to have a post-colonial framework when analysing the over-representation of Indigenous Australians in the criminal justice system and attempting to find solutions. A post-colonial theory confronts a colonizer's reading of history.⁴⁵ Neo-colonialism is "...a re-inscription of colonization practices in contemporary society". Boersig argues that "...a post-colonialist paradigm is crucial to both understanding contemporary society and plotting change to neo-colonial structures and systems".

A post-colonial reading of the over-representation of Indigenous Australians sees that the State as failing to "address the fundamental socially-based flaws that arise from marginalization and exclusion from power".⁴⁶ As a result the Court becomes the inter-racial site of conflict and rationalisation and an example of this is the result of legislation regulating public drunkenness. Whilst the legislation is not directly discriminatory, in practice the laws have more of an impact on Indigenous Australians than non-Indigenous Australians.

In the RCIADIC of 1991 drunkenness cases made up 57% of the Aboriginal custodies compared with 27% of non-Aboriginal custodies.⁴⁷ Words that are used to describe this occurrence: indirect discrimination or structural/institutional or systemic discrimination.

According to a VALS placement student studying alternative dispute resolution "[...]by locking out Indigenous Australian involvement from the development of policies and laws, and the subsequent locking up of Indigenous Australians in our prisons, our traditional Westminster legal system has played and continues to play a great role in locking in repressive outcomes".⁴⁸ He concludes that "Indigenous Australian inclusive alternatives to this system are therefore needed if we are to move towards achieving equitable results" (Behrendt 1995). Indigenous Australians should have input in such alternatives as Indigenous Australian's drive to self-determination is capable of effecting the change needed to neo-colonial structures.⁴⁹

Theory

It is the experience of VALS in a post-colonial context that explaining the Indigenous Australian perspective in order to prompt change is hindered by barriers. According to Matthews restrictive criminological theoretical views "add barriers to the creation of comprehensive crime prevention strategies".⁵⁰

VALS is concerned that theoretical understanding of criminal and antisocial behaviour that inform policy development and practice privilege subjective

perceptions of youth as anti-social and criminalise Aboriginality. VALS argues that theories that lead to punitiveness as an end in itself are counterproductive. VALS argues that theories in explaining youth offending and interventions based on developmental theories address the risk factors that are arguably associated with or lead to youth involvement in crime.

Additional barriers to achieving the changed outlined above are: cultural difference, fear, urgency, individualism, and the need to being seen to be doing something. It is a tactic of VALS to attempt to overcome these barriers by explaining things in a way that non-Indigenous Australians are most likely to understand and this involves identifying common ground in theories that tend to be of the less restrictive type (ie therapeutic jurisprudence and restorative justice).

This means using non-Indigenous Australian concepts that contain similarities with Indigenous Australian concepts and then highlighting specifics of these concepts that relate to Indigenous Australians. Outlined below are some concepts that have received some acceptance in non-Indigenous Australian circles that resonate with Indigenous Australians.

Localised

Theories of crime prevention and intervention that resonate with Indigenous Australians are those that acknowledge the need for localised actions. In a discussion of crime prevention Kidd goes as far as to say that for Indigenous Australians there is even more of a need to keep crime prevention planning local.⁵¹ Particular to Indigenous Australians is their status as First Peoples of the country so their perspective should be sought in crime prevention and intervention.

Also, given Indigenous Australians have a particular relationship with the criminal justice system it makes sense for those who have first hand knowledge of a problem are involved in its solution. Indigenous Australians stress that each Indigenous Australian community is distinct and that what may work for one community, may not necessarily work for the other.

When given the opportunity to provide input on criminal offending some Indigenous Australian youth identified the following as potential solutions:

- Camps for leadership;
- Coming together with youth to find the activities they like doing.;
- Cultural youth camps;
- Decrease amount of drugs and alcohol in the community;
- Discos;
- Employment;
- Encourage to play sport;
- Equipment to keep kids occupied;
- Fitness days;
- More Indigenous role models –not only famous but those who are local too;
- Offender programs to build skills for workforce;
- Older people setting good example;
- Police visits to schools;

- Police to encourage youth.⁵²

The benefit of Indigenous Australian input in a program is that is more likely to be culturally appropriate and Indigenous Australians can help others gain cultural competency. There is need for cultural appropriateness otherwise an intervention runs the risk of being counterproductive. This sentiment is reflected in the following: *“It is tragic watching combating and competing adult helpers replicate, at a systemic level, many of the same dis-empowering and dysfunctional patterns of relationship and communication troubled youth experience in their families of origin. How is healing and wellness to be achieved in our young when the adults around them are broken and mean in spirit?”*⁵³ VALS does not agree with Martinson that the best approach is not to do anything as holistic assistance is required as outlined below. However, if the assistance is not culturally appropriate then it is the equivalent of doing nothing.

Please see discussion of Koori Court and VALS Police Cautioning and Youth Diversion Program below which are examples of localised approaches that sought Indigenous Australian input and the beginning of the project and during the implementation stage..

Holistic

Theories of crime prevention and intervention that resonate with Indigenous Australians are holistic approaches that do not just focus on punishment, but also addressing the underlying issues for offending (ie: risk factors addressed). An example is therapeutic jurisprudence which contains a transformational paradigm.

The barriers to achieving a holistic response are multiple: subjugated knowledge that privileges a tough on crime sentiment as opposed to a smart on crime sentiment, emphasis on individual over the collective, operating in silos and limited resources for a comprehensive approach.

Whilst Indigenous Australians have an Aboriginal Justice Agreement (phases 1 and 2 in 2000 and 2006 respectively) technicalities in funding make it difficult to seek dollars allocated by the Government for justice issues to address underlying issues, such as health. The value of a holistic approach or not just concentrating on the justice system is apparent in finding of the Institute of Health and Welfare and the Australasian Juvenile Justice Report.

In South Australia there was a reduction in Indigenous Australian youth in detention (250 less than in 2003-2004). According to SA Attorney-General Michael Atkinson “.. it is partly a result of Monsignor David Cappo's To Break the Cycle report. We're carrying out more of his recommendations, including hiring three Tirkandi school retention officers," Their job is to get Aboriginal Australian children out of bed in the morning, get breakfast into them and get them to school.⁵⁴

It is of note that the Discussion Paper commences with a discussion of the high cost of crime to the Australian community (\$35.8 billion in 2008).⁵⁵ VALS argues that this amount of money can be more effectively spent by focusing on prevention and early

intervention. VALS is aware of a trend whereby if the cost saving potential of a proposal is outlined to a funder then the chances of the proposal being adopted increase. Research indicates that significant long term benefits (particularly financial) will accrue from effective developmental and early intervention programs (AIC, 2003a, p1).⁵⁶

A long term follow up evaluation of the 1960s Perry Preschool Project in the US found that the program had produced a saving to the community of \$13 for every dollar invested (Schweinhart 2004). The demonstrated savings produced by these programs are numerous and include:

- reductions in welfare assistance
- decreased need for special education
- increases in income tax revenue from the higher wages of participants (due to improved educational attainment)
- reduced operational costs to the criminal justice system
- reduced costs to victims (Homel et al. 2006).⁵⁷

Proponents of a smart on crime approach acknowledge that: punishment is not an end in itself, but an angry and fearful public is not easily convinced of this fact. According to Matthews “[w]hen government takes the time to help adults understand that youth crime can be reduced and community safety improved substantially by rehabilitating young offenders, they are more likely to embrace this paradigm.”⁵⁸

Also, “a response from a position of fear is often costly, only have short term impact and “are usually ineffective because they fail to address the underlying causes of the problem” Matthews makes the challenge of taking shame and blame out of the equation in order to “open up to the possibility of taking a wider view of the problematic issue at hand.”⁵⁹

The table below highlights the difference between a criminal justice and restorative justice approach and the value of the latter.⁶⁰

CRIMINAL JUSTICE APPROACH	RESTORATIVE JUSTICE APPROACH
Crime is a legal or police matter	Crime is a whole school matter
Proceedings are impersonal	Proceedings include all persons involved
Resolutions utilize artificial supports	Resolutions utilize natural supports
Victim is excluded from resolution of matter	Victim is central to resolution of matter
Promotes victim helplessness	Promotes victim empowerment
Reinforces risk in perpetrator	Promotes resilience in perpetrator
Focus is on individual perpetrator	Focus is on context of behaviour
Ends are toward blaming, shaming, labeling	Ends are toward problem-solving
Adversarial nature of fault finding encourages denial and minimization	Encourages taking responsibility for actions and restoring harmony to relationships
Punishment focus	Supportive, rehabilitative focus
Is about revenge, banishment	Is about community building, inclusion
Marginalizes perpetrator in school and community environment	Enables capacity of perpetrator to contribute positively to the school environment
Relies on uniform, cookie-cutter responses	Uses localized and creative responses
Feeds fear	Creates hope

The notion that anything less than a punitive approach is a soft option is undermined by a survey of victims of non-violent crime which found seven out of ten victims want to see more treatment programmes in the community for offenders suffering from mental health problems, and for drug addicts, to tackle the causes of non-violent crime. Among the key findings from the poll were:

- two-thirds (62%) of victims think that going to prison does not prevent re-offending. more than half (54%) were in favour of making offenders work in the community - in schools, old people's homes or parks - to stop them returning to crime
- 51% of victims were also in support of making offenders meet their victims to make amends personally.⁶¹

Mental health is a good example to demonstrate the notion of what 'holistic' means in the eyes of the Indigenous Australian community. The phrase 'Aboriginal prisoner health' is used here to mean much more than simply a biomedical model of health: it also includes the social, emotional and spiritual wellbeing.⁶²

According to the 'Bringing Them Home Report' Aboriginal health is a holistic practice and can not be divorced from culture. It takes in many issues not usually associated with mental health and for Aborigines must be part of primary (preventative) health care run by Aborigines (1997:396 rec 33 a,b,c).⁶³

The holistic concept of health is expressed by Foster: "Within the Aboriginal health service, there is a much more holistic view of health, not like the western idea where you have a hospital for babies, a hospital for surgery, a building for mental health, a church for your spirituality, and never those things will meet - in Aboriginal culture, those aspects are tied into one," she said. "In the mainstream mental health service, there is a fascination with categorising people and putting a label on an illness - but that doesn't exist in Aboriginal culture, and people are able to see Aboriginal health workers for things that are unaccounted for in the mainstream."⁶⁴

The failure of the western mental health system to take a holistic approach results in failings, such as incorrect diagnosis, ignoring of social, historical and cultural aspects, including resilience via a negative, 'deficit' approach, separating mental health from overall health and lack of fit with Koori understandings. McDermott argues a post-colonial arguments of re-conceptualising mental health as *social, spiritual and emotional well-being* which involves identifying the clinical as positive and mandates organisational change.

According to McDermott cultural safety or security is affected by the relative *presence* or relative *absence* of Indigenous culture in the life of the nation.⁶⁵ Economic rationalism, by seeking efficiency and uniformity at the expense of cultural sensitivity has impacted on Aboriginal well being.⁶⁶ Economic rationalisation and main streaming promotes "efficiency and market force" as ends in themselves, whereas Aboriginal mental health is based on acknowledgment of Dreamtime, and suicide prevention and the reduction of depression as ends in themselves.

A discussion of the value of a holistic approach that goes beyond the individual to the communal is discussed below.

Protective factors

Theories of crime prevention and intervention that resonate with Indigenous Australians are those that emphasise building the capacity of protective factors rather than addressing deficits role, importance of “relationship” and the theory of social capital.

Relationship

According to Matthews “to a developing youth, especially one who is socially marginalized, a positive, supportive relationship can make all the difference between success and failure in terms of rehabilitation.”⁶⁷ It is VALS experience that conventional correctional treatment for young people downplays these things. However, more current treatments, such as group conferencing, capitalise on relationships. It is significant that Group Conferencing originated from the Maori people of New Zealand. Whilst Indigenous Australian culture is distinct to that of Maori culture, to generalise, the value placed on kinship connections and communal approaches over individual approaches, resonates with Indigenous Australian culture.

