



# **Victorian Aboriginal Legal Service Co-operative Ltd.**

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## **Submission from:**

### **The Victorian Aboriginal Legal Service Cooperative Limited**

**To: The Crime and Indigenous Justice Section, Crime Prevention Branch, Attorney  
General's Department**

**'Indigenous Justice Discussion Paper' – June 2004**

Thank you for allowing us to make a late submission. For some reason VALS did not receive a copy of the discussion paper nor did the National Aboriginal and Torres Strait Islander Legal Services Secretariat.

It is our view that the discussion paper could usefully have been circulated more widely.

Our response will make some comments about the Discussion paper and how events have in many respects overtaken it. We will then briefly address the questions which have been circulated with the paper.

#### **General Comments about the Discussion Paper**

The paper ranges widely from the almost self congratulatory list of "achievements" (pg 19) to the grim reality of on average a twenty year shorter life span and an imprisonment rate 15 times the non Indigenous rate. (pg 5-6), to a description of various programs to a fairly short list of matters where there is some analysis.

The discussion paper repeatedly and quite properly makes numerous mentions of the importance of Indigenous community control in all stages of program and policy development. The Summit Communiqué resolution included a commitment to work "in partnership with Indigenous peoples".

It is our view that the unilateral decision to abolish ATSIC and ATSI and mainstream programs represents a complete abrogation of the commitment made in the summit communiqué. It is bad public policy from the perspective of ignoring the recommendations of its own review of ATSIC, ignoring the views of the communities affected, ignoring the fact that in government and in business proper consultation is one of the fundamentals of effective decision making and ignoring the track record of Indigenous organisations in providing effective services.

The Commonwealth government policies in relation to Indigenous people appear to be a result of a severe case of amnesia. The statements in this discussion paper about Indigenous control and participation stand in stark contrast to the decisions and statements made in

recent months. VALS encountered this new extreme scepticism about the value of Indigenous control and involvement prior to the abolition of ATSIC/ATSIS when a Draft Exposure document was released about tendering Aboriginal and Torres Strait Islander Legal Services (ATSILS) in March 2004 by ATSIS. That document proposed tender specifications which would maximise the chances of non-Indigenous organisations winning the tender.

The proposal also aims to narrow the range of types of work done. There would be no scope for prevention, diversion, policy or law reform work.. VALS believes that this is a counter productive and myopic approach to dealing with the very considerable problem of overrepresentation of Indigenous people in jail.

Privatising and mainstreaming and narrowing the role of ATSILS will severely handicap the capacity of ATSILS to work effectively and will destroy a level of social capital and organisation capacity that has taken many years to build. ATSILS have knowledge and experience about how the community is affected by crime and crime prevention policies. ATSILS have a multitude of formal and informal links with Indigenous and mainstream organisations. One very important role is liaising, informing and advocating to state governments on variety of justice related matters. The VALS/NAILSS submission to the Public Accounts and Audit Committee Inquiry on Indigenous Law and Justice (copy attached) attempts to make this point in a variety of ways and with some case studies. Static funding and a rapidly growing population mean the capacity of ATSILS to do preventative work has been limited.

### **Legal Representation**

This topic is discussed on page 20 of the Discussion paper. There are several issues that require further analysis and some of these are dealt with in our submission to the Public Accounts and Audit Committee. The report states that ATSIC has been working “with” ATSILS to improve services and a major focus of the reforms has been to improve services to women;

The report then concludes that progress has been slow in relation to improving access to Indigenous women and that women clients represent only 25% (up from 11%)

VALS is curious as to how the report’s authors reached the conclusions that they did on this matter. What criteria did they use to decide the matter was a high priority for ATSIS and how did they determine that progress was slow. If increasing access of services to women was a high priority why does this matter receive hardly any attention in the Office of Evaluation Audit(2003) or the Australian National Audit Office Number 12 (2003) report.

The only table that provides a breakdown of male/female service use relates to family violence matter (Pg. 30-31,OEA 2003). The figures provided for all Legal Aid Commission cases (criminal, civil and family indicate that for Indigenous clients the balance is 71% male and 29% female. For all Commission clients the percentage is 65% male and 35% female.(Pg. 35 OEA, 2003) Given the huge overrepresentation rate of Indigenous which boosts the demand for criminal law assistance for men and women it is hardly surprising that ATSILS with declining funding and an increasing population have not achieved more. In fact to have achieved what they have is noteworthy.

The other contextual factor which deserves mention is that ATSILS generally have not run a high proportion of civil or family matters. Civil or family matters are far more time consuming than criminal matters and usually require specialist lawyers. Legal Aid have had a strong history of doing family law work and would be expected to see more Indigenous female clients as a result of doing work in this area and also as a result of conflict of interest matters that ATSILS can't do. In all the circumstances the fact that ATSILS proportion of male female clients (75:25) is only slightly different to Legal Aid (71:29) suggests that ATSILS may not be slow but that there is a structural factor which is the very large numbers of criminal matters and the predominance of male clients in this group which we expand on below.

