Victorian Aboriginal Legal Service

State Election 2018

Key Election Asks

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Overview

The Victorian Aboriginal Legal Service continues to strongly advocate on justice issues that are pertinent to Aboriginal communities across the state of Victoria. As such, we have developed this election document in order to bring to the attention of all parties contesting the 2018 state election the justice issues facing Aboriginal communities.

Recent legislative changes to aspects of the justice system under the rhetoric of ‘tough on crime’ - such as a tightening of the Bail Act, and a shift towards the introduction of mandatory sentencing - means that we all have a responsibility to tackle what has long been the greatest inequality in our society: the ever-increasing over-incarceration of Aboriginal men, women and children.

While the state government has committed to lowering the numbers of Aboriginal men, women and children in prison, recent legislation has ensured that instead, these numbers are set to increase, thus perpetuating the greatest ongoing inequality in our country – the mass incarceration of Aboriginal and Torres Strait Islander peoples.

The Victorian Aboriginal Legal Service calls on all parties to formulate policies that are aimed to alleviate and eradicate this inequality. As such, we provide this pre-election ‘policy priorities and commitments’ paper to guide the development of party policies.

We call for an immense shift in policy development, one that is based on a true commitment to self-determination and develops legislation in close consultation with Aboriginal communities, and that tackles the underlying causes of incarceration.

Aboriginal women are the fastest growing cohort of incarcerated person in the country, a result of ongoing inter-generational trauma underpinned by issues such as homelessness and lack of mental health care.

Due to this increase, more Aboriginal children than ever are being removed and placed into out-of-home care, with punitive permanency legislation ensuring it is more difficult than ever to keep Aboriginal children with their families. Sadly, the statistic show that these children are destined for youth detention and then adult prison, perpetuating the cycle of mass incarceration.

The state’s political parties have a responsibility to rectify this gross injustice and reverse this downward spiral. The election asks included in this document are not simply a wish list, but a comprehensive road map to reform based on decades of experience of Aboriginal peoples and comprehensive legal scholarship.

We invite each political party to work with us to create a future in this state where Aboriginal people share the same life opportunities as all Victorians, and where equality is a reality, not just an aspiration.
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Key Election Asks Summary

VALS makes the following key asks:

- Increase investment in prevention, diversion and rehabilitation programs to at least equal that spent on detention and imprisonment.

- Increase funding to bail support services, including increased funding to VALS to address increased demand from punitive changes to the Bail Act.

- Repeal the suite of punitive Bail Laws that directly increase the numbers of Aboriginal people in prison.

- Commit to oppose and repeal mandatory sentencing legislation.

- Commit to fund Balit Ngulu for the provision of legal and community justice supports to Aboriginal and Torres Strait Islander children.

- The minimum age of criminal responsibility be raised to 14.

- That support for children and young people in contact with the justice system be a policy priority.

- The permanency objectives be properly reconciled with s.10 of the CYFA and that Adoption be removed from the permanency hierarchy or placed last.

- Aboriginal and Torres Strait Islander women should only be jailed as a matter of last resort because of the devastating impact this has on families and children.

- The resources that would be spent on imprisoning Aboriginal women should be reallocated to legal, cultural and community services, including safe and appropriate housing.

- Implement a Charter-compliant practice of strip searching based on intelligence and risk assessment for all juvenile, male and women’s prisons.

- Establish an independent victim-centred investigative body for complaints against police.

- Amend the Sentencing Act to direct the judiciary to take into account the spe-
cific experiences of Aboriginal people as a sentencing principle by way of Abo-
riginal Community Justice Reports.

- Statement of Compatibility and Aboriginal Impact Statements be introduced to
legislative procedures to ensure independent oversight of legislative and policy
actions affecting Aboriginal communities.

- Implement a redress scheme for members and relatives of Victoria’s Stolen
Generations.

- Victorian political parties commit to the principle of self-determination under-
pinning all governance issues where Aboriginal people and communities are
concerned, including continued support for the Treaty process.

**Background to the VALS**

VALS is an Aboriginal community controlled organisation. It was established in 1972
by committee, and incorporated in 1975. VALS is committed to caring for the safety
and psychological well-being of clients, their families and communities and to
respecting the cultural diversity, values and beliefs of clients. VALS’s vision is to ensure
Aboriginal and Torres Strait Islander Victorians are treated with true justice before the
law, our human rights are respected and we have the choice to live a life of the quality
we wish.

We operate in a number of strategic forums which help inform and drive initiatives to
support Aboriginal and Torres Strait Islander people in their engagement with the
legal system in Victoria. We have strong working relationships with the other five
peak Aboriginal Community Controlled Organisations in Victoria and we regularly
support our clients to engage in services delivered by our sister organisations. Our
legal practice spans across Victoria and operates in the areas of criminal, civil and
family law (including child protection and family violence).

