



Victorian Aboriginal Legal Service Co-operative Ltd.

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VALS' submission to assist with the VCOSS Stage Budget Submission VALS' Justice Priorities 2008

Capacity Building:

Indigenous Organisations and Government (proposal to fund Junior and Senior Project Officers)

The Government funds each of the following five peak and statewide organisations to employ a Senior Project Officer and a Junior Project Officer:

- Victorian Aboriginal Community Services Association Limited (VACSAL);
- Victorian Aboriginal Education Association Limited (VAEAI);
- Victorian Aboriginal Child Care Agency (VACCA);
- Victorian Aboriginal Community Controlled Health Organisation (VACCHO);
- Victorian Aboriginal Legal Service Co-operative Limited (VALS).

The Project Officers will:

- develop policy, research and program delivery capacity;
- improve workplace planning and training for Indigenous people;
- improve quality and range of partnerships between Indigenous service providers; Government and non-Government organisations;
- forecast the likely impact of Government policy initiatives on Indigenous people;
- provide advice about integrating and prioritising community consultations and service provider feedback;
- develop policy proposals to improve outcomes for Indigenous people;
- liaise with non-Indigenous organisations to improve services;
- gather information from service users and community members about ways to strengthen community;
- disseminate information on good practice to non-Government organisations and all levels of Government;
- provide input into the research and development of national and international best practice for services; and

- identify how programs and services could better reflect United Nations human rights standards, particularly in relation to economic, social and cultural rights.

Annual Indigenous Sector Joint Forum:

The Government provide funding for an annual Indigenous Sector Joint Forum to develop:

- An annually updated framework for culturally inclusive policy.
- Quarterly meetings to provide advice about consultation strategies, timing of consultation and possible integration and synergies to help minimise community consultation fatigue.
- Advice to government departments on key policy initiatives in the early stages of development.

State Information and Communications Co-ordinator:

The Government fund a State Information and Communications Coordinator (worker) to assist the Victorian Aboriginal and Torres Strait Islander Statewide and Peak organisations to develop effective communication strategies. The worker will help Indigenous Australian organisations develop an information plan and media strategy. The worker will assist with implementation strategies as well as provide advice to CEO's about communications policy development and strategic public affairs management. The worker will assist Aboriginal organisations to provide effective input to policy development, attract skilled staff and volunteers and inform stakeholders about key issues and services.

Access to Legal Advice - Heritage Protection:

The Government provide funding for free legal advice to Indigenous Australians at all stages of the process outlined in the Aboriginal Heritage Act (2006) and regulations.

Articled Clerkship:

The Government provide ongoing funding for the position of Articled Clerk, to be filled by an Indigenous Australian, at VALS.

Indigenous Women's Justice Forum:

The Government fund the Indigenous Women's Justice Forum on an ongoing basis. The IWJF is an opportunity for Indigenous women working in the justice system and mainstream service providers working towards improved service delivery outcomes for Indigenous women to come together. This project was funded two years ago and was very favourably evaluated by a State Government funded consultant. However the funding was from a non-recurrent program.

Royal Commission Into Aboriginal Deaths In Custody:

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) Implementation Review Report (2005) proposes the creation of an independent Commissioner for Aboriginal Social Justice. Funding is required. The Commissioner would, *inter alia*, report on the implementation status of the RCIADIC and Implementation Review Report. Many of the Implementation Review Team recommendations are about monitoring the status of the original 339 recommendations of the RCIADIC (1991).

Decriminalise Public Drunkenness:

VALS suggests that justice could be modernised by reforming criminal law to decriminalise public drunkenness. VALS' stance on public drunkenness laws is as follows:

- Public drunkenness should be decriminalised and treated as a public health issue. More Indigenous Australian specific Sobering-up Centres should be established.
- There are factors standing in the way of decriminalisation occurring in Victoria. One of the factors is that despite a public statement by Attorney-General, Mr Rob Hulls, decriminalisation of public drunkenness is on the Government's agenda, there has been no action.

Indigenous Community Engagement Officer:

This role is currently only provided at the Dandenong Magistrates' Court. Data indicates the success of this role as the number of Indigenous Australians assisted in the last three months is 48. This number is striking given that Court data only recorded 17 Indigenous Australians using the Court in 2007.

Aboriginal Liaison Officers:

This role is only available in the mainstream criminal courts at Melbourne Magistrates' Court. Such a role should be provided in all Courts, such as Family Courts. VALS argues that there should be more than one Aboriginal Liaison Officer at Melbourne Magistrates' Court.

