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BY: ATSI/A



Victoria Legal Aid  
Response to the House of Representatives' Inquiry  
into the  
High levels of involvement of juveniles and young adults  
in the criminal justice system

1. Response and recommendations

Victoria Legal Aid's (VLA) response and contribution to the Inquiry is informed by Australian reports on the legal needs of indigenous people including, but not limited to:

- o Findings of the *Royal Commission Into Aboriginal Deaths in Custody from 1989* and updates on the reporting on the implementation of the recommendations;
- o *Access to Justice* – Senate Legal and Constitutional Affairs Committee December 2009;
- o "*Staying Strong on the Outside*" - Final Report, An Initiative of the National Justice Chief Executive Officers Group September 2009;
- o National Legal Aid's Submission to *Australia's Children Safe and Well: A National Framework for Protecting Australia's Children 2008*;
- o Victorian Ombudsman, *Own motion Investigation into the Department of Human Services Child Protection Program 25 November 2009*; and,
- o Consultations and discussions with staff from the Victorian Aboriginal Legal Service and Youth Legal Centre at the Lionel Murphy Centre during December 2009.

VLA alongside Aboriginal and Torres Strait Islander Legal Services (ATSILS), has provided assistance to indigenous people on civil law, criminal law and family law service systems for over 30 years.

As at 30 June 2008, 24% of the prison population were indigenous – despite making up only 2.2% of the Australian population...*of the 1795 indigenous prisoners aged 18-24 years in custody on 30 June 2008, 1,665 or 92.8% were male, while 130 or 7.2% were females. Males comprise the majority of indigenous young adults in custody, although its worth noting that attendees at the forum were also concerned that young women should not be forgotten pointing to the increase in the imprisonment rate for indigenous women<sup>1</sup>.* The continued over-representation of indigenous prisoners requires new approaches to inform and support prisoners manage their lives to post incarceration but importantly to support them and their families avoid the cycle of justice system.

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<sup>1</sup> *Staying Strong on the Outside: Indigenous Young Adults* Final Report of the National Justice Chief Executive Officers' Group released 2009 at page 6. The findings reflect research, practice survey and a forum attended by policy and practitioners from Australia and New Zealand.

The recent report by the Senate into *Access to Justice*<sup>2</sup> noted the models of intervention and support also offered by Community Legal Centres and other legal assistance providers that "work beyond the individual". VLA sees these community based models of support as being critical to extending legal services beyond the traditional "lawyer client sessional" provider model that places a strong emphasis on preventative models to strengthen community resilience.

However, the ability of indigenous people to access justice in the past decade has been impacted by funding reductions in real terms to legal assistance providers. The "*Access to Justice*" Report by the Senate Committee Inquiry in 2009 proposed "*increasing the level of funding for indigenous legal services (with loadings for additional expenses) ... recommending that governments inquire into and report on joint funding for the legal aid for indigenous Australians program with a view to more equitably apportioning responsibility for the provision of legal aid services for indigenous peoples*"<sup>3</sup>.

VLA supports the Committee's findings that "*ATSILS and FVPLS provide high quality and culturally sensitive indigenous specific services to meet the complex and legal needs of eligible indigenous peoples*"<sup>4</sup> and support their continued role. In VLA's view, the complexity of legal need experienced by indigenous young people and young adults requires a wrap around, integrated service for the person that considers all their civil, family and criminal law needs alongside preventative community based models - pre and post incarceration that actively involves indigenous people in all aspects of their design and delivery. In this regard, VLA notes and supports the consistent findings that indigenous people experience a greater and more successful engagement with indigenous specific services provided by indigenous people.<sup>5</sup> And conversely, the lack of indigenous specific programs has been consistently identified as a major barrier to indigenous participation and successful reintegration from prison.<sup>6</sup>

VLA further recommends the co-location of legal services with generic community support services near indigenous communities. Community post release support options would be enhanced by including access to legal advice and community legal education programs to assist on issues such as negotiating debt arising from mobile phones, driver's license renewal after suspension, housing law issues (tenancy, personal contracts) and other daily living issues as required.

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<sup>2</sup> *Access to Justice Legal and Constitutional Affairs References Committee 2009 at page 47.*

<sup>3</sup> *Access to Justice Legal and Constitutional Affairs References Committee 2009 at xix.*

<sup>4</sup> *Access to Justice Legal and Constitutional Affairs References Committee 2009 at page 15.*

<sup>5</sup> Gilbert and Wilson, 2009:4 cited by Chris Cunneen, Law Faculty, UNSW, *Indigenous young people, crime and justice conference*, September 2009.

<sup>6</sup> Willis and Moore, 2008 cited by Chris Cunneen, Law Faculty UNSW September 2009. See also *Police drug diversion in Australia: Equal outcomes for indigenous young people?*, Jason Payne, *Indigenous young people, crime and justice conference*, September 2009.