Social capital

According to Matthews “social capital is the cornerstone of effective crime prevention”.⁶⁸ Social capital is a “protective network of supportive relationships among children, parents, families, social institutions and all community members.” When strong and working effectively, social capital helps improve the ability of a community to meet the material, emotional, physical, mental, and spiritual needs of its members.

Communities with strong social capital help reduce risk factors, isolation, and vulnerability in children and families. Social structures that engender community safety, trust, reciprocity, and inclusion, cultural traditions, practices and the networks also comprise part of social capital.⁶⁹ Social capital is linked to self-determination.

Culture

Following along the theories of social capital, and culture being a part of social capital, correctional research indicates that cultural content is crucial to the success of Indigenous correctional programming.

For instance, a Canadian study examined recidivism and responses to blended treatment (traditional healing tempered by contemporary approaches) among Aboriginal and non-Aboriginal Canadian sex offenders residing in the community (Ellerby & MacPherson 2002). They found that the lower rates of treatment completion initially found within the Aboriginal offender sample disappeared once culturally relevant programs became available.

The Aboriginal offenders who received the blended treatment also had significantly lower recidivism rates than Aboriginal matched controls.⁷⁰

The interviewees involved in the research identified the following elements of the program as Indigenous Australian specific:

- having mostly Indigenous specific participants;
- incorporating Indigenous community issues ;
- using Indigenous facilitators;
- having elders involved in program delivery.⁷¹

The inclusion of Indigenous people within the treatment process could enhance the perceived legitimacy of the intervention and subsequently the offenders' responsiveness to the content.

The importance of culture and how to use it as a protective factor by strengthening comes from the voice of Indigenous Australian youth:

- **24 year old Yorta Yorta man:** "My connection to culture could be strengthened, definitely. For me to be able to portray an image to my youth and to instil that cultural identity in them, I need to learn it myself, and unfortunately it's fairly difficult to learn in a culture that's systematically been raped and taken away from us. ...There's a lot of great work going on out there as well - don't get me wrong - about, you know, trying to reclaim our culture and integrate it back into what is now our mainstream or more broader culture. If there was, you know, a little bit more commitment from various outsourced agents as far as making sure that those programs continue to run, it might not be able to, in my lifetime, strengthen my culture or my connection to my culture, but definitely my child and my grandchildren would benefit greatly from that."⁷²
- **21 year old Arrernte woman:** "I believe the Indigenous culture can be strengthened using the culture's two greatest assets - the Elders and the youth. All it takes is for one young person to ask an Elder a question regarding the Indigenous culture. By listening to the responses of Elders, one young person can take that Elder's story and share it with another young person. Young people, however, must have the desire to listen and learn and, more importantly, have patience."⁷³

Some specific recommendations from recent reports that relate to culture are at Appendix A:

DIVERSIONARY STRATEGIES

Diversionary strategies are positive because they:

- Create opportunities for the offender to have less involvement with the justice system;
- Encourage the offender to take responsibility for the offences;
- Enable the victim to understand the offender, express hurt and influence the way the offence is dealt with; and

- Increase resolution of disputes within the community without Government intervention.

Youth Conferences

VALS supports group conferencing and is encouraged by the following statistics which indicate the success of group conferencing in terms of recidivism rates of Indigenous Australians:

- Aboriginal juveniles attending conferences appeared to have a lower risk of reoffending than those Aborigines attending court¹
- “Within 500 days of their first apprehension half of the Indigenous juveniles who had a court appearance would not have reoffended, compared with two-thirds (67%) of Indigenous juveniles who received a diversion.² At end of the five year period, only one-third (34%) of Indigenous juveniles who had been to court would not have reoffended, compared with 44 percent of those who had been diverted”.³

However, recidivism should not be the only measure of success of group conferencing and VALS has concerns about access to group conferencing by Indigenous Australians. VALS is concerned that in practice the extent to which Indigenous Australian benefit from the program is lower than it should be.

The cause of this may be attributable to:

- Basing the program in the Criminal Justice system which means police have the power to veto people entering the program. Police as gate keepers tend to emphasise the ‘no prior convictions’ eligibility requirement for diversion, and this is arguably a bigger impediment to Indigenous Australians than non Indigenous Australians who experience poor relations with police (ie: systemic discrimination).
- The conferencing model can place too much emphasis on the offender/victim relationship. It would be better to involve a wider group which would place major emphasis on ensuring the offender was diverted into positive community activities and was dealt with by his/her community. The need to strengthen the family group, given the level of disadvantage and dysfunction in the Indigenous Australian community, should not be overlooked.
- Koori youth are likely to be isolated without supports if their families are not local to a conference.

¹ Luke and B Lind, ‘Reducing Juvenile Crime: Conferencing versus Court’ (2002) *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research, No 69, p 1 at 3

² Cunningham Teresa ‘Pre-court diversion in the Northern Territory: impact on juvenile reoffending’

AIC, issue 339 June 2007, page 4

³ Op cit page 5

- There are no Indigenous Australian conveners in Victoria as far as VALS is aware.
- Group conferencing has the potential to stigmatise Indigenous families as being uncaring, incompetent, failures, etc.⁴
- The fact that group conferencing is assumed to be accessible to Indigenous Australians because it has its roots in New Zealand Maori culture. According to Loretta Kelly "...a conferencing process based on Maori traditions will not necessarily be effective in the Indigenous Australian context".⁵

Cautioning

From July 2000 to June 2001, the level of under utilisation of cautioning of Indigenous Australian young people was in the order of 10-15% when you focus on people who have had no prior police contact.⁶

- the offence of bicycle theft resulted in the cautioning of 6.7% of Indigenous Australian juveniles compared to 22.6% of non-Indigenous juveniles;
- the offence of regulated public order resulted in the cautioning of 10.5% of Indigenous Australian juveniles compared to 30.7% of non-Indigenous juveniles;
- the overall cautioning rate for Indigenous Australian juveniles was 13.3% compared to 30.8% of non-Indigenous juveniles".⁷

The trend outlined above in cautioning of Indigenous Australian youth is part of the *amplification process* that Indigenous Australians experience throughout the justice system. If Indigenous Australian youth are not being equally cautioned this has a carry through affect that escalates outcomes for Indigenous Australians further along the justice system. In response to the trend outlined above VALS appointed a Project Officer to implement the Police Cautioning and Youth Division Pilot. The Pilot was developed in consultation with relevant parties (ie: Government, Police, Aboriginal people, youth, and workers involved with youth). The pilot commenced in March 2007, has been evaluated and deemed successful. VALS is currently employing a Project Officer to implement the Police Cautioning and Youth Diversion Program. The Program is being rolled out to 6 other locations.

The Program contains a caution and follow-up component. The protocol that originated from the pilot is documented at Police Cautioning Program [Victoria Police

⁴ Kelly Loretta, Oxley Elvina 'A Dingo in Sheep's Clothing? The Rhetoric of Youth Justice Conferencing and the Indigenous Reality', Indigenous Law Bulletin 12,1999 as at <http://www.austlii.edu.au/au/journals/ILB/1999/12.html>

⁵Ibid

⁶ Victorian Aboriginal Legal Service, 'Police Cautioning of Indigenous Juvenile Offenders in Victoria' 2003.

⁷ ibid

Caution

- Police give a caution whenever appropriate (ie: admit offence, no more than third offence, consent of accused/parent).
- If Police do not give a caution they must complete a 'Failure to Caution Form' which provides a reason why no caution was given and this reason is reviewed to determine if it is appropriate.
- Police attempt to locate the parent or guardian to be present at the caution. This may require postponing the caution until the parent or guardian is available. Alternatively the Youth Resource Officer at the police station may choose another family member or respected Aboriginal community member to stand in for the parent or guardian.
- Police should consult with the local Koori Justice workers as to the most effective way to deliver a caution.
- The caution will be delivered by an elected Police Officer who is of high ranking to ensure consistency in the cautioning process.
- The following people should be present at the caution, and provided notice, or if not possible told that a caution has been given: Youth Resource Officer who reviews the caution, parent or guardian, support people, elected members of the community, justice worker and VALS Client Service Officer.
- The Youth Resource Officer (and possibly justice worker) creates a 'Background File' which contains information about the accused gathered at the caution (ie: factors involved in the offence such as alcohol and other factors such as whether the youth lives at home). A joint discussion occurs between the parties at the caution about who the youth should be referred to and whether a mentor is appropriate.
- A caution should take place at a neutral location, or where necessary, a less 'formal' room within the Police Station.

Follow-Up

- A follow up meeting occurs 2-6 weeks after the caution. The meeting will be held with the offender, police representative, family or community member, Koori Educator and any other individual who has since been involved with the offender. The purpose of this meeting is to 'check-in' on the progress of the offender since receiving the caution. The follow up process can continue for up to 3 months.

The success of the Program is the cultural input it facilitates to enable Indigenous Australians to access diversion and ensure the accessed diversion program is successful. The Program contains several strategies for improving diversion which are broader than simply increasing the cautioning rate. It involves improving the effectiveness of cautioning. The Program identifies any obstacles to cautions operating successfully to divert a young people from offending. The Program involves identifying people who could explain to young people the effect of a caution in a culturally appropriate way.

The evaluation of the Pilot in quantitative terms is that 94% of individuals do not re-offend after completing the Follow-Up program. The qualitative value of the Pilot is apparent in the following case study and more information is available at Appendix B which contains the evaluation of the Pilot.

Case Study 1: After School Activities

Area of Referral:	EDUCATION	
Gender: M	Age: 12	Offence: Handle Stolen Goods
<p>Referral Description: Post-caution meeting indicated that lack of school attendance and boredom were factors in initial offending. Subsequently attendance was arranged for the school-based activity program and involving extracurricular activities. This also included involvement with an after school program run by a Koori Educator.</p> <p>Follow-Up: Programs are to run for the remainder of the school year. Additionally, three subsequent meetings were held with youth, mother, YRO and ACLO to asses progress. An additional meeting was held with the Vice-Principal regarding reintegration into school.</p> <p>Comments: Mother and Vice-Principal report ‘easier and more structured’ integration into school. Youth reports subsequently avoiding criminal activity when the opportunity was presented. Mother, YRO and ACLO note that the Youth has had no further contact with the Police and a more positive experience with school.</p>		

Koorie Court

Recidivist studies are useful in developing policy and practice. The extent to which recidivism research informs policy and practice is apparent in the example of the Koori Court. One contributing factor to the roll out of the Koori Courts is the reduction of offending. A 2005 review of the Koori Courts in Victoria found they had been very successful in reducing repeat offenders, with recidivism rates of 12.5% and 15.5% compared to the general Koori rate of 29.4%. There are seven Koori Courts throughout the State, two of them are for children.

Victoria will be introducing County Koori Court. However, caution should be exercised in placing too much emphasis on recidivism as has been identified through a recent review of circle sentencing in NSW.⁸

Principles

VALS supports the development of diversion programs as a means of increasing the flexibility, effectiveness and meaningfulness of the justice system. Gate keeping of diversion programs should avoid cultural stereotyping or culturally inappropriate policies. Listed below are some principles for diversion program which could form part of a diversions strategy which is currently lacking in the Victorian Government. Many of the principles outlined below are attributes of the Police Cautioning and Youth Division Program, particularly cultural input in the diversion process.

Placing a young person 'back on track' is not necessarily the best criterion of success of diversion. Rather the criterion should be whether the system enabled a child to return to his or her community and have that community make a commitment to the young person in an encompassing way.

If diversion programs are adequate and appropriate, they will help keep Indigenous Australians out of jail and reduce reoffending. If diversion programs are inappropriate they will:

- Lead to increased contact of Indigenous Australians within the criminal justice system;
- Be inaccessible to Indigenous Australians;
- Be ineffectual due to lack of cultural appropriateness.