In delivering legal and other services to Aboriginal clients we understand that an
individual’s legal problem is the result of a challenging set of individual issues, as a
result VALS seeks to provide supports that are not just limited to legal services.

As such we support thousands of people within the Aboriginal and Torres Strait
Islander community in Victoria with a range of services including:
• Legal services such as advice, representation and case work in criminal, family, child protection and civil law
• Client support services in addition to legal services, aimed at providing the link between law and community;
• Pre-and post-prison release support services to facilitate positive transition back into community
• Community legal education to ensure our community know their legal rights and responsibilities and known who to turn to when in need
• Providing analysis and advice on the impact of law and other social factors on our community
• Advocating systematically for the rights of Aboriginal and Torres Strait islander people when they interact with the legal system;
• Building awareness and understanding of the broader legal system, and the general public, of specific issues facing Aboriginal and Torres Strait Islander people in the legal system and beyond.

VALS looks for sustainable responses to legal problems. This means we support investigation and use of therapeutic and preventative approaches to reduce the interaction our clients and community have with the legal system and produce long lasting outcomes for our clients.

**Criminal Law Practice**

We represent male and female clients of all ages in immediate criminal court dealings such as bail applications, defending or pleading to charges and sentencing. In looking at bail conditions and sentencing options, we are involved in finding accommodation and supports that will not only support a client in their immediate circumstances, but also address the underlying causes of why they are committing criminal acts. This will include drug and alcohol services delivered by Aboriginal specific organisations; behavioural change programs and counselling; linkages to mental health services, and connections to community.

We also represent young people who are dealing with criminal offending – their offences may not directly reflect family violence, but often, they have histories of family violence in their home. They have rights as victims of family violence, and there is a distinct lack of family violence specific responses for children, particularly non-Government counselling and healing support.

Their experiences as victims of family violence are distinct from the adults in the home, and requires separate responses. They may struggle to identify family violence
and how it has impacted on their life. They may feel responsible for the violence in their home, or feel guilty if they tell someone about it.

A lack of stable home environment can lead to absences from school or links with sports and community activities, and can mean children are left without guidance and find themselves making poor decisions leading to criminal behaviour.

**Youth and Family Law Practice**

Our Youth and Family Law Practice represents both adults and young people in the areas of child protection and family law. We are increasingly seeing a significant number of young people who are being removed by the Department of Health and Human Services due to family violence and/or substance misuse.

In the course of representing clients we often observe young people to be suffering from the anxiety of being away from family, plus coming into contact with the older children who have been in the child protection system for extensive periods of time, which may cause anxiety, distress and place them at risk of harm in other ways. Often these young people are involved with the justice system and the first offending often begins whilst they are in the care of DHHS.

VALS data indicates a 56% increase in family law and related matters (information, advice, referrals and legal representation) between 2010-13.¹ This reflects an increased awareness and reporting of family violence issues and also the current mandate for Police to respond to family violence incidents at higher rates.

VALS has increased the size of the Youth and Family Law Practice through grants and yet we are still not able to meet the demand and are required to regularly refer matters out. Also, as our service model is holistic, when people require our support for police or other family violence services, we often find they require internal and external referrals for a number of other legal and holistic services, including for parenting or child protection issues.

**Civil Law Practice**

Our civil law practice encompasses a range of legal areas which can often follow issues concerning child safety such as family violence. When a victim of family violence needs to relocate from the family home, issues may arise i.e. preserving or relinquishing tenancy, changing locks, recovering personal property and other related matters.

Issues such as maintain a tenancy, resolving debt and infringement issues and issues relating to employment and discrimination are also dealt with on a regular basis by

our civil law practice as these can often lead to instability which would place our most vulnerable community members, children and the elderly at risk.

**Balit Ngulu**

Balit Ngulu has been established by the Victorian Aboriginal Legal Service in response to the needs of Aboriginal youth to have a say in their own affairs and to be able to work towards breaking the cycle of disadvantage. Balit Ngulu aims to provide legal advice and assistance in the areas of youth justice, child protection, family law, and civil law issues to Aboriginal and/or Torres Strait Islander young people across Victoria. Balit Ngulu will provide integrated and culturally appropriate services to Aboriginal and/or Torres Strait Islander young people to address issues such as recidivism, cultural, family, education, employment, and leadership so that they can self-determine their own futures.

**Community Justice Programs**

VALS provides holistic supports to clients by way of the Community Justice Program’s Section which conducts our pre-and post-release support program, our Local Justice Worker Program and our Aboriginal Community Justice Panels Program. The CJP Section also facilitates our 24-hour support service which is backed up by the strong community based role our Client Service Officers play in being the first point of contact when an Aboriginal or Torres Strait Islander person is taken into custody, through to the finalisation of legal proceedings.

