



## Victorian Aboriginal Legal Service Co-operative Ltd.

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### **VALS' submission to the Federal House of Representatives - Standing Committee on Family, Community, Housing in response to Inquiry into the impact of violence on young Australians - sent 20 November 2009**

Thank you for the opportunity to send this submission in response to the Inquiry into the impact of violence on young Australians. It is imperative that status of Aboriginal and Torres Strait Islander as victims is not overlooked.

#### **Background**

By way of background, people over 15 years comprise 61% of the total Aboriginal and Torres Strait Islander population and 49% are under 15 years. This contrasts with 80% of the non-Indigenous Australian population being over 15 years and 20% being under 15.<sup>1</sup> 613 Indigenous Australians over 15 report being a victim of physical or threatened violence at twice the rate of non-Indigenous Australians (Al-Yaman, Van Doeland & Wallis 2006).

#### **a) Perceptions of violence and community safety among young Australians;**

There are a number of trends operating around Aboriginal and Torres Strait Islander youth and adults about violence. The perception of these trends by Aboriginal and Torres Strait Islander youth varies as some question the trends and others do not. Some trends are:

- Young people being pressured by older people to continue long standing family disputes within the Aboriginal and Torres Strait Islander community.
- Violence is seen as a consequence of transgenerational trauma from colonisation and erosion of the male role in Aboriginal and Torres Strait Islander society.
- Some young women present at family violence refuges saying things like: "my man does not love me if he does not hit me". People who question this trend attempt to communicate that violence is not a part of Aboriginal culture.
- Over-representation in victimisation statistics, but failure to perceive oneself as a victim, as evidenced by an under-representation in applications to the Victim of Crime Assistance Tribunal by Aboriginal and Torres Strait Islander peoples.
- Discrimination, bullying or racism on the streets or in schools happening on a daily basis (see below).

<sup>1</sup> Bryant Colleen, Willis Matthew 'Risk factors in Indigenous violent victimisation' AIC Reports Technical and Background Paper 30 (2008), page 19

- Some young people are not linked in with culture and see prison as a way of learning culture or as a rite of passage.

It is VALS' opinion that the dominant discourse, that marginalises the Aboriginal and Torres Strait Islander perspective, perceives that a law and order crime is the answer to violence and safety. This perception is influenced by anger and fear rather than an awareness of the underlying causes of crime and the need to take a holistic approach that does not exclude restorative justice. VALS classifies a restorative justice approach as a smart approach, whereas a tough on crime approach is not smart. There is evidence that a tough on crime approach does not work in terms of reducing crime.

Professor Arie Freiberg in his review of Victorian sentencing highlights that sentencing rates are increasing ahead of crime rates: *"In Australia, as possibly elsewhere, there is little evidence that increasing imprisonment rates have significantly affected crime rates. Victoria's crime rate over the last decade, which has shown small annual increases for the most part, appears to be unrelated to the numbers in prisons.* (p. 41, Freiberg 2002).

**b) Links between illicit drug use, alcohol abuse and violence among young Australians;**

VALS acknowledges that there are links between illicit drug use, alcohol abuse and violence among young Aboriginal and Torres Strait Islander Australians and non-Indigenous Australians and something needs to be done about it. However, VALS is against law and order measures. For instance, the City of Yarra recently introduced Local Law 8 which bans consumption of alcohol in public. VALS argued against the law as follows.

It is VALS' impression of Local Law 8 that there are misconceptions of what it is and what it can achieve. It appears that the City of Yarra sees Local Law 8 as a public health and harm minimisation response to public drinking, effective response to public drinking and a tool for police to intervene that does not involve the criminal justice system. VALS does not see Local Law 8 in the same light.

VALS sees Local Law 8 as a law and order approach masquerading as a public health approach. VALS considers a public health approach to "fulfil society's interest in assuring conditions in which people can be healthy." VALS considers harm minimisation to involve a focus on safety. Local Law 8 involves cracking down on the drinking in public and not thinking any further such as causes and solutions (ie: just tip out the drink and not address addiction). This is the 'gap' that Local Law 8 leaves when it comes to public health issues. It takes a tough, as opposed to a smart approach.