VALS suggests that diversion programs should:

- Clearly articulate objectives and strategies to implement them.
- Be subject to ongoing evaluation and periodical independent review to ensure that programs are working effectively and that the legislative, financial and policy factors affecting programs are considered in all these reviews. There should be assessment of diversion programs in relation to their impact on Indigenous Australians.
- Be based on community cultural input as the Indigenous Australian community should be involved in the development, implementation and monitoring of diversion programs. The involvement of traditional owners, local community programs and especially family and extended family is essential to the success of diversion. Such people should received equality in pay.
- Be provided by both Indigenous Australian agencies and non-Indigenous Australian agencies. Indigenous Australian agencies should receive proper funding and an emphasis should not be on police and court based programs to the detriment of other programs that can be managed by Indigenous Australian agencies.

⁸ *Fitzgerald Jacqueline* 'Does circle sentencing reduce Aboriginal offending?' (NSW Bureau of Crime and Statistics Research Crime and Justice Bulletin no 115) May 2008

- Identify whether a participant is of Aboriginal and Torres Strait Islander descent and cater for Indigenous Australians.
- Not exclude the need for legal advice.
- Enable Magistrates to have power to override a decision of police about access to diversion which would enable review of alleged discriminatory practices by police as gate keepers. There is need for procedures that overcome police bias in the use of diversion options for Indigenous Australians.
- Contain base eligibility requirements on whether diversion would benefit the offender rather than criminal history. Alternatively, prior convictions should not be the sole basis for excluding people from diversion.
- Be provided to young people at risk generally, not only to those who have committed offences
- Remove the requirement of informant approval so that diversion can be initiated by the Magistrates or legal practitioners. Legal practitioners should address Magistrates as to suitability for diversion where an unfavourable recommendation is made. According to a participant in a study “the program relies too much on the idiosyncratic subjective assessment of individual informants”.⁹
- Incorporate training for police, Magistrates, Judges, Court staff to such an extent that the culture of the police force and Courts is changed.
- Be made available consistently, not just in some regions. Diversion can be improved by providing a legislative basis for it. In the absence of such legislation it is unfortunate that programs do not have to be made available.
- Be supported by holistic service delivery.

Effectiveness of diversion also depends on compliance with best practice guidelines identified in Cunneen’s ‘review of best practice models for Indigenous diversion programs’ (24 August 2001).

- Developmentally appropriate;
- Meaningful (not tokenistic) involvement of Aboriginal people;
- Involvement of family and community;
- Community based, where possible;
- Emphasise Aboriginal heritage, culture and law;
- Focus on remediating educational deficits in the basic skills to raise social competence;
- Help people to develop market place work skills which can lead to further training opportunities, qualifications and real jobs;
- Assist in establishing and strengthening relationships with significant others who can become mentors and role model.¹⁰

CONCLUSION

Indigenous Australian youth are nearly 14 times as likely to enter juvenile justice supervision as non-Indigenous young people.¹¹ At the outset, a response to Indigenous

⁹ Springvale Monash Legal Service Inc ‘Criminal Justice Diversion Program - Discussion Paper’ 2006, page 24

¹⁰ Cunneen ‘Review of best practice models for Indigenous diversion programs’ (24 August 2001), page 7

Australian offending should take into account the voice of Indigenous Australian youth.

The experience of the criminal justice system by Indigenous Australian youth is distinct, and for that reason programs should meet the specific needs of Indigenous Australian youth. The distinct characteristics of Indigenous Australian youth offending are apparent through a discussion of context, such as the ongoing and growing nature of the over-representation of Indigenous Australians in the criminal justice system and the type of over-representation. Indigenous Australians tend to be over-represented in negative terms in relation to risk factors.

In line with the RCIADIC, VALS argues that there is need to address underlying causes for the over-representation of Indigenous Australian youth in the criminal justice system. One key to achieving this is to recognise the rights contained in the Charter of Human Rights and Responsibilities Act (2006) and the Declaration on the Rights of Indigenous Peoples. Another way is to build upon protective factors, such as connection to culture and family and the resilience of the Indigenous Australian community in the face of oppression. Indigenous Australian input is a factor for the success of the VALS Police Cautioning and Youth Diversion Program which has received a positive evaluation. This learning about how to addressing the over-representation of Indigenous Australian youth in the criminal justice system should not be overlooked.

¹¹ Juvenile justice supervision figure hits 4yr high, ABC News, 27 August 2008 as at <http://www.abc.net.au/news/stories/2008/08/27/2347444.htm?section=australia>

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APPENDIX A

The following recommendations are from the following report: A Report by Monsignor David Cappo AO Commissioner for Social Inclusion, 2007 'To Break the Cycle: Prevention and rehabilitation responses to serious repeat offending by young people).

Recommendation 29. (URGENT ACTION STATUS)

That the Government supports the introduction of programs for Aboriginal young people at risk, particularly young males, which use **cultural education and cultural activities to build confidence and pride**, as well as connect Aboriginal young people with education, training and employment pathways. As the first step, a demonstration project in Adelaide should be funded to develop and test approaches for using cultural education and activities in this way.

Recommendation 38.

That the Department of Education and Children's Services, in consultation with Aboriginal communities, develop education units on Aboriginal history and culture. Such programs should be implemented across all primary schools and be presented with input from Aboriginal community members. Consideration should be given to including the implementation of such programs in the performance contracts of principals and district directors.

Recommendation 41.

That the Government's Cultural Inclusion Framework is used as a basis for ensuring cultural competence of staff within Families SA, Courts Administration Authority, South Australia Police, Department of Education and Children's Services, and Department of Health with reporting against performance targets relating to:

- cultural awareness training which includes a focus on Aboriginal people. That this training include social and historical factors that have led to the disadvantaged position of many Aboriginal people and how such factors impact upon relationships between Aboriginal people and non-Aboriginal, and Aboriginal people and government service agencies,
- community partnerships
- workforce cultural diversity at all levels of the agency, with a focus on the recruitment of Aboriginal persons.

Recommendation 46.

That the Government establishes a Chief Executive's Coordinating Committee on youth justice, comprising the Commissioner of Police and the chief executives of the Department for Families and Communities, Department of Education and Children's Services, Attorney-General's Department, Department of Health, Department of the Premier and Cabinet and Department for Correctional Services. The group should meet at a minimum quarterly and report to Cabinet annually through the Attorney-General. The Committee should be responsible for:

- development of an action plan and related timelines for the implementation of the recommendations in this report as adopted by the Government
- overseeing implementation of recommendations

□□improvement in the quality and timeliness of the response of the youth justice system to the issues identified in this report.

The following recommendations are available from the following Report: VIYAC, 'VIYAC VOICES TELLING IT LIKE IT IS: Young Aboriginal Victorians on Culture, Identity and Racism (2006) page 34.

Recommendation 2:

That the State Government consider the potential to further invest in Indigenous young people's cultural expression and learning by creating more opportunities for Indigenous young people to access cultural expression programs in a variety of settings including school and higher education settings, juvenile justice settings, community service settings and cooperatives and while in State Care. Opportunities to participate should be available to all Indigenous young people in Victoria.

Recommendation 4:

That the Victorian Government work with the Indigenous community to develop strategies to increase resources and support to Aboriginal and Torres Strait Islander families in Victoria, as the central source of support for young people.

Recommendation 5:

YACVic calls on researchers, academics and governments to seek partnerships with Indigenous young people, Elders and their communities to pursue a greater understanding of Indigenous young people's experiences, aspirations and needs within a culturally sensitive and appropriate framework. Such research needs to be conducted with and not on Indigenous young people and their communities.

APPENDIX B



Police Cautioning and Youth Diversion Pilot Project

Final Pilot Evaluation Report

The purpose of this document is to provide a comprehensive Final Evaluation of the established Police Cautioning and Youth Diversion Pilot Project (Pilot) as per the original Project Brief and Stated Methodology, in particular highlighting the successes and obstacles of the preceding twelve months. This will include an overview of the development and implementation process in addition to quantitative and qualitative evaluations of the progress. While the Pilot has essentially completed all major tasks set in the Project Brief, this document also include key issues arising from the implementation process and directives for the future.

CONTENTS OF THE REPORT

1. Executive Summary	29
2. Background and Rationale	31
3. Pilot Aims: Benchmarks for Analysis	5
4. Protocol Development	6
5. The Cautioning Pathway: Overview of Current Practice	6
6. Evaluation Tools	7
7. Data Sets and Limitations.....	8
8. Quantitative Analysis	8
Non-Caution Related Statistics	9
Caution Related Statistics	11
9. Qualitative Evaluation	17
Case Studies	17
Lessons: Learned: Key Revisions Made through the Pilot Process	20
Lessons Learned: Key Components for Successful Management of the Program.....	21
10. Summary Evaluation	22
11. Future Tasks	23
12. State Roll-out	23

<i>Appendix A – Local Level Protocols (Victoria Police Instructions)</i>	24
<i>Appendix B – Non-Caution Form</i>	26

1. Executive Summary

The cautioning system needs to be improved to allow Indigenous young people to be diverted from the courts at a greater rate than they are now. As the police have the discretion to decide whether and how a young Indigenous offender will proceed through the justice system, police commitment to the effective diversion of Indigenous young people, either through cautioning or informal warnings, is paramount. (VALS, 2003:9)

In April 2003, a research paper was presented to the Aboriginal Justice Forum (AJF) concerning the Cautioning of Koori Youth. The paper drew on a range of literature and research regarding culturally specific difficulties faced by Koori Youth in regards to cautioning and diversion.¹² As a direct result of a Cautioning Steering Committee Workshop held in December 2003, it was proposed to develop a Pilot Program, aimed at increasing the effectiveness of both police cautioning and diversionary efforts for Koori youth. It was emphasized that this would be a joint effort between Victoria Police and the Indigenous Community, and that such efforts would be aimed at improving the relationship between these two parties. Funding was secured from the Department of Justice. The Victoria Aboriginal Legal Service Co-operative Limited was entrusted with the development and implementation of the Pilot.

The conceptualisation and subsequent development of the Pilot was based on a number of key observations and assumptions:

- **Recent research indicates that cautioning, involving a formal warning for first, second and sometimes third offences, can be an effective deterrent from the criminal justice system. However, there is little known about making cautions more effective.**
- **Re-offending rates for youth who are cautioned appear to be lower than for those who proceed further into the criminal justice system. This suggests that an increase in the total number of people being cautioned eventually has an effect on the total number of people proceeding through the criminal justice system.**
- **According to police statistics, young Indigenous Australian people in Victoria do not receive the benefit of diversionary programs such as a police caution to the same extent as non-Indigenous young people.**

Thus, building upon a theoretical and practical grounding, the Pilot was developed to address both the discretionary use of cautioning for Youth, in addition to the ineffective nature of the caution experience. This task involved extensive consultation with

¹² Of specific note were issues pertaining to 'No Comment' interviews, lack of parental presence at stations, lack of culturally appropriate cautions and lack of follow-up with cautioned individuals.

Communities, Justice Workers, Victoria Police and Youth, to refine and make appropriate the present cautioning procedure. As outlined in the Final Report (2007), tendered to the 18th Meeting of the AJF, these consultations produced revised Protocols for the cautioning of Indigenous Youth, in addition to a comprehensive Follow-Up Program to be tailored to the needs of each individual receiving a caution. The Pilot has now been in operation for a year, having launched in Mildura on the 1st January 2007, and the La Trobe Valley on the 20th March 2007.

When compared to statistics received from Victoria Police Corporate Statistics Unit for the 2004/05 financial year, a 16% increase in cautioning for first time offenders in the Mildura Region and a 10% increase in the La Trobe Valley is noted. In addition, there is an almost 45% increase in cautioning rates for offenders regardless of offence status in Mildura and a 32% increase in cautioning in the La Trobe Valley. Importantly, there have only been three reported cases of recidivism across the Pilot sites over the Pilot period. In the following analysis, the features of the initial offending and cautioning processes are discussed in detail.¹³ Case studies are also provided to give a clearer understanding of how this process has worked in practice.

Key revisions of the Protocols that have occurred in the Pilot period are noted here. Alterations made to timelines, the submission of forms and providing alternative processes when a key member is absent are addressed in the evaluation section.