**Community Legal Education**

Our community legal education program supports the building of knowledge and capacity within the community, so our people can identify and seek help on personal issues before they become legal challenges.
**Key Election Asks**

1. **Prevention, Diversion and Rehabilitation Programs**

   1.1 *Investment in Prevention, Rehabilitation and Diversion*

   **Key Ask: Increase investment in prevention, diversion and rehabilitation programs to at least equal that spent on detention and imprisonment**

   The Victorian Government spends nearly five times as much on locking men, women and children up in prisons as it does on diversion and rehabilitation programs. By prioritising funding for incarceration the Victorian Government is effectively investing in higher rates of reoffending and underfunding prevention, diversion and rehabilitation programs that are proven to reduce offending.

   It is therefore no surprise that prison numbers in Victoria have risen by 70.8% in the last decade. Much of this increase is the result of the concurrent rising recidivism rate, which continues to sit at over 40%.

   Justice reinvestment, shifting funding from prisons to prevention, diversion and rehabilitation, is cheaper and more effective. In her 2015 report on rehabilitation and reintegration of prisoners the Victorian Ombudsman found that it costs $270 per prisoner per day, whereas Community Corrections orders cost just $27 per offender per day.

   This is despite evidence that investment in diversion has massive cost benefits. For example, a 2010 study found that for every dollar invested in the Court Integrated Services Program (CISP) there were savings of between $1.70 and $5, and offenders who completed CISP had a 10% lower recidivism rate than other offenders.

   Despite the evidence that prevention, diversion and rehabilitation reduce offending and recidivism, and are overwhelming cheaper than imprisonment, most offenders are given little access to such programs. This failure of investment is highlighted in education statistics: 56% of young offenders were expelled from school and only 34% of Victorian prisoners are involved in education programs.

   Prioritising investment in the prison system also has a disproportionate impact on Victoria’s Koori population, who are the most overrepresented and fastest growing group in Victoria’s prisons, and therefore the most in need of prevention, diversion and rehabilitation programs. In the last ten years the Aboriginal and Torres Strait Islander imprisonment rate grew significantly more than the overall imprisonment rate, jumping from 956.7 per 100,000 adults in 1999 to 1,833.9 per 100,000 in 2017. This brought the Aboriginal and Torres Strait Islander rate of imprisonment to be 13 times higher than the overall population.
VALS asks all Victorian political parties support the setting of a target to increase spending on prevention, rehabilitation and diversion. Such a target would be a positive step to ensure justice policy is on track to reduce both crime and imprisonment rates.

It is logical that such an increase in funding should come from that previously allocated to expanding the prison system: investment in prevention, rehabilitation and diversion decreases the prison population and therefore the need for funding prison expansion.

2. Bail & Remand

2.1 Repeal Punitive Bail Laws

Key Ask: Repeal the suite of punitive Bail Laws that directly increase the numbers of Aboriginal people in prison

The Victorian Aboriginal Legal Service also calls for the punitive new Bail laws to be repealed, given the adverse impacts on Aboriginal men, women and children. The new Bail laws are also in part at odds with the Bail Act s3A which allows for cultural considerations when an Aboriginal person is making an application for bail. We know that the new Bails laws will – and already are – having a dramatic effect on the rate of prisoners in Victoria. We also know that any general increase in incarceration rates has a higher impact on Aboriginal men, women and children.

In particular, the denial of bail to Aboriginal women is compounding the already rapidly increasing numbers of Aboriginal women in Victoria’s prisons. Aboriginal women are nationally the fastest growing cohort of incarcerated persons in Australia, often for minor offences. The flow-on effects of this increased incarceration are increased impacts on family including higher rates of child removal. Legislative amendments such as those that reduce the opportunity for bail only further compound the underlying social factors that drive the incarceration of Aboriginal women (as well as men and young people).

VALS calls on state political parties to act to repeal these amendments and instead introduce considerations for bail and sentencing that address the underlying causes of incarceration for Aboriginal people in Victoria.

2.2 Bail Support Services

Key Ask: Increase funding to bail support services, including increased funding to VALS to address increased demand from punitive changes to the Bail Act

In the last few years significant changes have been made to the Bail Act that have resulted in greater demand for bail support services. While increased funding has been
allocated to the courts and bail justices to accelerate court processes and reduce time spent on remand, little funding has been allocated to meet the demand for bail support services. The shortfall in funding for bail support services means that many accused are not granted bail due to circumstances such as housing and that many on bail are charged with bail breaches due to a lack of support in meeting the increasingly onerous conditions.

According to the Royal Commission Into Aboriginal Deaths In Custody (RCIADIC):

“[t]he lack of flexibility of bail procedure and the difficulty Aboriginal people frequently face in meeting police bail criteria by virtue of their socioeconomic status or cultural difference contributes to their needless detention in police custody. This is the case for both adults and juveniles”.