The Australian National Audit Office Review of the Law and Justice Program provides the following overview of ATSILS:

- Services provided have increased dramatically (from 68,000-113,000 case and duty matters)
- Funding has been static since 1991 (the only increase to ATSILS was a time limited supplementation to compensate for losses associated with narrowing of access to fringe benefits)
- Demand has and is likely to increase
- Services require between \$12.5 and \$25 million extra
- They are the primary provider of legal services providing approximately 89% of all services. (Pg, 25-6, 46 Australian National Audit Office, 2003)

The role of ATSIC/ATSIS has not been primarily or even moderately about increasing access of women to ATSILS. ATSIS have instituted a series of accountability measures; almost totally neglected anything approaching consultation and have failed comprehensively to develop realistic strategies or funding levels. The Commonwealth have funded Indigenous Women's Legal Services through mainstream Community Legal Centres and created a new program in ATSIS for Family Violence Prevention Services. During the last seven years \$5million has been spent on Indigenous Family Violence Services. This figure was doubled in the last budget. The Office of Evaluation and Audit (ATSIC) 2003 report argues that civil and family law require a boost more than family violence matters. The OEA report was written prior to the recent doubling of expenditure on Family Violence Prevention Legal Services. Approximately 75% of crime is committed by men. Unless ATSILS dramatically reduced the amount of criminal law matters that they do or ceased doing them completely they will be assisting more men than women. Civil and family law matters are in VALS experience demanded by slightly more women than men. On average these matters take considerably more time than criminal matters. Even if ATSILS halved the amount of crime cases that they did there would still be a significant majority of male clients.

Later in the section about legal representation the statement is made that there continues to be a significant disparity between funding available for representation of Indigenous men charged with spousal violence and child abuse and that available assist women and child victims of those perpetrators. Where men are charged with a criminal offence there are police forces and prosecutors engaged in seeking convictions. It is a false dichotomy to compare funding for representation for perpetrators and victims in this context. In relation to child abuse this is not usually dealt with as a criminal matter but as a child protection or family law matter. Men and women may be involved in contesting the assessments of police

or child protection workers in the course of determining a child protection matter or a child contact or residence dispute. VALS also makes the point that the incidence of family violence is no doubt underreported. However not everyone who experiences family violence wants a criminal justice legal service. Some people want access to alternative accommodation, some want family law assistance, some want community based support and intervention some want short term safety-the perpetrator removed by police and some want treatment options for their partner.

VALS do not want to understate the significance of the problem of family violence but we disagree with presentations of the role of ATSISS and ATSISS which ignore key facts.

If ATSISS did more civil and family work there would still be an imbalance in the number of males compared to females due to the influence of a large number of criminal matters 75% of which will involve male clients.

### **Alternative Justice Measures**

This section of the paper states: “Questions remain as to how best to balance the interests of offenders and victims of crime and the broader community; and the need to reduce imprisonment rates and sentence lengths has to be balanced against the need to protect the community to which the offender will return.” This statement owes more to the perceived wisdom of tabloid media than it does to criminology and evidence. Academics such as Arie Frieberg have argued that public enthusiasm for punitive sentencing has to be tackled on more levels than that of logic and figures. He also points out that people are more punitive in relation to abstract generalisations about sentencing than when talking about the specific or the local. The statement above in the discussion paper omits any mention of the fact that longer sentences appear to have little or no impact on crime rates. While governments seek to reduce Indigenous overrepresentation while at the same time going along with a mainstream lock them up and throw away the key mentality they don't have a credible or sensible strategy.

Apart from some minimalist attempts to address overrepresentation via Aboriginal Justice plans neither the Commonwealth nor the States have developed substantive policies to reduce imprisonment rates or sentence lengths. Over the last decade the number of people in prison has skyrocketed. Politicians and the judiciary have responded to a perceived push for punitiveness.

Trying to achieve reduced overrepresentation of Indigenous people in jail without having an across the board policy of reducing imprisonment rates and sentence lengths is at best rowing against the current and at worst a recipe for increased public criticism of “special treatment” for Indigenous people.

There may be a perceived problem balancing reduced imprisonment rates with community safety but that is predominantly because of public ignorance and a media focus on the aggrieved victims and “early release” or “soft sentencing” stories. Surely one of the primary

tasks that any crime prevention policy should take on is breaking the spurious link between longer sentences and community safety.