This report notes the invaluable work by the relevant Youth Resource Officers (YRO) and Aboriginal Community Liaison Officers (ACLO) in ensuring the success of the Pilot, and highlights the need for extensive information sharing and training of all Police Members to facilitate the longevity of the Program. Additionally, in response to concerns raised a model for increasing the effectiveness of the flow of information to the YRO is suggested.

All indications speak to the success of the Pilot in achieving its stated aims. In addition to the increased caution rates and reduced rates of recidivism noted above, evaluations by those involved in the Program demonstrate a general satisfaction with the referral and follow up process, particularly by youth and parents. Specifically, involvement of the youth and parents in the decision-making process, including negotiation of referrals made, was noted as a valuable feature of this model. Positive contact with the police is seen to be encouraged and achieved through this process. In addition to the continued monitoring of and improvement to the existing Pilot sites, VALS has received assistance from the Indigenous Issues Unit to begin the first phase roll-out of the Program to three additional sites in the near future.

As a final note, countless recent reports and directives have expressed that culturally sensitive cautioning operating procedures and better engagement by youth with community based services may lead to a reduction in both negative police contact and recidivism rates. This evaluation gives credence to the idea that Programs such as this have great potential to address these Koori-specific issues and provide early deterrence from the criminal justice system. As such, it is

¹³ Please note that further and more detailed statistical analysis can be found in the [Police Cautioning and Youth Diversion Pilot Project: Interim Progress Report](#).

recommended that the Aboriginal Justice Forum continue to support this initiative and associated Programs, throughout the future roll out phases.

2. Background and Rationale

There is now an expansion of programs and legislation which aim to increase the flexibility of the court and divert young people from further involvement in the criminal justice system. The aim of this section is to examine the usefulness of cautioning as a form of diversion with specific reference to young Indigenous Australians, in order to highlight the necessity of the present Pilot.

There is growing realisation that very few young people become persistent or chronic offenders. Studies of recidivism show that around 70% of offenders will not reappear before the court, and of the 30% who do re-offend, around half returned to court only once (Cain, 1996). Recent research conducted by the Australian Institute of Criminology (Dennison, Stewart and Hurren: 2006) compared recidivist outcomes for juveniles offenders cautioned at first contact and those who appeared at court.

Importantly, this comprehensive, longitudinal study concluded that the majority of children are being cautioned for their first offence contact, and that of these children, the majority do not have re-contact prior to the age of 17 years. Secondly, when comparing children who were cautioned for a first contact with children who went to court for a first contact but appeared to be eligible for cautioning, children who were cautioned fared better in terms of likelihood of re-contact, frequency of re-contact and most serious sentencing outcomes. Therefore, the use of a caution as a means of diverting children away from the court system is likely to be an efficient way of responding to young people on their first contact.

Additionally, Challenger (1981) compared two matched groups of juvenile offenders. One group received court processing, while the other group received a police caution. While the differences were not significant, the data showed slightly more recidivism amongst the court processed juveniles than those who received a caution. Based on the results, Challenger (1981) argued that cautioning was certainly more expedient and less expensive.

Despite these assertions, various studies across Australia have found that Young Indigenous Australian people do not receive the benefit of a police caution to the same extent as non-Young Indigenous Australian people (Doherty, 1997; Luke & Cunneen,

1995; South Australian Office of Crime Statistics, 2001, Cunneen & White, 2002). Although there are no commensurate studies available for Victoria, a study on the NSW juvenile justice system by Luke & Cunneen concluded that:

Aboriginal young people are more likely to receive harsher outcomes from police decisions to apprehend and prosecute, even when offence and criminal history differences are controlled for. It seems that young Aboriginal people have a 10-15% greater chance of going to court rather than receiving a formal police caution. While this difference is not large, the compounding effect over time may be very significant, particularly in relation to decisions concerning first offenders where the acquisition of a criminal record is likely to influence later discretionary decisions (Cunneen & White, 1995: v).

3. Pilot Aims: Benchmarks for Analysis

As previously stated, the Pilot has been devised to improve justice outcomes for Indigenous Australian Youth through decreasing the over-representation of youth coming into contact with the criminal justice system. In light of this, from the outset the Pilot had six general, yet interrelated aims. Namely:

- 1. Decrease contact of Indigenous Australian children and youth with the criminal justice system;**
- 2. Increase positive Indigenous Australian contact with the justice system;**
- 3. Increasing access to diversionary and other community supports;**
- 4. Increase proportion of cautioning and improving cautioning outcomes of Indigenous Australians, with an emphasis on community based options;**
- 5. Promote achievements against national benchmarks and best practice;**
- 6. Identify service gaps and mapping of early intervention, family strengthening and diversionary needs.**

As such, the present project is aimed at promoting local Indigenous Australian community participation in improving justice outcomes and improved relationships between the Victoria Police and Indigenous Australian Communities, with a focus on increasing the use of cautioning as well as more effective cautioning and diversionary programs.

RELATED INITIATIVES AND INTERDEPENDENCIES

Related initiatives included:

- Aboriginal Community Justice Panels
- Local Victoria Police/Indigenous Australian community protocols and agreements

- ACLO Program
- JJ Indigenous Australian Program
- Crime Prevention Victoria initiatives

LINKAGE TO KEY POLICY DOCUMENTS AND STRATEGIES

The Pilot is linked to the objective and principles of the:

- Victorian Aboriginal Justice Agreement;
- Victoria Police Aboriginal Strategic Framework and Policy Documents;
- Regional Aboriginal Justice Advisory Committee Plans;
- RAJAC Regional Social Justice Plans

SELECTION OF THE PILOT SITES

The Pilot Sites were selected to demonstrate two diverse quandaries in the administration of cautions, namely; under-usage and ineffectiveness. An analysis of data obtained by VALS in 2003 indicated that the use of cautions varied widely across the State of Victoria. Initially, more recent data was garnered from Victoria Police in order to confirm areas to be targeted. As a result, Mildura emerged as the area with the lowest State average of cautioning of Indigenous Youth. Conversely, the La Trobe Valley appeared to have the highest rate of cautioning across the board. However, an analysis of data in this area revealed a high recidivism rate after a caution.

4. Protocol Development

The specific Protocols for each of the Pilot Sites, inclusive of individual roles and structure of Follow-up Network, were negotiated at a local level. Protocols development was based on the resources and willing individuals available at each Pilot site. However, the development of Protocols at each site did comprise common elements. The development of the Protocols began with an assessment of the aforementioned literature and research. Subsequently, various reference groups were established at the Pilot sites, inclusive of:

- **Pilot Steering Committee – comprising of elected representatives of the Department of Justice, Juvenile Justice, Victoria Police, Regional Aboriginal Justice Advisory Groups and the Victorian Aboriginal Legal Service**
- **Victoria Police Working Groups – comprising of Senior Members, Aboriginal Liaison Officers and Youth Resource Officers**
- **Justice Workers Advisory Groups – comprising of Koori Court Workers, Juvenile Justice Workers, Community Liaison Workers, Aboriginal Health Workers, Drug and Alcohol Workers, Behaviour Change Workers and various other Agency Workers**
- **Local Community Reference Groups – comprising of Elders from the Pilot site regions and representatives of the community including Koori Educators.**
- **Youth Reference Group – Comprising of Youth from each area. This group was largely comprised of students from the area KODE Schools.**

It should be noted that there was considerable cross-over between these groups with members attending the meetings for more than one working group. The Project Officer facilitated meetings and forums with the above groups to both identify issues and problems faced by Koori Youth, Victoria Police and relevant Justice Agencies, and develop practicable and acceptable solutions. This task involved sharing information between groups and compromising on various issues. The final step in this process involved the designation of particular roles to individuals and groups involved in the maintenance of the Pilot.

5. The Cautioning Pathway: Overview of Current Practice

The following provides an overview of the cautioning procedures as they are undertaken at the two Pilot Sites. The Pilot can be conceptualised within two interrelated areas:

CRIMINAL JUSTICE COMPONENT involving:

- Victoria Police Protocols, which have been designed to address previously identified concerns with cautioning of Indigenous Australian Youth including low caution rates, 'No Comment' interviews and inability to guarantee presence of parent.
- Protocols also address lack of 'Follow up' after caution through linking Police with a Follow up Network.

These protocols have been negotiated as a shared responsibility between Local Police, Relevant Agencies and the Community.

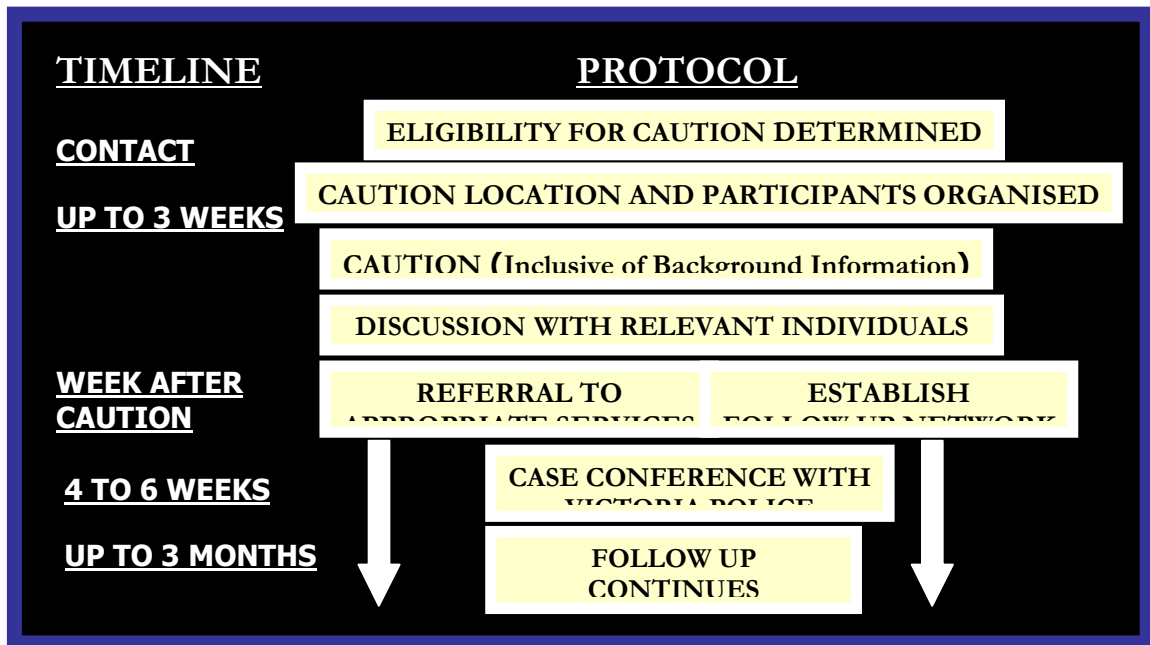
COMMUNITY BASED FOLLOW UP COMPONENT involving:

- An established Network of diversionary services and mapping of gaps
- Involvement of both Victoria Police and Community in Follow up meetings and programs based on recommendations made at the time of caution

Essentially this program co-ordinates relevant community members and local services, in addition to Koori Educators, in order to ensure that each youth has a number of resources subsequent to receiving the caution. Each program is individually tailored, based on consultation with the youth, family and other relevant individuals. Initiation of the follow-up is largely the responsibility of the local YRO.¹⁴ The following Diagram depicts each stage of the process as they occur in relation to a flexible timeline:

DIAGRAM: GENERAL TIMEFRAME

¹⁴ Refer to *Appendix A* – Local Level Protocols (Victoria Police Instruction) for further detail.



6. Evaluation Tools

VALS has created a Database pertaining to information gathered during the Pilot period. This database contains both statistical information and qualitative information, inclusive of forms completed by the Youth Resource Officer during the Follow-Up program period. The structure of these forms, in addition to conversations with participants, is central to:

- a. amassing knowledge relating to the nature of offending, reasoning behind offending and factors likely to reduce future offending;
- b. assessing the perceived effectiveness of the Pilot structure;
- c. identifying current and future service and program gaps.