VALS argues that disadvantaged people should not be worse off because of their cultural or socio-economic status when it comes to bail and it is therefore critical that culturally appropriate bail support services be funded. Shortages in bail support at a time when bail conditions have become more onerous and responses to breaches more severe has resulted in people being sentenced for minor breaches of their bail conditions. Following a report highlighting the impact of bail changes Professor Arie Frieberg, Chair of the Sentencing Advisory Council, stated that: “Offences that arise from breaching conditions are responsible for a significant and growing proportion of charges sentenced in Victoria.”

By far the most common breach of bail resulting in charges sentenced is not attending a court date, something that is often the result of a lack of support, such as transport or time management. With appropriate funding of bail support services, such as the Koori Intensive Support Program (KISP), those on bail would have assistance from a trusted person to ensure they attend court dates and fulfil other bail conditions. VALS asks all Victorian political parties commit to increase funding for bail support services, including culturally appropriate bail support services through the direct funding of Aboriginal Community Controlled Organisations.

3. Sentencing

Key Ask: Commit to oppose and repeal mandatory sentencing legislation

The sensationalist ‘tough on crime’ debate in the lead up to the election has seen both major parties commit to introducing mandatory minimum sentencing. VALS strongly opposes the introduction of any mandatory sentencing laws in Victoria as such laws undermine our justice system and prevents government and community from working together on effective solutions.
It is well documented that mandatory sentencing does not have a deterrent effect and disproportionately impacts marginalised groups. The West Australian government has recently repealed and committed to never again introducing mandatory sentencing as a result of the disproportionate impact it had on Aboriginal and Torres Strait Islander people and the failure of such laws to deter crime. Mandatory sentencing has had a similar impact in the Northern Territory and there have been widespread calls from legal experts and the judiciary to repeal mandatory sentencing. In 2015 the Law Council of Australia argued that repealing mandatory sentencing laws in Western Australia and the Northern Territory would significantly close the gap on Indigenous imprisonment rates.²

Mandatory sentencing laws erode judicial discretion in sentencing, they take away the judiciaries’ ability to deliver justice by tailoring sentencing to the circumstances of the offender, the impact on the victim and the nature of the offence. For crime to be reduced and offenders to be rehabilitated it is critical that their individual circumstances can be considered by judges. The Victorian Ombudsman revealed that most Victorian prisoners experience significant disadvantage and health problems, and it is critical for just outcomes and reducing crime that such circumstances can be considered by judges. In 2014, 40 per cent of prisoners had a mental health condition, over 30 per cent had a cognitive disability, 50 per cent were unemployed and 85 per cent had never finished high school.³

Other factors considered by judges are whether they are on a path to rehabilitation from drug dependency or have family members dependent on them. Mandatory sentencing laws will take away judges ability to consider such factors in sentencing. VALS asks all Victorian political parties to commit to repealing and opposing all mandatory sentencing laws in Victoria. This includes the recent *Justice Legislation Miscellaneous Amendment Bill 2018* concerning attacks and injuries on emergency and protective services workers.

While VALS of course fully supports better protection of emergency and protective workers, we do not believe that mandatory sentencing will achieve that. Instead, we support the introduction of better mental health services, supports for people experiencing homelessness, and targeted health programs to reduce drug and alcohol abuse.

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³ https://www.ombudsman.vic.gov.au/getattachment/5188692a-35b6-411f-907e-3e7704f45e17
4. Aboriginal Children & Youth

4.1 Balit Ngulu

*Key Ask: Commit to fund Balit Ngulu for the provision of legal and community justice supports to Aboriginal and Torres Strait Islander children*

Aboriginal and Torres Strait Islander children move in and out of the child protection and youth justice systems with patchy or little legal representation. These children often come into contact with these systems due to intergenerational trauma, substance misuse, family violence, grief and loss and poor education and economic outcomes. Once they become part of these systems they often rapidly move down a path of disconnected care, separation from their community and culture and perpetuate the existing cycles of poor education, economic and health outcomes and intermittent incarceration. A VALS lawyer once heard one 16-year-old child in Youth Justice say “I’m a lost cause, aren’t I?”

That’s why in 2017 VALS’ decided that no child should ever feel like this so we launched a separate legal service titled Balit Ngulu, which means Strong Voice, to provide legal assistance in the areas of youth justice, child protection, family law and civil law issues to Aboriginal and Torres Strait Islander youth across Victoria. Balit Ngulu currently provides integrated and culturally appropriate services to 100 children and young persons to address issues such as recidivism, cultural needs, connection to family, educational and employment need and leadership so that they can be assured they are not a lost cause and can have a strong voice in their own affairs. We note that VALS continues to passionately provide legal advice and casework assistance in the areas of child protection, intervention orders and family law matters. With the establishment of Balit Ngulu the majority of VASL clients are parents and we find that the provision of culturally appropriate legal advice to multiple parties within a matter enhances the approach and ensures that Aboriginal families have a chance at self-determining their own future.