Koori Courts:

These Courts are not available to all because some do not live in the right catchment area. The Koori Court option should be available to all Indigenous Australians.

Diversion:

Diversion options that are available at some Courts are not available at others and this should be rectified. Also, mainstream diversion programs are not accessible to Indigenous Australians and engagement with diversion should be improved.

Consolidation of Court dates for Indigenous Australians:

The urban based Courts should follow the example of regional based Courts which have consolidated matters for Indigenous Australians to a particular period of a week. This will assist VALS in terms of efficient use of time and resources and also assist Indigenous Australian clients.

Consolidation of Consultation:

A Government consultation plan would enable duplication of issues to be minimised and give some clarity to community organisations about what was occurring and when. This should occur at least annually. It would prevent consultation fatigue experienced by the Indigenous Australian community. For instance, a non-legally binding commitment could enable some better inter and intra department collaboration processes to be trialed as well as a more integrated community consultation approach. Also, several times a year there could be a systematic consultation cycle involving visits to communities to gather information on highly contentious or highly significant policy, program or justice related issues.

Indigenous Australian Input/Dialogue:

There is need to utilise Indigenous Australian knowledge in the development of the justice system, ADR models and restorative justice models. This is in light of the fact that Western based systems are alienating to Indigenous Australians which creates problems of access. Indigenous Australian opinions should be valued as Indigenous Australians are experts of issues that involve them. Programs work better if Indigenous Australians are involved at the beginning and have ownership. There is a need for a culturally inclusive approach at the beginning of a decision making process. To often Indigenous Australians are involved in processes when decisions have already been made and at this stage of the process all that is offered is tokenism.

Alternative Dispute Resolution:

It appears that the Justice Statement 2 has a focus on ADR. In its submission VALS argued for a model that contained the following characteristics:

1. Choice

There should be a choice between mainstream and Indigenous Australian targeted ADR services, not simply an expectation that Indigenous Australians will use mainstream services.

2. Strategic Social Justice Approach

There should be strategic social justice approach to ADR that is adopted by this ADR review process, along with the civil justice review and Equal Opportunity Act to overcome the problem of these reviews operating in isolation. The strategy should prioritise systemic discrimination and I will now describe some ways this can be done.

3. Culturally inclusive framework

Include a culturally inclusive framework at the beginning of the policy development process rather than at the end. This means involving Indigenous Australians in the process and 'designing in' opportunities for Koorie ideas and values and being self reflective about western assumptions.

4. Create space for restorative justice

A culturally inclusive framework may result in an ADR model for Indigenous Australians based on restorative justice. Restorative justice is closely related to Indigenous Australians forms of dispute resolution: ie, victim-offender mediation which involves multiple parties.

5. Community Based

A model which creates space for community based ADR which is in a position to provide early intervention and is not in the shadow of the Courts. The model should be regional and could be based on the CLC model. This occurred in NSW which has Community Justice Centres that provide mediation. The ADR could even link in with the CLC model on an arms length basis because of the problem of conflict of interest.

6. Co-mediation

A co-mediation model which is favoured by Behrendt as she argues it will work for Indigenous Australian as they can have someone they can relate to in some way.¹

7. Education

A model incorporating community education about ADR that is targeted at Indigenous Australians. For instance, Indigenous Australian specific publications which are noticeably so, such as Indigenous Australian colours and artwork. A model incorporating education of legal professionals improves referral process and information sharing between practitioners.

¹ Behrendt Larissa (2005) above n2, page 63

8. Safeguard: Legal Advice/power imbalance

A model that ensures that prior to using ADR all parties get clear legal advice about the scope of the ADR process that they are engaging in and their rights in terms of withdrawing from the process, especially if ADR is mandatory and there is a significant power imbalance (ie: family violence).

9. Triage

Where the dispute involves a matter of some urgency (eg: impinging on welfare of child) there should be a fast tracking option to the Courts. This would encourage the party not engaging in negotiation to do so and be useful in addressing welfare issues for the child quickly.

Aboriginal Family Decision Making:

There is opportunity to further expand the successful practice of Aboriginal Family Decision Making. It is used in the context of child protection and process involves the Department of Human Services, the Indigenous Australian family and community to work out a solution.

The limitation of this model is that it is only applicable at crisis point when a child protection notification has been made to the Department of Human Services. There is potential to extend this model to allow for early intervention. It is inappropriate that the limited application of restorative justice to the tertiary end of the child protection system for Indigenous Australians. Such limited application of restorative justice is not the case for non-Indigenous Australians as early intervention is available.