For the purposes of this evaluation, case studies were drawn from the dataset to provide examples of the process as it is tailored to the individual. Additionally, interviews were conducted with relevant Police, Aboriginal Liaison Officers and other individuals involved in the Pilot, to further ascertain limitations, obstacles and success related evaluations.

7. Data Sets and Limitations

Prior to viewing the evaluation there are a number of important issues to note regarding the figures provided: –

Data was extracted from the **CAUTIONING PILOT DATABASE**.

Due to the staggered nature of report filing data is not necessarily reflective of total work completed on the Pilot. Data concerns both Pilot Sites for the year 2007.

MILDURA commenced on the 01.01.2007.

The **LA TROBE VALLEY** commenced on 20.03.2007.

While the submission of Non-Caution Forms to the Pilot database is often consistent and prompt, the detailed forms that are required to be filed for the individuals in the Pilot often result in delayed filing. This must be taken into account when viewing the following statistics. The attrition that can be noted in the following extrapolation is a consequence of the type and amount of data available at the time of publication and the timeframe referenced. As a result of the slow rate of some forms being submitted to the database, the raw figures contained in the first section gradually diminishes throughout the analysis. This is acknowledged where possible throughout the data. Additionally, it must be noted that where data is used for comparative purposes, the original data refers to figures obtained by VALS in 2006. It should be noted that this data set

Was produced by **VICTORIA POLICE CORPORATE STATISTICS UNIT**.

Was extracted from **LEAP** on March 16, 2006

Concerns **TOTAL ALLEGED OFFENDERS PROCESSED AGED LESS THAN 17**

Concerns **2004/05 FINANCIAL YEAR**

Was produced in reference to the **LOCAL GOVERNMENT AREA** of **MILDURA** and the **LA TROBE**

Is subject to **VARIATION**.

Further anomalies and limitations are discussed throughout the analysis below.

8. Quantitative Analysis

The following provides an overview of data gathered on the VALS Police Cautioning Database for the period 20.03.2007-19.03.2008. Key features of data for Non Cautions received and Cautions completed, inclusive of subsequent referral and follow up, are discussed here with reference to both pre-Pilot observation and Stated Aims.

TOTAL FORMS RECIEVED

For the period **20.03.2007-19.03.2008**, 34 cautions, referrals and follow-ups were completed in the Mildura area. This is in contrast to the 21 individuals who were not cautioned. For the period **20.03.2007-19.03.2008**, 21 cautions, referrals and follow-ups were completed in the La Trobe Valley area. This is in contrast to the 27 individuals who were not cautioned.

When compared to statistics received from Victoria Police Corporate Statistics Unit for the 2004/05 financial year, a 16% increase in cautioning for first time offenders in the Mildura Region and a 10% increase in the La Trobe Valley is noted. In addition, an almost 45% increase in cautioning rates for offenders regardless of offence status in Mildura and a 32% increase in cautioning in the La Trobe Valley is noted. See **Table 1** below:

Table 1: COMPARATIVE TO 2004/05 STATISTICS FOR ALL OFFENDERS REGARDLESS OF OFFENCE STATUS

MILDURA

	CAUTIONED	NOT CAUTIONED
2004/05	17.30%	82.70%
Current	62%	38%
DIFFERENCE	+44.70%	-44.70%

LA TROBE VALLEY

	CAUTIONED	NOT CAUTIONED
2004/05	12%	88%
Current	44%	56%
DIFFERENCE	+32%	-32%

This Table indicates an increase in cautioning, and an associated decrease in non-cautioning, at both Pilot sites. This initial analysis indicates that the Pilot is currently successful in the primary aim of increasing cautioning rates for Indigenous Youth which brings both Pilot Sites well above the State average. The increase noted in the La Trobe is particularly impressive as this area had previously proved a high cautioning region. It must also be noted that these figures are inclusive of timeframes in which the Pilot was still being implemented and as a result, more consistent reporting did not occur for sometime. Future figures would therefore be expected to demonstrate a further increase.

Non-Caution Related Statistics

As a necessary feature of the present Pilot, VALS undertook the responsibility of gathering data pertaining to the non-cautioning of Indigenous Youth at the two Pilot sites. This was achieved through the completion of a Non-Caution Form by Victoria Police Informants at the time of contact with Indigenous Youth.¹⁵ The form required, among other details, an explanation and reason behind the failure to caution an individual. These reasons were then matched against the revised protocols. In cases where VALS did not consider the explanation sufficient, or they did not comply with protocols, the matter would be followed up with the relevant Station. Success in this case is measured by the rate of non-cautions in addition to the validity of the reasons provided for non-cautioning. The following provides an overview of the main features of the data pertaining to Non-Cautions collected over the period **20.03.2007-19.03.2008**.

NON-CAUTION STATISTICS

Initial statistics indicate that a number of individuals received non-cautions multiple times. A total of 98 Non Caution forms were received pertaining to 45 individuals over the Pilot period. 26 Non Caution forms were received from the Mildura site pertaining to 21 individuals. 76 Non Caution forms were received from the La Trobe Valley site pertaining to 27 individuals.¹⁶ Reports at both Pilot sites indicate that a small number of Koori youth accounted for the majority of recorded non-cautions.

¹⁵ Refer to *Appendix B* – Non-Caution Form completed by members of Victoria Police throughout the Pilot.

¹⁶ Youth Resource Officer Darren Anderson reports ‘of these 27 individuals, 6 accounted for 62% of non-cautions issued. 5 of these 6 are currently under DHS care. 3 of these five were responsible for 40% of all occasions that Koorie youth were processed in the La Trobe’.

OFFENCE STATUS

Analysis of the data indicates that over 86% of those not cautioned in Mildura and 94% of those not cautioned in the La Trobe Valley had previous cautions recorded with the Police. Of individuals across the Pilot identified as having received a caution, the majority were listed as having two previous Cautions (35%), with 32.5% receiving one and 20% receiving three previous cautions. 10% had no previous cautions recorded. In the Mildura Region, anomalies relating to individuals with No Previous Caution were justified by reference to 'Extensive Criminal History' in two cases, where a caution had not originally been issued. The third case refers to the individual with No Prior Contact, where the offence was considered too serious for a caution. In the La Trobe Region, the reason provided was 'Extensive Criminal History' and 'Similar Offence History' (Assault).

OFFENCE TYPE

In reference to the type of offence committed in these cases, the majority of offences were Theft and Theft Related in both Regions, accounting for around 60% of all offences, regardless of multiple offence status. This was followed by matters relating to Damage of Property (20%) and Crimes against the Person (10%) and Miscellaneous, including traffic offences (10%).

LOCAL LEVEL INSTRUCTION ELIGIBILITY CRITERIA

In Mildura, identity and sufficient evidence were never an issue, being established in all cases. Admissions were made in 73% of cases. Access to legal advice was provided in 55% of cases. When a parent was not available, a replacement was found in all cases. In the La Trobe Valley, identity and sufficient evidence were never an issue, being established in all cases. While admissions were made in nearly 80% of cases, it was UNKNOWN in 20% of cases. Access to legal advice was provided in nearly 95% percent of cases. A parent was contacted in only 17% of cases.

Across the two Pilot Sites, identity and sufficient evidence were never an issue, being established in all cases. While admissions were made in nearly 60% of cases, it was Unknown in 23% of cases. Access to legal advice was provided in nearly 73% percent of cases. A parent was contacted in only 42% of cases with an alternative found in 23% of cases as these were the only ones that were applicable.

REASONS PROVIDED FOR NON-CAUTION

In 2003, VALS examined national research and interviewed several police officers, Client Service Officers and criminal law solicitors in order to examine some of the reasons why young Indigenous Australian people received fewer cautions. According to the police, some of the difficulties in cautioning young Indigenous Australian people arise because:

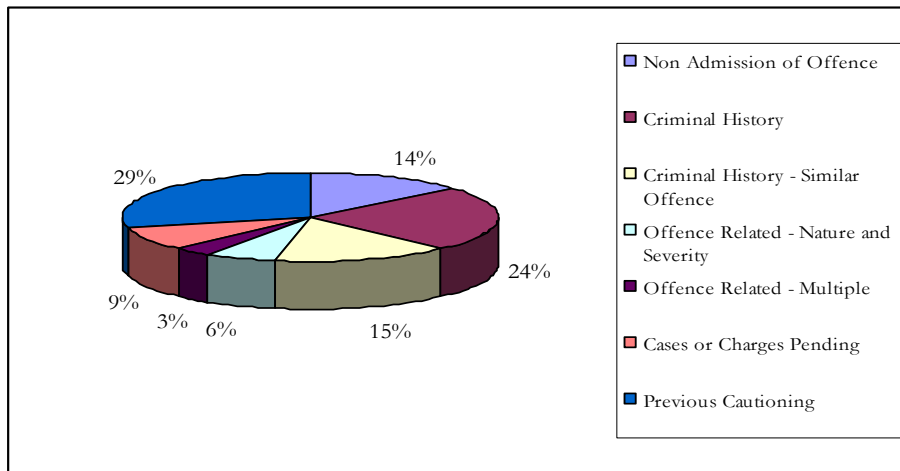
- **Young Indigenous Australian people reoffend at a greater rate than non-Young Indigenous Australian people. If the offender has a prior offence, a caution is not applicable.**
- **VALS advises offenders to say "No comment." Unless the offender admits to the offence, a caution is not applicable.**

- **Parents or guardians are unavailable. The parents or guardian must be present for a young person to be cautioned.**
- **Young Indigenous Australian people are less co-operative and therefore a caution is not appropriate.**

With the benefit of the Pilot database, VALS is now more accurately able to analyse the reasons that individuals are unable to receive a caution. The following analysis relates to the reasoning provided for the Non-Cautioning of the 30 individuals who received a Non-Caution. In the majority of instances multiple reasons were provided for non-cautioning. In these cases a primary reason was recorded separately from the total. The following provides an analysis of the two pilot sites, in addition to the Pilot as a whole.

In the Mildura Region, the main reasons provided across all cases were Previous Cautioning (33%), Criminal History (22%) and Similar Offence (22%). Non Admission of Offence was identified in 16.3% of all cases. In the La Trobe Valley Region, the main reasons provided across all cases were Criminal History (27%) and Previous Cautioning (24%). This was followed by factors relating to Cases Pending (21%) and Severity of Offence (10%). Non Admission of Offence was identified in 10.3% of all cases.

Figure 1: Pilot Total - Percentages of Reasons Provided for Non Caution



The main reason for non cautioning provided across the Pilot related to Previous Cautioning (29%), followed by Criminal History, both in reference to the extensiveness (24.3%) and relating to Similar Offences (15%). Non Admission of Offence was mentioned in 13% of all cases. However, this was named as the primary reason in 9% of cases.

Caution Related Statistics

Largely informed by consultation with the Local Community Reference Groups and relevant Justice Agencies, the follow up section of the Pilot was developed to address many of the repeatedly identified concerns of these groups in regards to the effectiveness of cautions. The Follow-Up involves a mandatory meeting with the Youth Resource Officer, family members, the youth and any additional individuals as appropriate. In

addition, access and referral to appropriate agencies, programs and activities are arranged. The degree of contact between the YRO and youth after this point is discretionary. Success in this case is measured by engagement with the referral process and level of positive interaction with Police, in addition to low recidivism rates after follow-up. The following provides an overview of the main features of the data pertaining to Cautions collected over the period **20.03.2007-19.03.2008**. Due to the aforementioned paperwork backlog and the fact that completion of the Program can take up to three months, not all individuals had completed the process by the **19.03.2008** (N=55). The breakdown of this is expressed below in **Table 2**.

Table 2: PAPERWORK SUBMITTED

	Background Taken	Referrals Made	Follow-Up Completed
Mildura	34	30	28
La Trobe Valley	21	21	19
Pilot TOTAL	55	51	47

These figures should be acknowledged when reading the following analysis.