Balit Ngulu commenced service delivery on 10 July 2017 and has successfully addressed Aboriginal and Torres Strait Islander children in the areas of child protection and youth justice by ensuring consistency and utilising client service officers to provide an additional layer of support. This service was funded for a year though our own limited revenue with the hope than an alternative funding source could be located, unfortunately we have been unable to locate alternate funding. We are committed to locating urgent funding to continue the service so that Aboriginal children and youth continue to have a strong voice in their own affairs.

The importance of the service is exemplified by the following example, an Aboriginal child was removed from his parents care last year in a regional town and as a result of
that removal his mental health had significantly declines as he had moved to a number of placements and residential care facilities. The child’s participation in school was poor as a result of the frequent moving, the child was eventually placed in the care of a family member and was able to thrive whilst in that placement, his attendance went up, he was engaged and present in his learning activities, he was healthier and he was happier.

DHHS received reports that the family members had not been caring for him and decided to bring a new application to remove him, the court thankfully agreed that it was not in the child’s best interest to be removed after hearing the strong arguments put forth by the Balit Ngulu lawyer. We note that the family member had not been spoken to by DHHS about the reports nor had there been any evidence that the child was not in the family members care.

The advocacy provided by Balit Ngulu was the difference between the child being placed in out of home care or being placed within his kinship network, this was a matter where the cultural rights of the child was at the forefront of the advocates mind.

4.2 Raising The Age Of Criminal Responsibility

Key Ask: The minimum age of criminal responsibility be raised to 14.

Children have the right to be treated fairly by the justice system and this must be reflected in the age of criminal responsibility. Currently the age of criminal responsibility is not based on a young person’s cognitive development, does not allow young people to fairly participate in the justice system and fails to contribute to the wellbeing and safety of society by diverting young people from the criminal justice system.

The age of criminal responsibility in Victoria is one of the main drivers behind the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system as it disproportionately impacts young people that are socially disadvantaged and perpetuates the cycle of disadvantage as they age. The increasing rates of young people in the youth justice system has driven the shift of the current government to a more punitive approach which has led to increased recidivism of young people and robbed them of their childhood and their chance to combat the complex issues underlying their offending.

The age of criminal responsibility has been raised over time in different states as a result of international developments and an improved understanding of the mental capacity of young people regarding decision making. In Victoria, the age of criminal responsibility was raised from 7 to 8 in 1948 and then to 10 years of age in 1989. The basis of a minimum age of criminal responsibility is that the brains of young people are still developing, they are less able to control their impulses, plan ahead and comprehend the consequences of their actions, and are therefore not criminally responsible for their actions.
Since 1989 the developments in behavioural psychology and neuroscience have led to most countries increasing the age of criminal responsibility. The age of criminal responsibility in Victoria is now lower than that of the majority of countries. The median age of criminal responsibility internationally is 13.5 years of age, and in over 60 countries the age of criminal responsibility is 14 years and above.

Raising the age of criminal responsibility in Victoria will allow greater focus and investment in diversion and rehabilitation. There are numerous diversion programs that have demonstrated that preventative and therapeutic programs do reduce contact with the justice system and recidivism rates.

Young people are particularly vulnerable to the negative impacts of contact with the criminal justice system due the stage of their cognitive development which make them especially impressionable. This impressionability means they are more receptive to positive interventions in comparison to older offenders. Diverting young people from the criminal justice system is also a widely recognized principle of youth justice. The Convention on the Rights of the Child states:

“The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety.”

VALS strongly believes that the age of criminal responsibility should be raised to 14 years of age in Victoria. VALS also believes that the doli incapax presumption should be applied to children between the ages of 14 and 17. These two changes would reflect the current understanding of brain development, ensure that young people participating in the criminal justice process are capable of experiencing procedural fairness and divert young people from a life of crime that was not their own making.

In recent years Victoria has moved away from a focus on diversion and rehabilitation for young people and has instead promoted a ‘tough on crime’ response that has led to legislation that is punitive and undermines therapeutic responses to young offenders. VALS believes the youth justice system should be based on the best available evidence to reduce offending, which will both increase community safety and reduce incarceration rates.

4.3 Support for Youth: Bail Houses, Throughcare, Restorative Justice Programs

Key Ask: That support for children and young people in contact with the justice system be a policy priority

The Victorian Aboriginal Legal Service calls on each party to support initiatives and policies that will provide children and young people coming into contact with the jus-
tice system with bail houses, access to supportive throughcare, and the implementation of restorative justice programs.