VALS sees Local Law 8 as a political tool to be 'seen' to be doing something in relation to complaints about the amenity of the local area. Also, it is framed around

the so called ‘Smith Street’ problem, which involves how Aboriginal and Torres Strait Islander peoples use public space.<sup>2</sup>

The effectiveness of Local Law 8 is question given it has the potential to have a disproportionate impact on Aboriginal and Torres Strait Islander peoples by further entrenching them into the criminal justice system.<sup>3</sup>

- Local Law 8 does not recognise Aboriginal and Torres Strait Islander peoples’ use of public space as cultural space. Given the communal nature of Aboriginal and Torres Strait Islander culture<sup>4</sup>, some Aboriginal and Torres Strait Islander peoples drink in public. Specifically in relation to Smith Street in Fitzroy, Aboriginal and Torres Strait Islander persons have a historical connection to Fitzroy and Smith Street has been defined as a ‘one-stop shop’ for meeting the needs of Aboriginal and Torres Strait Islanders.
- Local Law 8 itself could result in indirect discrimination or the way it is enforced could involve indirect discrimination. Indirect discrimination occurs where there is no intention for discrimination to occur as it not directed at a particular people, but it ends up having a disproportionate impact on those people.
- Poor relations between some members of Victoria Police and some members of the Aboriginal and Torres Strait Islander person community which can result in what VALS refers to as the trifecta (ie: charges are added to an original charge which relate to how the Police and person in custody interact). For instance, a Police officer may ask a person to comply by tipping out the contents of their bottle, or a Police officer completes an infringement notice, the person will get angry and do one of the following: swear at police (ie: offensive language) resist arrest or assault police to name a few.
- Low socio-economic status of Aboriginal and Torres Strait Islander persons which contributes to inability to pay fines and potential imprisonment.

Local Law 8 relates to public space and this is a highly contested area for youth which needs to be taken into account in measures to address violence by young people. Dee explains how “Rob White addressed some of these issues in his 1990 book ‘No Space

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<sup>2</sup> The *Evaluation of Alcohol Free Zones in NSW: Final Report (2007)* found through evaluation that people who want to drink alcohol in public will always be able to find somewhere to have a drink and it was generally viewed that Alcohol Free Zones are not effective for people who have an alcohol drinking problem, One Police Officer from the consultation for this report stated that ‘(t)he AFZs aim to stop people congregating and drinking, but they don’t minimise the alcohol consumption’ (Department of Local Government NSW 2007:39).

<sup>3</sup> Current public drunkenness laws have a disproportionate impact of Aboriginal and Torres Strait Islanders. In October 2002, custody incidents were 17 times more likely to involve Aboriginal and Torres Strait Islander peoples than non-Aboriginal and Torres Strait Islander peoples and 19 percent of all Aboriginal and Torres Strait Islander people’s custody incidents were for public drunkenness compared with eight percent of all non-Aboriginal and Torres Strait Islander peoples (Taylor and Bareja 2005).

<sup>4</sup> the low socio-economic status, poor health, transgenerational trauma following dispossession of cultural space in the past (ie: colonisation), over-crowding in houses

of Their Own'.<sup>5</sup> White argues that young people's occupation of both public and private space is a struggle between the young people and other representatives of authority, in the form of parents, neighbours, police and retail traders;<sup>6</sup>

**c) The relationship between bullying and violence on the wellbeing of young Australians;**

There is a relationship between bullying and violence on the wellbeing of young Australians. VALS' civil practice assists young people who have disengaged from school due to bullying by assisting in mediations. These mediations sometimes result in apologies and plans on how to prevent truancy etc.

**d) Social and economic factors that contribute to violence by young Australians; and**

There are social and economic factors that contribute to violence by young Australians. It must not be forgotten that "some characteristics of the individual, their lifestyle and the community in which they live may leave some people more vulnerable to being a victim of particular types of violence. Risk of victimisation tends to arise out of the confluence of several risk factors.

Risk factors in this report have been subdivided into three categories:

- sociodemographic variables, including age • and sex of the victim
- measures of individual, family and community • functionality
- resources available to a person, including material • resources, education, employment, housing mobility and the influence of living in remote or non-remote areas."<sup>7</sup>

**e) Strategies to reduce violence and its impact among young Australians.**

Some strategies that focus on Aboriginal and Torres Strait Islander youth that seek to reduce violence and its impact amongst Aboriginal and Torres Strait Islander youth are as follows:

1. Introduce an Aboriginal and Torres Strait Islander mediation centre. VALS has been unsuccessful in past funding applications to establish such a centre.
2. Conduct outreach workshops on dispute resolution.
3. Community Legal Education about the Victim of Crime Assistance Tribunal and the fact that Aboriginal and Torres Strait Islander peoples are victims who have rights.
4. Reinforce the message that family violence is not part of Aboriginal or Torres Strait Islander culture.