BACKGROUND INFORMATION

The following data concerns the Background Information gathered at the time of the post caution interviews thus far in the in the Pilot. The purpose of this interview is to ascertain the details of offending and possible factors that contributed to the offending, in addition to other issues that are identified by the Youth or parents.

SECTION 1: THE OFFENCE

The following represents the types of offences committed by the individuals in the Program.

Table 3: Percentage of Offence Type

	Mildura	La Trobe	Pilot Total
Against the Person	4.5	15.4	8.6
Theft Related	68.2	69.2	68.6
Criminal Damage	22.8	7.8	17.2
Other	4.5	7.8	5.7

These figures effectively mirror those of individuals who were not cautioned and thus trends across the two Pilot sites for all youth. It should be noted that on average 55% of the offences were committed by the youth alone, with this rate being slightly higher in the La Trobe (62%). The reason provided for the offence was typically related to boredom and a lack of supervision, in addition to opportunistic crimes, generally theft related, that were justified as ‘necessity’.

The following analysis relates to the main sections of the Background Information Form. After highlighting specific questions asked by the Youth Resource Officer, the rates of reporting for each category are depicted. This is followed by examples of the details

recorded by the Youth Resource Officer, as potentially needing attention in future follow-up.

SECTION 2: HOME AND FAMILY

It was reported at the time of caution that 87% of the youths in Mildura and 92% of youths in the La Trobe Valley were presently living at home. All of those who were not, were currently residing with a family member and had experienced complications at home.

The following Table depicts the rates at which there were issues identified in this area either by the youth or parent/guardian present at the Background Interview.

Table 4: Percentage of Issues Identified Relating to Home and Family

	YES	NO	UNKNOWN
Mildura	13.6	86.4	0
La Trobe Valley	0	84.6	15.3
Pilot TOTAL	8.6	86	5.4

Examples of the issues identified in this area included:

A mother having difficulty sending child to school
A single parent family with 5 children leading to a lack of supervision.
A mother attending station heavily intoxicated

SECTION 3: EDUCATION RELATED

It was reported at the time of caution that 82% of the youths in Mildura and 86% of youth in the La Trobe Valley were presently attending school. Of those who weren't all were above school leaving age.

The following Table depicts the rates at which there were issues identified in this area either by the youth or parent/guardian present at the Background Interview.

Table 5: Percentage of Issues Identified Relating to Educational Background

	YES	NO	UNKNOWN
Mildura	13.6	72.8	13.6
La Trobe Valley	0	77	23
Pilot TOTAL	8.6	71.4	17

Examples of the issues identified in this area included:

Low attendance due to bullying (YRO and ACLO able to arrange reenrolment in an alternative school.)
Disengagement from school reported by Youth

SECTION 4: SUBSTANCE RELATED

It was reported at the time of caution that 13% of the youths in Mildura and 7% of youth in the La Trobe Valley substance use was identified as contributing to the offence. Alcohol was identified as the substance in each case. It was noted that this caused poor judgement.

The following Table depicts the rates at which there were issues identified in this area either by the youth or parent/guardian present at the Background Interview.

Table 6: Percentage of Issues Identified Relating to Substance Use

	YES	NO	UNKNOWN
Mildura	13.6	86.4	0
La Trobe Valley	7.7	84.6	7.7
Pilot TOTAL	11.4	85.7	2.9

Examples of the issues identified in this area included:

Previous chroming dealt with through Drug and Alcohol counselling
Aunty indicated possibility of Alcohol issue. Individual subsequently underwent successful Drug and Alcohol counselling
Occasional Cannabis use, subsequently referred to Drug and Alcohol counselling.
Minor in possession of Alcohol. However was not identified as a habitual user.

SECTION 5: ADDITIONAL

The following Table depicts the rates at which there were additional issues identified either by the youth or parent/guardian present at the Background Interview.

Table 7: Percentage of Issues Identified Relating to

	YES	NO	UNKNOWN
Mildura	22.7	77.3	0
La Trobe Valley	0	100	0
Pilot TOTAL	14.3	85.7	0

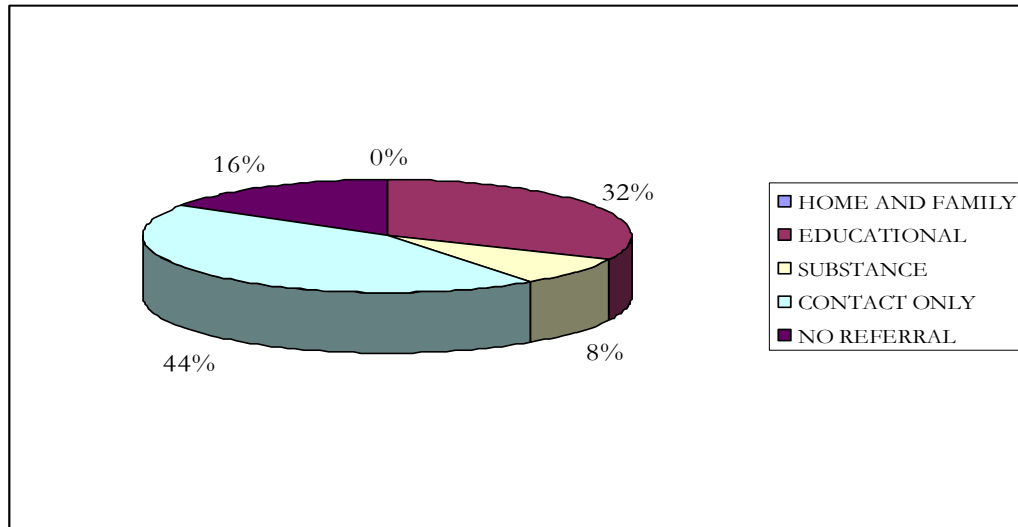
Examples of the issues identified in this area included:

Motivation for crime appeared to be boredom resulting from a lack of supervision.
Ongoing problems with victim (of Assault). Individual identified as worried about restraining order as impacting on future employment prospects - Resolved through discussion with ACLO.

REFERRAL

The following data concerns the referrals made thus far in the in the Pilot. In this first section data pertaining to the type of referral made is depicted. This Figure shows these as represented as a percentage of the total referrals made across the Pilot sites:

Figure 2: Percentage for Types of Referral across the Pilot



This analysis indicates that the majority of referrals were contact related, involving extensive follow up meetings and additional contact. This was followed by referrals made to address issues related to education. Substance related referrals, inclusive of Drug and Alcohol counselling, were made in 12 cases.

The following Figure depicts examples of the types of referrals listed above. This is by no means an exhaustive list and should be viewed as a sample of the various types of referrals utilised during the Pilot period.

Figure 3: Sample of Referrals made

EDUCATION
After school activities
Re-enrolment in an alternative school to end bullying as arranged by YRO and ACLO
SUBSTANCE
Contact with Juvenile Justice worker and Drug and Alcohol counsellor
CONTACT ONLY
Restorative Justice inclusive roundtable discussion with those impacted
Referral to Football program in the coming season and additional contact until this time
NO REFERRAL
Individual relocated out of State
Refusal by Mother to allow youth to participate in Referral Process

For the purposes of clarity, examples of referrals made are explored further in the Case Studies on **Page 17**.

FOLLOW-UP

The following data concerns Follow-Up completed thus far in the in the Pilot. It should be noted that there are a number of Follow-Ups forthcoming, particularly in the La Trobe Valley, due to the extended timeframe over which this program operates. **Table 8** displays the total number Follow-Ups completed represented as a percentage of all individuals in the Pilot:

Table 8: Follow-Up Completed at each Pilot Site

	Follow Up Complete	% of Total
Mildura	28	82.35
La Trobe Valley	19	90.4
Pilot TOTAL	47	86.4

The first step in the Follow up process involves a meeting with Victoria Police a few weeks after the caution. These rates are reflected below.

Table 9: Follow-Up Meeting with Victoria Police Completed

	YES	NO	UNKNOWN
Mildura	90.1	0	9.9
La Trobe Valley	90.4	0	9.6
Pilot TOTAL	90.3	0	9.7

With reference to these Follow-Up meetings with Victoria Police parents were available to attend the meetings in all but three cases. In these cases a suitable replacement was able to be found. Typically this was another family member, although in one case a member of the Community Justice Panel was utilised. It should also be noted that in 41 cases there were multiple follow up meetings.

These Follow-Up meetings were regarded as a success in all but two cases. In one case, the individual went on to re-offend (Refer to discussion below). The second refers to a case in which both the mother and individual displayed a refusal to take place in any form of referral. However, it was noted in the case files that this case was considered an anomaly by the YRO.

RECIDIVISM

There have been three cases of recidivism across the Pilot sites. In Mildura, the individual re-offended and was represented by VALS, and as a result received diversionary measures.

In the La Trobe Valley it should be noted that while two individuals re-offended, the YRO has been determined to remain in contact and intends to continue with follow-up contact. It was the opinion of the YRO that the welfare, education,

justice and support services should remain involved in these cases and as such case management is ongoing.

The most significant feature of this data is 94% of individuals did not re-offend after completing the Follow-Up program.

9. Qualitative Evaluation

The following section provides an overview of various qualitative data gathered throughout the Pilot. This includes case summaries and evaluations reported through the Caution Pilot Forms completed by YROs and ACLOs, follow up discussions with relevant Police and, where possible, the Youth and parent involved. An additional section discusses issues raised and key components identified primarily by Police in relation to the successful implementation of the Pilot.

Case Studies¹⁷

Case Study 1: After School Activities

Area of Referral:	EDUCATION	
Gender: M	Age: 12	Offence: Handle Stolen Goods
Referral Description: Post-caution meeting indicated that lack of school attendance and boredom were factors in initial offending. Subsequently		

¹⁷ This section provides sound examples of the aforementioned referral process in action. Each case study is representative of possible avenues of referral and follow-up undertaken by youth and Victoria Police over the duration of the Pilot. The additional section 'Comments' refers to the evaluation of this process in each case by the youth and relevant parties involved in the process.

attendance was arranged for the school-based activity program and involving extracurricular activities. This also included involvement with an after school program run by a Koori Educator.

Follow-Up: Programs are to run for the remainder of the school year. Additionally, three subsequent meetings were held with youth, mother, YRO and ACLO to assess progress. An additional meeting was held with the Vice-Principal regarding reintegration into school.

Comments: Mother and Vice-Principal report 'easier and more structured' integration into school. Youth reports subsequently avoiding criminal activity when the opportunity was presented. Mother, YRO and ACLO note that the Youth has had no further contact with the Police and a more positive experience with school.

Case Study 2: Drug and Alcohol Counseling

Area of Referral:	SUBSTANCE USE	
Gender: F	Age: 16	Offence: Theft and Possess Cannabis
Referral Description: Post-caution meeting indicated that, while not necessarily influencing the offence, the youth is an occasional cannabis user. Youth identified this as an area of concern that she would like addressed. Subsequently access to Drug and Alcohol counseling was arranged. This also included meetings with the area Juvenile Justice Worker.		
Follow-Up: Youth attended Drug and Alcohol counseling, as arranged. Follow up meetings held with ACLO, YRO and Juvenile Justice Worker.		
Comments: Youth was very receptive to the counseling provided and reported progress in subsequent meetings. ACLO and YRO report no subsequent contact with the Police since this offence.		

Case Study 3: Restorative Justice

Area of Referral:	CONTINUED CONTACT	
Gender: M	Age: 12	Offence: Burglary
Referral Description: Post-caution meeting indicated that lack of school attendance due to recent bullying. Offence was committed at a school previously attended by youth. Subsequently a meeting was arranged for youth, mother, School Principal, YRO and ACLO, with an aim of outlining effects of the offence on the school and allow youth to raise aforementioned concerns. Mother and youth indicated a desire for youth to return to previous school for education. This was addressed through a meeting with the above named parties resulting aim a re-enrolment of the youth into the school.		

Follow-Up: In addition to the above, Youth agreed to attend after school programs where possible. Subsequent meetings held with youth, mother, YRO and ACLO to assess progress. An additional meeting was held with the Principal regarding progress of reintegration into school. The ACLO and YRO continue to monitor progress.