Without considerable support and investment in such programs, the crisis of youth detention will only continue to repeat itself. As opposed to building more youth prisons – which has the flow-on effect of ensuring young offenders turn into adult offenders – VALS strongly supports and advocates for a suite of measures that will instead assist and prevent further youth offending.

**Bail Houses**

Bail is often not granted by the courts as there may be nowhere for the young person to go. This has resulted in overwhelming numbers of children and young people on remand, often up to 80 percent of youth detention populations. Furthermore, the evidence is clear that youth offending is often compounded by bail breaches, and that bail breaches often occur due to family violence or other disruptive and negative situations at home, from which the child or young person is escaping.

VALS fully supports and endorses the introduction of bail houses, especially for Aboriginal children and young people, being a safe place where they can go on bail instead of residing in youth detention centres. These would also be places where the necessary supports can be arranged to assist the young person.

**Throughcare**

VALS calls for the provision of appropriate and comprehensive throughcare programs and case management for children and young people experiencing, and exiting, youth detention and corrections orders. Comprehensive and culturally responsive throughcare is vital to ensure that children and young people do not re-enter the justice system, and is a vital measure to ensure that the transition into adult offending does not occur.

For Aboriginal and Torres Strait Islander people, such programs and case management must be led and run by Aboriginal community agencies, and be culturally grounded. Such programs can ensure that children and young people are exiting the system with the right cultural and community supports, skills and opportunities to ensure that reintegration with both the mainstream and Aboriginal communities is both possible and successful.

**Restorative Justice Programs**

VALS also calls on state parties to support Restorative Justice Programs for young people, including increased funding to group and community conferencing programs, in particular, supporting Aboriginal communities to run culturally appropriate restorative justice responses.
As an example, VALS are looking to establish community run, culturally based community conferencing circles, which aim to target Aboriginal children and young people entering or exiting the justice system. This may include young people receiving a caution, or as an alternative to being charged. This may also include assisting Aboriginal children and young people exiting detention, whereby via a community conference, can be supported by the appropriate services and community members to assist them. Along with bail houses and the appropriate throughcare models of support, restorative justice programs can ensure that children and young people do not re-enter the justice system and progress to become adult offenders and inmates.

4.4 Amend punitive legislation concerning permanency objectives

Key Ask: The permanency objectives be properly reconciled with s.10 of the CYFA and that Adoption be removed from the permanency hierarchy or placed last.

The permanency objectives introduced under s 167 of the Children, Youth and Families Act (2005) are punitive and do not provide enough allowance for access or reunification between children and their parents and families. The real-life impact of these laws can be instead a greater disintegration of Aboriginal families and can provide a disincentive for Aboriginal men and women to address the underlying causes that may be the instigator for permanency orders to be made in the first instance.

That parents are required to address such underlying causes in a small time frame – being two years – is more often not enough time for this to be achieved. This is especially so for parents who may be incarcerated, whether on remand or sentenced. The recent changes to bail and parole laws have been introduced, along with certain mandatory sentencing principles, means that more Aboriginal people than ever can be placed on remand for longer periods of time. The lack of supports for people exiting prison, and lack of affordable housing, means that the parent is often unsupported to meet the necessary requirements to have their children returned to their care.

Further, that the provisions only make allowances for four contacts between the parent and child per year once the permanency order has been given, is a breach of international human rights norms which support the child’s right to have contact with their parents.

Such punitive contact provisions also strips away the potential for that child to better know and participate in their right to culture, as per s19.2 of the Victorian Charter of Human Rights and Responsibilities Act (2006).

VALS asks that the punitive aspects of the permanency objectives be repealed to provide better incentive for parents to address the underlying causes that have necessitated such orders to be made, and for both child and parent to have greater access and communication with each other under the orders.
5. Aboriginal Women

5.1 Reduce numbers of Aboriginal women in prison

Key Ask: Aboriginal and Torres Strait Islander women should only be jailed as a matter of last resort because of the devastating impact this has on families and children. The resources that would be spent on imprisoning Aboriginal women should be reallocated to legal, cultural and community services, including safe and appropriate housing.

As has been well-documented in the report ‘Over-represented and Overlooked’ Aboriginal and Torres Strait Islander women are the fastest growing cohort of incarcerated persons in the country. The rate of incarceration of Aboriginal women in Victoria is not dissimilar, and only looks set to grow with the new Bail laws and introduction of mandatory sentencing. The vast majority of Aboriginal women in prison are victims of family violence, abuse (often sexual), neglect and homelessness, and are more than likely to have been in state care. Furthermore, drug and alcohol misuse is also a factor, largely as a way of self-medicating from the traumas of the above life experiences.