The report of the National Chief Executive Officers Group<sup>7</sup> identified the need for research on young adults offenders "as valuable because these people are at a decisive period in their development". The report provides a useful list of evaluated programs throughout Australia that support young indigenous people in their communities.

The relationship between family violence and adverse mental health outcomes for indigenous young people requires "joined up" legal and community support responses as both a preventative strategy to reduce harm to children and as a way to build family resilience and strength. Occasionally, when a young person in the child protection system becomes involved with the criminal justice system, child protection workers reduce their involvement with the family, sometimes allowing the criminal justice system to "take over" the case management. The inclusion of, and involvement of state child protection service systems with the criminal justice system on how best to respond to their placement needs (pre and post sentencing) that incorporate alternatives such as emergency housing for the whole family, roundtable dispute management (mediation and ADR on child placement options in family law matters) and the development of appropriate community based "wrap around" service responses at early stages needs further consideration. Whilst early identification is critical to preventing entry into the criminal justice system, it should be recognised that young people are often indirectly impacted by the substantial unmet legal needs of their adult parents and guardians in a number of civil law matters. Furthermore, it needs to be recognised that an adolescent who is the care of an adult fleeing domestic violence or an adolescent who is not attending school who is in the care of an adult who is at risk of family violence is most likely to be impacted adversely by the instability of these situations. The linkage between early mental health risk and offending in young people has been raised in research and needs to be considered as part of preventive planning and diversion strategies for young indigenous people at risk of entry into the criminal justice system.

In VLA's long standing practice of representing young people charged with criminal offences, there have been instances where children and young people have been charged with further offences such as criminal damage and offensive language whilst they have been in residential care. This applies to both indigenous and non indigenous young people. Behaviour such as kicking doors, throwing objects and/or yelling are reported to police and invariably result in criminal charges before the Children's Court. This impacts options to bail and diversion programs (discussed further below). VLA recommends the introduction of alternate behaviour management responses that include therapeutic responses to control or respond to children and young people who exhibit self destructive or anti social behaviours. VLA suggests that these behaviours may reflect symptoms of a child's distress and dislocation, fear and anxiety and possibly an underlying mental health issue.

In short, legal and community responses between the criminal justice and civil justice systems for indigenous people should aim for a seamless and smooth transition for young indigenous people. The current compartmentalisation of criminal justice responses from the civil law needs of indigenous young people disregards the impact of significant social and community problems on the individual and contributes to the entrenched cycle of problems experienced by young

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<sup>7</sup> *Staying Strong on the Outside: Indigenous Young Adults* Final Report of the National Justice Chief Executive Officers' Group released 2009 at page 8 .

people. In VLA's experience, family violence indirectly or directly impacts on and creates civil law needs for indigenous young people such as tenancy and or homelessness issues, social security issues or consumer debt as well as family law needs (such as shared parenting, guardianship, divorce, child support arrangements).

VLA supports greater coordination of service supports for indigenous young people to reduce the gap between service responses. VLA supports the focus of this inquiry to locate best practice models that enable greater cooperation between the State and Federal governments with responsibilities for education and employment. VLA holds that any effective short or long term approach requires a collaborative, partnership between the non government sector and the policy and program arms of government agencies at the state and federal level.

**The impact that alcohol use and other substance abuse has on the level of indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this**

VLA recommends that children who have offended and are in need of care and protection are dealt with in the same system and that the appropriate system also considers medical rehabilitation and therapeutic support.

VLA recommends diversion from detention and that health care solutions/options be used as alternatives to addressing issues of alcohol abuse or alcohol related offending. As such medical rehabilitation and cognitive behavioural options should be incorporated as part of an integrated program to assist young people and young adults manage alcohol and substance abuse. Opportunities should also be made available to assist young offenders to address underlying mental health issues.

VLA supports the reduction of public order offences, including those relating to young people and alcohol. For example, VLA supports the decriminalisation of young people possessing or drinking alcohol in public places. Substance abuse is identified as a major health concern for indigenous young people and an underlying cause of crime<sup>8</sup>. This includes the public order offence itself and what can often be consequential offences resulting from the police intervention, such as resist arrest, offensive language and/or assault. Negative historical associations between indigenous people and police can create a propensity for conflict and what was an indigenous young person possessing alcohol in a public place can easily escalate to incarceration for resisting arrest and assault with no constructive impact on any underlying health or welfare issue.

VLA further recommends that the health, social and civil law needs of indigenous people be concurrently met alongside the criminal justice obligations of the person.

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<sup>8</sup> See "Investing in indigenous youth and communities to prevent crime", Tom Calma ATSI social Justice Commissioner, and "Police drug diversion in Australia: Equal Outcomes for Indigenous Young People?", Jason Payne, *Indigenous young people, crime and justice conference*, September 2009.