Comments: Mother and Youth report satisfaction with the outcomes of the referral. Mother particularly reports satisfaction at being involved with the entire process. YRO and ACLO note that the Youth was very responsive to the restorative justice meeting.

The Principal reports a more positive experience with school since re-enrolment and enthusiastic participation in school activities.

Case Study 4: Sports Clubs

Area of Referral:	EXTRA CURRICULAR ACTIVITIES		
Gender: M	Age: 13	Offence: Attempted Theft	
Referral Description: Post caution meeting indicated that offence was out of character and arose through boredom and influences of co-offender. Youth expressed a desire to be involved in extra-curricular activities, particularly football. Arrangements made by ACLO for Youth to attend pre-season training to begin in two months. In the mean time, meetings held with relevant Koori Educator to encourage more consistent school attendance and involvement to after school programs.			
Follow-Up: Three meetings held with youth subsequent to caution to develop the above referrals.			
Comments: Referral considered successful by all parties. Youth appreciative of efforts regarding programs and now attends school regularly. As a result of this case and similar cases, recommendations were made to reinstall a Sport and Recreation Officer at the Co-op. YRO and ACLO currently following this up.			

Case Study 5: Counseling

Area of Referral:	CONTINUED CONTACT		
Gender: M	Age: 12	Offence: Burglary	
Referral Description: Post-caution meeting indicated a concern by youth with family pressure and expectations. Youth also indicated identity issues pertaining to indigenous heritage. YRO arranged a Hope Project counselor to attend home and discuss identity issues. In a subsequent follow-up meeting, youth expresses desire to attend Sporting Team. Youth is placed in an Under 14s Team coached by YRO and Hope Project Counselor.			

Follow-Up: Programs are to run for the remainder of the school year. Additionally, subsequent meetings are to be held with youth, mother, YRO and ACLO as Youth has expressed a desire to maintain contact, particularly with YRO.

Comments: Youth reports gratitude to YRO, ACLO and Counselor. Excellent rapport established. Youth continues to participate in a number of sporting activities and has not re-offended.

DISCUSSION

These case studies highlight the diverse paths that can be taken by youth during the referral process. The above examples demonstrate the individual nature of referrals and follow up. It is important to note that the YRO and ACLO generally report a very positive response to the process by both Youth and Parent and in particular note the positive interaction and subsequent relationship established with Police as a central indicator of success.

Evaluation by Key Pilot Personnel

The following provides an overview of issues highlighted in consultation with relevant Victoria Police and, where possible, additional people involved with the caution, referral and follow up processes. Here, key revisions to the initial structure are explained in addition to components identified as important to successful implementation.

Lessons Learned: Key Revisions Made through the Pilot Process

1. Timelines for Follow-Up:

The initial timelines for follow up proved to be too restrictive given the various types of referrals made and the number of meetings after the caution. A number of services were not immediately available and, in the case of on-going programs, follow-up often continued for many months after the initial referral.

Revision: The timelines for referral have been extended to allow for the availability of programs. Additionally, the length of Follow-Up will now be decided by YROs and ACLOs on a case by case basis.

2. Submission of Pilot Related Police Forms:

Submission of all relevant Forms pertaining to a particular individual by the YRO or similar was initially designed to occur as soon as referrals were made. However, due to the extensions of timelines relating to this practice this process became problematic in relation to the monitoring of the progress and the database.

Revision: Forms are now to be submitted *as completed* by YRO. This means that not all forms pertaining to an individual are submitted at once, but rather as the follow-up process occurs. YROs have the option of submitting incomplete forms in the interim to indicate that progress is being made in a particular case. VALS Database has been altered accordingly.

3. Replacement for YRO when on Leave:

It was reported that YRO typically take leave in the School Holidays as many connected services shut down during this period. However, for obvious reasons the number of cautions peak during these periods leading to a heavily increased workload for the YRO upon returning from leave.

Revision: That an alternative be trained in the YRO duties pertaining to the Pilot. This will involve initial completion of background forms and initiation of referral and follow up where possible.

4. Cross-Border Issues:

Cross-border issues were identified in Mildura, with a number of Youth from New South Wales committing offences for which cautions were appropriate. Additionally, youth living in Mildura were committing caution appropriate offences in New South Wales and not receiving the benefit of the Pilot.

Revision: Where feasible the YRO and ACLO in Mildura have been traveling across the border for Follow-Up. The YRO has also contacted counterparts in border towns to raise awareness of these issues. A Reference Group meeting will soon be held in the area to ascertain advice about how to address these issues in future.

Lessons Learned: Key Components for Successful Management of the Program

1. Timeframe for Implementation with Reference to Education of Members:

Implementation was hindered in certain areas due to inadequate dissemination of information to members of Victoria Police prior to the commencement. As a result, consistency in reporting took a number of months to achieve.

Recommendation: That in future sites, the process of dissemination of information regarding the Pilot begins as early as possible in the establishment process. This should be inclusive of directives from Senior Members, notifications on the Global Email System and additional meetings with members by VALS and others to answer questions. An additional recommendation is that an official 'Launch' is held when the Pilot is set to begin in a particular area.

2. Support of all Victoria Police Members:

Both sites report that support of the Program by all Victoria Police Members is necessary to the flow of information to the YRO. This goes beyond the issue of education as members must see the value of the Program.

Recommendation: In conjunction with the above process for dissemination of information, VALS recommends that those involved with the Pilot thus far produce documents detailing the success of the Pilot. This will need to be a well coordinated and ongoing process.

3. Involvement of ACLO:

The ACLO is seen as performing an invaluable role in the Program. YROs report that in a number of cases, post caution meeting would not be possible if not for the work of ACLO. This extends to knowledge regarding appropriate programs.

Recommendation: That the next phase of roll out focus on areas that currently have an ACLO. An appropriate alternative position needs to be sourced in cases where no ACLO exists.

4. Information Flow to YRO:

As identified above, the flow of information to YROs is crucial to the success of the Pilot. The completion of Non-Caution Forms in particular is important for understanding and monitoring those not deemed appropriate for the program. At this point, YROs have had some difficulty monitoring this process as it requires a great deal of time accessing daily reports. There have been cases in the La Trobe, where the YRO has attended court in order to have briefs withdrawn for youth he felt would benefit from the program rather than the court process.

Recommendation: VALS Police Cautioning Database records E*Justice Notifications for Youth on a daily basis as a monitoring tool for the use of Cautions. It is recommended that YROs in future sites have access to this, or are alternatively provided with a similar program by Victoria Police to make monitoring more efficient and effective and reduce the number of potentially eligible individuals continuing to court.

10. Summary Evaluation

The Pilot has been designed to better respond to the needs of youth coming into contact with the criminal justice system. The following provides an overview of the Progress of the Pilot in relation to the aims outlined in the initial Project Plan:

▪ Increase in cautioning rates for Indigenous Australian youth

The increase of Cautioning rates for both first time offenders and those with prior contact with the police is evident in the above statistical analysis. This reveals a 16% increase for first time offenders in the Mildura region. In addition, the data reveals a 10% increase for first time offenders in the La Trobe Valley region. This is an overall increase of nearly 45% in Mildura and over 32% in the La Trobe Valley Region, placing both Pilot Sites clearly above the State average.

▪ A chance to avoid getting further involved in the criminal justice system, in addition to avoiding a police record.

The successful achievement of this aim at this point is indicated by the extremely low recidivism rate for those that have completed the program, with only one individual in each area having re-offended at the conclusion of the official Pilot period. It should be noted that the success of this relies heavily on follow up and monitoring by the YRO and ACLO.

▪ Greater participation in decision making when coming into contact with police

The ability to discuss, recommend and negotiate the conditions of referral and follow up was noted by the majority of Youth and Parents as a particularly valuable feature of the Program. In many instances referrals were made and opportunities were provided that were seen to have very little to do with the reasons behind the offence, but in which assistance was sought by the Youth nonetheless.

▪ Involvement in follow up programs

The variety of Follow-Up Programs accessed by those involved in the Pilot has been noted earlier. It should be stated that all referrals are based on the availability of programs and places. In a number of cases access alternative Programs has been provided where initial Programs were inadequate.

▪ Access to support networks

In addition to the access provided to Programs, the increased involvement of family (and in many cases relevant Educators), and consistent an sustained follow up with members of Victoria Police, is seen to provide a support networks previously absent in the Cautioning process.

▪ More education around legal rights and advice

This was achieved though the production of Pilot-specific materials by VALS that was disseminated at schools, local co-operatives and Police stations.

With reference to these specific outcomes, the above analysis indicates that the Pilot has thus far been successful in addressing the original aims stated. Continued and consistent success in this area is dependant on a number of important future tasks.

11. Future Tasks

With reference to current Pilot Sites, discussions will continue with all previously established Reference Groups into the future to ensure that arising issues are dealt with quickly. Additionally, efforts will need to be made to include more Agencies, Programs and Individuals, particularly in the follow-up portion of the Program. Raising awareness and promotion the Pilot to both Victoria Police and community in the prospective sites is also of critical importance to the sustainability of the Program.

12. State Roll-out

In addition to monitoring and sustaining the Pilot, VALS is aware of the need to begin the process of establishing further sites for roll-out. This process was approved previously at Meeting 18 of the AJF.

Throughout the Pilot's Development stages, VALS was approached by a number of regions, requesting that they be considered for future roll out. Subsequent statistical analysis has narrowed the field of potential sites for the first wave of roll outs to Shepparton, Bairnsdale and Swan Hill. With the development and design of the Pilot completed and Protocols agreed to, this process would chiefly entail a great amount of co-ordination and education at the future Pilot sites.

VALS has gained the assistance of the Indigenous Issues Unit in this task and as such will be co-ordinating the first phase of the roll-out in the very near future. The roll-out of the Pilot will be directed by the Contact and Cautioning Strategy

Of particular focus in the immediate future will be awareness-raising at the above mentioned sites and networks established to facilitate the follow up component of the Pilot. An additional concern of the Steering Committee is the need to develop a metropolitan-specific model. Consultation as to the method of Police awareness raising and education is will also underway.

'Koories are over-represented in their contact with police. When processed by police, Koories are cautioned less often and arrested more often than other Victorians. This makes it apparent that there are opportunities to impose penalties less harsh than those Koories often experience when coming into contact with the criminal justice system. Interventions that make less severe sanctions more likely can have a major impact on rates of over-representation.'
(VALS, 2003)

APPENDICES

Appendix A – Local Level Protocols (Victoria Police Instructions)



LOCAL LEVEL INSTRUCTION

Koori Youth Cautioning and Diversion Pilot

1. Local Policy

The Police Cautioning and Youth Diversion Pilot Program (Program) provides police with an option of dealing with an offender alternative to progressing through the courts. The Program comprises of both a Caution element and Diversionary (referral and follow up) element. The pilot period extends from 01.01.2007 until 31.12.2007. Specific criteria must be met before the Program can be administered as an option.

Use of this Program should initially be considered for:

– *Koori-identified children for any offence.*

2. Eligibility Criteria

For an offender to be eligible to receive a caution, all of the following criteria to be met::

the offender must be koori-identified

identity of the offender must be verified

there must be sufficient admissible evidence to establish the offence.

the offender must admit the offence. In a case where the offender provides a No Comment or uncooperative interview, access to legal advice should be provided prior to deciding on caution eligibility.

the offender's prior criminal history does not exclude them from receiving a caution.

However, as a general rule this incident must be no more than the offender's third offence.

the offender and the parent/guardian or similar (Refer to Section 3), must consent to the caution

If a caution is not given to an offender answering to the above eligibility criteria –

A FAILURE TO CAUTION Form (Copy of document Attached) must be completed and submitted to the Officer in Charge and area Youth Resource Officer

Protocols and Instruction

Informant Responsibilities

Prior to the caution – complete:

Appropriate sections of the Cautioning Notice [Form L21]

Where appropriate notify VALS Client Service Officer or other Justice Worker of caution

Contact local Youth Resource Officer to advise of eligible youth

Joseph Clarke (Youth Resource Officer, Mildura)

Phone: (Mildura HQ) 5018 9703

Fax: (Mildura HQ) 5021 0332

Email: joseph.clarke@police.vic.gov.au

Facilitate faxing of relevant documents to CDEB and local Youth Resource Officer, via Officer in Charge.