Yet placing Aboriginal women in increasing numbers in prison only serves to compound already existing traumas and does nothing to address the underlying causes that drive the circumstances where offending may occur in the first instance. A further flow-on impact is that of the continued removal of Aboriginal children. Victoria currently has the highest rate of Aboriginal children in out-of-home care, a statistic that is in no way alleviate – in fact, instead exacerbated – by the rising number of Aboriginal women in prison.

VALS calls on political parties to commit to comprehensive reforms to the justice system where women are concerned, and provide therapeutic supports for Aboriginal women outside of prison.

These reforms include (but are not limited to):

- Transitional housing and post-release support for Aboriginal women exiting the prison system;
- A women’s version of Wulgunggo Ngalu to be created, being a culturally responsive centre to assist women to complete corrections’ orders;
- Repeal of punitive legislation directly impacting the increasing incarceration rates of Aboriginal women;
- Better access to culturally responsive health care and support programs for Aboriginal women in prison; and
- Funding of support services for women to divert and prevent offending in the first instance.
6. Prisons

6.1 Improving conditions in prison

*Key Ask: Implement a Charter-compliant practice of strip searching based on intelligence and risk assessment for all juvenile, male and women’s prisons*

In November 2017, the Victorian Department of Justice accepted all recommendations from the Ombudsman’s report into the Dame Phyllis Frost Centre but one, it rejected the recommendation to replace the current strip searching practice with a practice of targeted strip searching when justified by intelligence or risk. VALS believes this practice is unnecessary, often traumatic and disproportionately impacts Aboriginal women, who are the fastest growing group in Victoria’s prisons.

VALS supports the comments by Victorian Ombudsman Deborah Glass:

“Although intended to prevent contraband entering the prison, it does not appear to be effective in doing so: none of the items seized during the searches conducted the previous year involved illicit drugs, which plainly, were entering the prison by other means. Yet this humiliating, degrading and undignified practice persists, described by some women prisoners as a form of sexual assault. It should not be forgotten that many women prisoners are victims of sexual abuse, for whom strip searching has the potential to inflict further trauma.”

The failure of the Victorian Government to uphold the human rights of women prisoners undermines the integrity of our justice system and is a major breach in the states duty of care of women in custody. For Victoria to have an effective justice system it is critical that all components are human rights compliant. Australia has now ratified the Optional Protocol on the Convention against Torture and Victoria has a responsibility to ensure that all justice facilities are human rights compliant.

VALS asks all Victorian political parties to commit to immediately ceasing the routine strip-searching of women prisoners and to upholding our human rights obligations as outlined in the UN Convention against Torture.

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7. Police

7.1 Police complaints

Key Ask: Establish an independent victim-centred investigative body for complaints against police

Police contact and police misconduct remains a critical issue for Aboriginal and Torres Strait Islander people in Victoria. In VALS’ experience, many of these community members continue to lack confidence in the police complaints system, which is demonstrated by low numbers of complaints despite high levels of police contact.

This include concerns with over- and under-policing, inherent bias in the complaints investigation process, poor communication, lack of adequate evidence gathering, and relatedly, a reluctance to make complaints.

The current system, with Victoria Police investigating the vast majority of police complaints, often by officers stationed alongside the officer(s) under investigation, is not working. In VALS’ view, the Independent Broad-Based Anti-Corruption Commission’s (IBAC) current oversight role has proven incapable of addressing these perceptions of bias in the investigatory process.

VALS calls for the establishment of an independent victim-centred investigative body for complaints against police. This is necessary to rebuild community confidence in the complaints process and to assist more broadly in relationships between Victoria Police and Aboriginal and Torres Strait Islander communities. VALS asks all Victorian political parties to commit to supporting the Police Accountability Project’s recommendations for what an independent investigatory body should look like:

- Independent of the Police—hierarchically, practically, culturally and politically
- Capable of conducting an adequate investigation
- Prompt
- Open to public scrutiny
- Victim-centred, and enables the victim to participate in the investigation

8. Cultural Considerations in Legislative Procedures

8.1 Aboriginality as a sentencing principle

Key Ask: Amend the Sentencing Act to direct the judiciary to take into account the specific experiences of Aboriginal people as a sentencing principle by way of Aboriginal Community Justice Reports

In the twenty-six years since the report of the Royal Commission into Aboriginal Deaths in Custody was tabled in the Parliament of Australia, the proportion of the
prison population that is Indigenous has doubled. Innovative and evidence solutions are required to correct the inequality in our justice system. Based on the Canadian example of Gladue reports, VALS proposes amending the Sentencing Act Part 5(2) include a new section 5(2)(h) stating:

‘(2) In sentencing an offender a court must have regard to - ... (h) circumstances related to the offender’s Aboriginal background.’