### **Access to Alternative Justice Mechanisms**

This section of the report states that factors affecting access to alternative justice mechanisms include that Indigenous offenders are generally advised not to admit guilt and that Indigenous offenders are more likely to have a prior conviction and be ineligible for diversion. VALS agrees that prior convictions explain some of the difference between Indigenous and non Indigenous people's access to diversion. In our experience there is still a 10-15 % difference which is not explainable by this phenomenon. In relation to young people not admitting guilt we believe that this is very uncommon. We have attached a paper about the use of police cautioning in Victoria which looks at some of these issues. This paper has led to a decision to conduct two pilot projects to improve the access to and effectiveness of diversion measures.

It is ironic that the Northern Territory after refusing to abolish mandatory sentencing and being in breach of human rights covenants received funding from the Commonwealth government for diversion programs as a means of weaning them from mandatory sentencing. It would be reasonable to expect the Commonwealth to make funding available to all States.

### **Comments About the Feedback Form**

VALS supports the three common threads mentioned in the feedback form with the proviso that we perceive the Government to have changed its mind about the value of propositions one (Increase Aboriginal Involvement in the administration of justice) and two (building on good work already in place...in partnership..)

The third point about community safety being a core goal has to have some reference to reducing reliance/acceptance of imprisonment as an effective or sustainable means of enhancing community safety.

#### **1 What fundamental principles should undermine strategies to address Indigenous Justice and crime prevention issues?.**

Reduce community dependence on the illusion that more punishment equals more community safety

Increase community support for the importance and value of prevention and rehabilitation  
Increase community recognition of the value of different programs for different people and different problems –treating everybody the same is not necessarily fair.

Recognise that Indigenous control of policy and programs is vital to the success of the programs and put that recognition into practice.

Realistic funding for Legal Aid Services and in particular Indigenous Services.

Legal Aid impact statements prior to making legislative change.

Realistic and more integrated and more efficient strategies for consulting the community on an ongoing basis. Government and community resources are finite there has to be a better strategy for doing this.

**2. Priority Areas for Action**  
(see answer above)

Community strengthening policies which would reduce the incidence of child protection cases.

**3. What is working well?**

The Koorie Courts appears to be working well. Extending this to a Children's Court is likely to be useful.

The State Government via its Justice plan has increased the quantity and quality of input from Indigenous people to government on a range of matters in the criminal justice area.

The VALS community education project is improving access to legal information, legal processes and legal aid related services particularly in relation to civil law. VALS and other organisations such as Equal Opportunity Commission of Victoria and Consumer Affairs Victoria are developing a collaborative regional information program.

**4. Factors Involved in Evaluating.**

Koorie Court is being evaluated. Recidivism rate, seriousness of reoffending, understanding of the court process, perception of stakeholders would be some of the ways to evaluate.

Improved consultation processes and community legal education can be evaluated against objectives such as number of people involved, appropriate input by all parties to the design and content of what is done, participant evaluation of whether it was useful or whether they would recommend someone else to participate.

**5. Practical Ways to Encourage People Working in the Area of Justice to Work Together.**

In relation to ATSILS don't privatise, mainstream and tender them out. Refund the peak body for ATSILS, the National Aboriginal and Torres Strait Islander Legal Service Secretariat.

Funds for travel, conferences and round tables are useful. Developing a detailed picture of an issue from multiple perspectives is often helpful.

**6. Working Well Cooperation Between Legal Aid Providers.**

State Government has some commitment to working in partnership.

7. The Commonwealth Government is undermining the capacity of Indigenous organisations to have a voice by defunding them and implying that they are all ineffective. Guaranteed Funding periods for ATSILS have been less than twelve months for the last year.

## **8. Practical Measures.**

Work collaboratively with Indigenous organisations. Make long term policy commitments, make effective consultation plans. Help Strengthen Communities; enhance Indigenous health and education programs. Increase job creation programs.

## **9. Prevention of Violence, Alcohol and Drug Abuse. What can Indigenous Communities do?**

Community members often state that more needs to be done earlier eg well before the tertiary level. In Shepparton there has been an extensive development of football and netball teams health messages are often delivered alongside sporting carnivals which people from around the state attend. Increased treatment services are needed.

## **10 What can Justice Agencies do?**

Support greater spending on prevention/primary and secondary interventions.

## **11. What should be done about young people who are “at risk of getting into trouble with the law**

Young people who are “at risk of getting into trouble with the law” is a very large group Low income and low school attendance young people would narrow the target slightly but they are not easy to reach. Apart from primary and secondary interventions which aim to inform, support and enable parents to obtain better access to employment and support services there are phone services, education and youth activities which improve skills and self esteem.

## **12 Better Support Victims of Crime?**

Tell people what victims services there are. Make free Indigenous counselling available with an absolute minimum level of bureaucracy.

Better protect victims of crime?. Not sure better prevention policies?