**Best practice examples of programs that support diversion of indigenous people from juvenile detention centres and crime, and provide support for those returning from such centres.**

VLA notes both findings that; (i) Indigenous young people are 28 times more likely to be detained than non indigenous young people<sup>9</sup> and that (ii) Indigenous people are less likely to be referred or recommended for diversion programs<sup>10</sup>

An overwhelming factor in the over representation of Indigenous young people in detention is the inequitable access Indigenous young people have to bail and to diversion programs. VLA notes the findings in Queensland that 83.9% of all admissions of Indigenous young people to detention were as a result of being remanded in custody.<sup>11</sup>

In this regard, VLA recommends the introduction of indigenous specific bail support programs in all metropolitan and regional areas.

VLA refers the Committee to the findings of the Report of the National Justice Chief Executive Officers Group<sup>12</sup> (NJCEO) undertaken in 2008-2009 that reviewed 36 Australian and New Zealand post release programs assisting indigenous young adults aged 18-25 years released from custody.

VLA supports programs that include the following core principles identified by the NJCEO<sup>13</sup>:

1. addressing the cognitive and behavioural causes of offending
2. programs that met the cultural competency in the design and planning of programs.
3. aimed at reintegration at the beginning of the sentence and continue through post release.
4. holistic and ensure practice health and welfare needs are met.
5. empower and offer practical life skills.
6. strengths based focus that builds on capacity.
7. effective partnerships and information sharing between agencies that includes joined up services.
8. recognises the needs of victims.

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<sup>9</sup> "Investing in indigenous youth and communities to prevent crime", Tom Calma ATSI Social Justice Commissioner, AHRC, *Indigenous young people, crime and justice conference*, September 2009.

<sup>10</sup> See "Police drug diversion in Australia: equal outcomes for indigenous young people", Jason Payne, *Indigenous young people, crime and justice conference*, September 2009

<sup>11</sup> "Are Governments Bound to Fail Indigenous Children, Young people and their Families?", Chris Cunneen, *Indigenous young people, crime and justice conference*, September 2009. Only 16% of those remanded in custody were subsequently sentenced to a custodial. Sentence. See the *Evaluation of the ATSI Justice Agreement*, p 78.

<sup>12</sup> *Staying Strong on the Outside: Indigenous Young Adults* Final Report of the National Justice Chief Executive Officers' Group released September 2009.

<sup>13</sup> *Staying Strong on the Outside: Indigenous Young Adults* Final Report of the National Justice Chief Executive Officers' Group released September 2009 at page 2.

The NJCEO's group findings supported courses with a minimum of 100 hours of intensive support.

A program of particular merit is the pilot ROPE Program for young people who have committed their first offence. "THE ROPES PROGRAM" was devised and launched in November 2002 by Leading Senior Constable Mick O'Meara of Boronia Police Station out of a concern of the over representation of young people involving the Police and the Courts carrying with it the largely negative, punitive outcomes that did little to educate them about making better choices in order to avoid an ongoing cycle of re offending.

The young person must be under 18 years at the time of the offence, acknowledge the circumstance of their offence and must be their first appearance at Court. The police officer who charged the young person has the discretion to recommend the young person for ROPES and once recommended, the Magistrate adjourns the criminal charge/s to enable participation in the program.

The Ropes Course is a full-day event, and involves the young offender and the Police Informant who brought them before the Court interacting and working together to achieve the various tasks set for them during the Course. It breaks down the barriers between young people and Police encouraging them to communicate, take responsibility for their actions, work together to achieve a common goal, and confront and change their perceptions of each other.

When the young person successfully completes the Ropes Course, they receive a Certificate, a copy of which is forwarded to the Court. The Certificate is attached to the person's Court File, the matter is withdrawn, and no finding of guilt or conviction is recorded.

Noting that indigenous young people experience more successful engagement and outcomes when programs are indigenous specific and accepting the findings that indigenous people are less likely to be referred to diversion programs, VLA supports the expansion of the ROPES program to include an indigenous specific ROPES program and that the Victoria Police are educated in the availability and importance of that utilising that diversion option in relation to indigenous young people.

Overall, there is a need for a considered and comprehensive investment in diversion, (such as ROPES,) but also therapeutic options that can provide a tailored individual case-managed approach. Currently, the front end of diversion options in the youth justice system is under-developed. A new pilot program "Right Step" operates at the Moorabbin Children's Court where young people undertake a tailored 8 week program with the community agency Youth Connect. Youth Connect workers tailor the program to the young persons needs (seeking alternative education, drug and alcohol counselling, family counselling etc).

There is also a need to develop specific young indigenous women's programs, including during detention, to address their needs.

END.