Member Giving the Caution

Must be Sergeant or Above.

Caution does not have to be given on the day of the interview.

If a parent or guardian cannot be contacted/attend the caution, the Youth Resource Officer should be contacted to make alternative arrangements.

Once appropriate arrangements have been made, proceed to Caution as instructed in VPM Discuss referral to appropriate agency or program with youth, parent/guardian or similar and Youth Resource Officer

Complete the 'Caution' part of the Form L21 and serve the offender copy. Ensure details are faxed to CDEB for recording.

Youth Resource Officer

At Caution

Retain File copy of Form L21

Complete **BACKGROUND INFORMATION FILE**

Subsequent to Caution

Submit all reports as required

Design and facilitate Follow up Program, including meeting with member giving caution

Complete **REFERRAL CHECKLIST** and **FOLLOW UP CHECKLIST** as appropriate

Submit all documents to VALS caution notification system

Appendix B – Non-Caution Form

NON CAUTION FORM		COPY ONLY	
PAPERWORK COMPLETED BY:		CONCERNING:	
DATE:		NAME:	
STATION:		D.O.B:	
OFFICER NO:		RESIDENCE:	
PARTICULARS OF OFFENCE:			
SECTION 1: THE OFFENCE			
DATE OF OFFENCE:			
TIME OF OFFENCE:			
OFFENCE TYPE:			
INFORMANT:			
1.1. DESCRIBE the CIRCUMSTANCES through which the INDIVIDUAL came into CONTACT with POLICE?			
1.2. Is this a FIRST CONTACT for this INDIVIDUAL?			
<input type="checkbox"/> YES		<input type="checkbox"/> NO	
a) If NO, has the INDIVIDUAL been CAUTIONED PREVIOUSLY?			
<input type="checkbox"/> YES		<input type="checkbox"/> NO	
b) If YES, provide DETAILS of PREVIOUS CAUTION(S);			
DATE OF OFFENCE:			
OFFENCE TYPE:			
INFORMANT:			
DATE OF CAUTION:			
SECTION 2: LOCAL LEVEL INSTRUCTION ELIGIBILITY CRITERIA			
2.1. INDICATE which (if any) CRITERIA this individual does NOT meet.			
a) Can the identity of the offender be verified?			
<input type="checkbox"/> YES		<input type="checkbox"/> NO	
b) Is there sufficient admissible evidence to establish the offence?			
<input type="checkbox"/> YES		<input type="checkbox"/> NO	
c) Has the offender admitted to the offence?			
<input type="checkbox"/> YES		<input type="checkbox"/> NO	
If NO, has the offender had the opportunity to seek legal advice?			
<input type="checkbox"/> YES		<input type="checkbox"/> NO	
d) Has a parent/guardian been contacted to consent to be present for the caution?			
<input type="checkbox"/> YES		<input type="checkbox"/> NO	
If NO, have attempts been made to locate an appropriate replacement?			
<input type="checkbox"/> YES		<input type="checkbox"/> NO	
e) Is a caution appropriate in the circumstance?			
<input type="checkbox"/> YES		<input type="checkbox"/> NO	
2.2. If NO, was checked for any of the above please provide further DETAILS;			
SECTION 3: REASON FOR FAILURE TO CAUTION			
3.1. STATE plainly the REASON a CAUTION was not given in this CASE;			



This document is to be submitted to the Officer in Charge and forwarded to the area YOUTH RESOURCE OFFICER, at the earliest possible convenience. Attach this FORM to subsequent incident paperwork/file.

¹ National Indigenous Youth Leadership Group 2004-2005 'Having our voices heard: Aboriginal and Torres Strait Islander Youth Perspectives', page 10

² Ibid

³ Cunningham Teresa 'Pre-court diversion in the Northern Territory: impact on juvenile reoffending' AIC, Issue 339 June 2007, page 1

⁴ Cooperative Research Centre for Aboriginal Health (CRCAH) et al Media Release 'Health care for Aboriginal prisoners the key to reducing offending and recidivism' 20 August 2008.

⁵ Willis Matthew, Moore John-Patrick 'Reintegration of Indigenous prisoners' Research and Public Policy Series, No. 90 Australian Institute of Criminology (2005) page 8 as at <http://www.aic.gov.au/publications/rpp/90/rpp90.pdf>.

⁶ 'Juvenile justice supervision figure hits 4yr high' ABC News, Wed Aug 27, 2008 as at <http://www.abc.net.au/news/stories/2008/08/27/2347444.htm?section=australia>

⁷ 'Young More Likely To Be Jailed, Report Says' Sydney Morning Herald, 26 August, 2008

⁸ 'Drop in juvenile detention cases', *The Australian* 28 March 2007, as at <http://www.theaustralian.news.com.au/story/0,20867,21461127-29277,00.html>, page 43

⁹ VIYAC, 'VIYAC VOICES TELLING IT LIKE IT IS: Young Aboriginal Victorians on Culture, Identity and Racism (2006) page 34.

¹⁰ 28 March 2007, above no 8, page 38

¹¹ Op cit page 91

¹² Op cit page 73

¹³ Willis Matthew, Moore John-Patrick (2005) above no 5, page 13

¹⁴ 28 March 2007, above no 8, page 71

¹⁵ Willis Matthew, Moore John-Patrick (2005) above no 5

¹⁶ 28 March 2007, above no 8, page 73

¹⁷ Op cit page 74

¹⁸ Victorian Law Reform Commission 'Review of Bail Act Consultation Paper' (2005) p.14

¹⁹ VIYAC (2006) above no 9, 43

²⁰ Willis Matthew, Moore John-Patrick (2005) above no 5, page 2.

²¹ Dr Anna Stewart et al 'Final Report: Pathways from Child Maltreatment to Juvenile Offending (School of Criminology and Criminal Justice Griffith University) October 2002, p. 97 as in Australian Institute of Criminology Trends and Issues Paper in Crime and Criminal Justice no: 241.

²² Minister for Aboriginal Affairs Media Release 'A Fairer Victoria: Building A Brighter Future For Indigenous Victorians' 28 April 2005.

²³ McTurk Nick et al 'The School Readiness of Australian Indigenous Children: A Review of the Literature' May 2008, Menzies School of Health Research and School for Social and Policy Research – Charles Darwin University, Northern Territory, page 23

²⁴ Ibid

²⁵ National Indigenous Youth Leadership Group 2(2005) above no 1, page 3

²⁶ VIYAC (2006) above no 9, page 31

²⁷ National Indigenous Youth Leadership Group 2(2005) above no 1, page 10

²⁸ VIYAC (2006) above no 9, page 13

²⁹ Op cit page 18

³⁰ Op cit page 37

³¹ Department of Justice 'Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody Statistical Information' Volume 2 October 2005 p.38

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- ³² Willis Matthew, Moore John-Patrick (2005) above no 5, page 35
- ³³ Department of Justice (2005) above no 31, page 29.
- ³⁴ VIYAC (2006) above no 9, page 43
- ³⁵ Op cit page 40
- ³⁶ Taylor Paige 'Aboriginal Children 'More Stressed'', *The Australian*, Thursday, 23 November, 2006 as at <http://www.theaustralian.news.com.au/story/0,20867,20805931-2702,00.html>
- ³⁷ VIYAC (2006) above no 9, page 38
- ³⁸ Department of Justice (2005) above no 31, page 46
- ³⁹ 'Racism weakens indigenous health' 2008 as at <http://www.theage.com.au/news/national/racism-weakens-indigenous-health/2008/03/13/1205126111249.html>
- ⁴⁰ Department of Justice (2005) above no 31, page 57
- ⁴¹ Lawrence Ruth 'Series of Research Briefs designed to bring research findings to policy makers: Research on strong Indigenous communities' Written for the Indigenous Justice Clearinghouse, page 6
- ⁴² VIYAC (2006) above no 9, page 46
- ⁴³ Op cit page 48
- ⁴⁴ Op cit page 47
- ⁴⁵ Boersig, John *Indigenous Youth and the Criminal Justice System in Australia*. In Elizabeth Elliott and Robert M. Gordon, eds., *New Directions in Restorative Justice: Issues, Practice, Evaluation*. Cullompton, UK: Willan Publishing, 2005 page 2
- ⁴⁶ Op cit page 9
- ⁴⁷ Johnston, Commissioner Elliott QC 'Royal Commission into Aboriginal Deaths in Custody (1991) National Report Volume 2 para 21.1.2
- ⁴⁸ Unpublished paper that will be made available shortly.
- ⁴⁹ Boersig (2005) above no 45 page 3
- ⁵⁰ Mathews Dr Fred, 'Toward a transformational paradigm to Prevent youth involvement in crime' *Central Toronto Youth Services Toronto, Ontario, Canada* Conference Paper Prepared for: Beyond the Rhetoric in Early Prevention: Bridging the Gap Between Education, Health and Crime Prevention March 26-28, 2003 Adelaide, Australia p10
- ⁵¹ Kidd, Michael 'Aboriginal Mental Health and Economic Rationalism: The Great Misunderstanding' (1998) Faculty of Social Inquiry University of Western Sydney Hawkesbury. This paper was presented to the Social Justice, Social Judgement Conference, University of Western Sydney. It is available at <http://www2.fhs.usyd.edu.au/bach/2033/kidd98.htm>
- ⁵² National Indigenous Youth Leadership Group 2(2005) above no 1, page 6
- ⁵³ Mathews Dr. Fred (2003) above no 50, page 46
- ⁵⁴ 'Youth detention falls in SA' ABC News, 27 August 2008, as at <http://www.abc.net.au/news/stories/2008/08/27/2347624.htm>
- ⁵⁵ Drugs and Crime Prevention Committee 'Inquiry into Strategies to Prevent High Volume Offending by Young People Discussion Paper, August 2008, page 1
- ⁵⁶ Op cit 25
- ⁵⁷ 'Cost effectiveness of early intervention' [AICrime reduction matters](http://www.aic.gov.au/publications/crm/crm054.html), no. 54, 6 February 2007 as at <http://www.aic.gov.au/publications/crm/crm054.html>
- ⁵⁸ Mathews Dr. Fred (2003) above no 50, page 44
- ⁵⁹ Op Cit page 10
- ⁶⁰ Op cit p23
- ⁶¹ *Drugscope*, 16 January 2005
Victims say stopping re-offending is more important than prison
Link to story: http://www.drugscope.org.uk/news_item.asp?a=1&intID=1281
- ⁶² Cooperative Research Centre for Aboriginal Health • Discussion Paper Series: No. 6
VALS submission to the Drugs and Crime Prevention Committee in response to the 'Inquiry into Strategies to prevent high volume offending by young people' Discussion Paper – sent 23 September 2008

⁶³ Kidd (1998) above no 51

⁶⁴ Foster, 'A holistic approach to Aboriginal health' Port Lincoln Times, 25 October 2007. as at <http://portlincoln.yourguide.com.au/news/local/general/a-holistic-approach-to-aboriginal-health/1075571.html>

⁶⁵ McDermott Denis 'The Political *Is* The Clinical: Comfort zones, cultural safety and Indigenous mental health', presentation as VACCHO forum in 2007.

⁶⁶ Kidd (1998) above no 51

⁶⁷ Mathews Dr. Fred (2003) above no 50, page 54

⁶⁸ Op cit page 13

⁶⁹ Zubrick SR, Lawrence et al 'The Western Australian Aboriginal Child Health Survey: The Health of Aboriginal Children and Young' People. Perth: Telethon Institute for Child Health Research, 2004. page 297

⁷⁰ Willis Matthew, Moore John-Patrick (2005) above no 5, page 56.

⁷¹ Op cit page 75

⁷² VIYAC (2006) above no 9, page 16

⁷³ Ibid