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<sup>5</sup> Dee Mike, 'Young People and the Struggle for Public Space in Australia' Youth 2000 Conference University of Teesside July 1995

<sup>6</sup> Ibid

<sup>7</sup> Bryant Colleen, Willis Matthew 'Risk factors in Indigenous violent victimisation' AIC Reports Technical and Background Paper 30 (2008), page xii

5. Culturally appropriate anger management programs/behavioural change programs.
6. Take a public health approach to the link between illicit drug use, alcohol abuse and violence among young Australians.
7. Education of the non-Indigenous Australian community about Aboriginal and Torres Strait Islander culture.
8. Community Legal Education about the signs of a violent relationship.
9. Provide more youth specific spaces than a skate park. Take into account gender difference and what female youths are interested in.
10. Introduce cultural centres.
11. Reduce the number of alcohol outlets.
12. Provide mentoring;.
13. develop more residential programs;
14. Make more use of group conferencing.
15. Provide more diversion programs.
16. Focus on protective factors such as cultural factors, kinship, family ties and history. These can act as strong protective factors that may build up resilience amongst young people. A Report by the Victorian Aboriginal Health Service *Strengths of Young Kooris* indicates some protective factors that may act as barriers against offending and re-offending by Koori youth. These include:
  - Strong family links, including extended family;
  - Friends;
  - Connection with the Koori community and culture;
  - Sense of identity;
  - Aspirations;
  - Responsibility;
  - Sport and creative activities.<sup>8</sup>
17. Adopt a rights based approach to crime prevention as described by Youth Law in a submission to ....” This approach would be beneficial in that
  - It ensures the integration and inclusion of an otherwise marginalised group (children and young people) in policy-making and evaluation;
  - It does not demand uniformity of outcomes but creates a principle-based approach which ensures that the individuality, differing maturity levels and best interests of each young person is recognised and considered;
  - It recognises there is no single solution to criminal behaviour, rather different methods are appropriate for different individuals
  - It is flexible and applicable to a broad array of situations.
  - Integrated prevention encompasses housing, mental health care, schools, educational outcomes, child and youth development, parental and community support”<sup>9</sup>

Some other strategies are to learn from Best Practice:

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<sup>8</sup> Drug and Crime Prevention Committee ‘Inquiry into strategies to prevent High volume offending and recidivism by young people Final Report’, (July 2009) page 252

<sup>9</sup> Youthlaw “Inquiry into strategies to prevent high volume offending by young people” September 2008, page 9  
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- **Murray River Marathon:** where Victoria Police and Aboriginal youth compete and work as a team.
- **Ngwala Willumbong & Youth Substance Abuse Service program - Koori Youth Alcohol and Drug Healing Service:** a residential drug and alcohol program, which is a partnership between Youth Substance Abuse Service (YSAS) and Ngwala Willumbong.<sup>10</sup>
- **Koori Court:** As His Honour Judge Paul Grant, President of the Children's Court describes the Koori Children's Koori Court "...it is not a solution. It is one part of what has to be a comprehensive strategy that tackles what the Royal Commission into Aboriginal Deaths in Custody described as the underlying causes of overrepresentation... One of the great things about the Koori Court is that it brings elders and respected persons into the court process. These are people who have authority within their local community, and we think that bringing them into the hearing and the determination of family division matters might strengthen the families' determination to respond. It might make it a more meaningful process so that family members will say, 'Yes, this is a process that I am committed to and I will try to do my best for my family and for my children'. We do not know if it is going to be successful or not, but we are prepared and willing to try it".<sup>11</sup>

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<sup>10</sup> Drug Info Clearinghouse, Prevention of alcohol-related harms in Victoria's Koori Communities:

Research, policy, practice and Indigenous ways of working, September 2009, as at [http://www.druginfo.adf.org.au/downloads/Seminar\\_notes/Indigenous\\_SeminarNotes\\_3Sep09.pdf](http://www.druginfo.adf.org.au/downloads/Seminar_notes/Indigenous_SeminarNotes_3Sep09.pdf)

<sup>11</sup> Drug and Crime Prevention Committee 'Inquiry into strategies to prevent High volume offending and recidivism by young people Final Report', (July 2009) page 254

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