The purpose of such an amendment would require the courts to consider the unique impacts of colonisation that have affected Aboriginal and Torres Strait Islander communities as a discreet group, understanding that such impacts have contributed to the high rates of incarceration currently experienced by those communities. Such consideration would also lead the courts to consider alternatives to incarceration, such as community led, culturally appropriate rehabilitative and restorative programs.

VALS is currently advocating for Aboriginal Community Justice Reports (ACJRs) to be employed by the courts to assist with such determinations. Aboriginal Community Justice Reports are a pre-sentence, community written report, which aims to gather information about underlying impacts on any Aboriginal offender.

The purpose of preparing such reports is to identify possible underlying drivers of the individual’s offending, in particular, those that may relate to the impacts of trauma and colonisation uniquely experienced as an Aboriginal person. The process of completing such reports allows the offender and the community to spend time to consider and speak about such impacts in a therapeutic and restorative manner, enhancing the ability to have a voice and to meaningfully engage with the justice system, akin to the aims of the Koori Courts. VALS asks all Victorian political parties to commit to amending the Sentencing Act to direct the judiciary to take into account the specific experiences of Aboriginal people as a sentencing principle.

8.2 Legislative Procedures

*Key Ask: Statement of Compatibility and Aboriginal Impact Statements be introduced to legislative procedures to ensure independent oversight of legislative and policy actions affecting Aboriginal communities.*

**Independent Oversight of Statement of Compatibility**

While VALS supports the need for Statement of Compatibility with the Charter when legislation is passed, we call for this to be an independent process overseen by the Victorian Equal Opportunities and Human Rights Commission.

VALS asks for independent oversight to monitor the implementation of the Charter, believing that the current process of self-monitoring by government and respective departments is not adequate. This process should also be required to be transparent and consultative.
Aboriginal Impact Statement

That the State Government introduce an ‘Aboriginal Impact Statement’ similar to the Charter ‘Statement of Compatibility’ that is required prior to the passing of legislation.

VALS proposes that in a similar manner, an Aboriginal Impact Statement must be produced, which will detail both the positive and negative impacts any legislation might have once passed.

This would be fact checked and researched to provide the government, stakeholders and the Aboriginal community with information and projected impacts legislation will have.

An Aboriginal Impact Statement will assist in tracking the government’s commitment to Aboriginal self-determination, as well as in other areas of commitment such as justice targets, treaty, education and health.

8.3 Redress Scheme for Victoria’s Stolen Generations

Key Ask: Implement a redress scheme for members and relatives of Victoria’s Stolen Generations

The 2013 Victorian Government report Betrayal of Trust recommended that a redress scheme be established for victims of child abuse regardless of background, ethnicity or Aboriginality. In a further discussion paper concerning redress, the Victorian Government stated that in any redress scheme, the loss of culture (termed ‘cultural abuse’) should be considered as a possible head of damage for Aboriginal Victorians.

The fundamental purpose of a redress scheme should be to recognise the loss of culture experienced by Aboriginal people after being removed from land, language and community, and placed in institutions or other forms of care, such as foster care or adoption.

The effects of removal of Aboriginal children are not limited to cultural loss, but include physical, sexual and psychological abuse, and manifest in the present day through poor mental and physical health, loss of employment and education prospects, alcohol and substance misuse and abuse. In Victoria, this intergenerational trauma is seen in the high rate of second and third generation families whose children are now in out of home care.

Under the Victorian Charter of Human Rights and Responsibilities (2006), the Victorian Government has acknowledged and made a commitment to the unique cultural heritage Aboriginal people within Victoria hold. As such, a redress scheme should be developed to address the loss of that cultural heritage through child removal and institutionalisation.
VALS asks all Victorian political parties to commit to the introduction of a redress scheme for members and relatives of Victoria’s Stolen Generations that includes loss of culture as a possible head of damage for Aboriginal Victorians.

8.4 Continued Commitment to Self-Determination and Treaty

Key Ask: Victorian political parties commit to the principle of self-determination underpinning all governance issue where Aboriginal people and communities are concerned, including continued support for the Treaty process.

The Victorian Aboriginal Legal Service strongly supports the continuation of self-determination as a governing principle for any relationship between the State and Aboriginal peoples in Victoria. The support for self-determination should be expressed by continued consultation on matters that affect Aboriginal communities, and Aboriginal community control in all affairs where our people are concerned.

We expect this principle to be strengthened, on the proviso that Aboriginal people know what is best for our communities, and how to achieve outcomes. In fact, it is when the principles of self-determination are not adhered to, that the inequalities as seen in mass incarceration become more evident.

Further to our support for self-determination is VALS commitment to the Treaty process. We ask that this process not be rolled back after the election, but maintains the strength and legislative support of Parliament. Treaty is a comprehensive and long-term way in which the state government can redefine its relationship with Aboriginal communities in Victoria and we call on all parties to demonstrate continued support for this process.