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VALS submission to the Department of Justice in response to the Equal Opportunity Review Options Paper, March 2008 – sent 9 May 2008

Introduction

Thank you for the opportunity to comment on the Equal Opportunity Review Options Paper.

VALS' choice of options is influenced by the need to meet the needs of Indigenous Australians.

VALS preferred options are:

- Framework: Option 3 (framework to address systemic discrimination and create equality).
- Power and Functions: Option 2 (facilitator).
- Dispute Resolution Options: Option 2 (choice between Commission and VCAT) which is modified to include Indigenous Australian specific dispute resolution.
- Legal advice: Option 2 (funding Community Legal Centres).

The choice of these preferences is influenced by the need to meet the needs of Indigenous Australians.

VALS highlights other processes that are on foot that should be considered when preparing a report on the inquiry. VALS highlights flaws in the Options Paper in relation to cultural appropriateness. VALS finishes with a reminder that there is need to extend the grounds for a complaint of discrimination.

Framework: Option 3

VALS is in favour of the Framework Option 3 that has been proposed: framework to address systemic discrimination and create equality. The reason for this is that it is the broadest framework and importantly is inclusive of:

- A recognition of the need to address systemic discrimination. VALS is pleased to see an emphasis on systemic discrimination as it indicates that previous arguments made by VALS about the systemic discrimination have been heard. VALS urges the Commission to consider VALS' recommendations about systemic discrimination that perhaps are more detailed than is necessary at this stage of the inquiry or are non-

legislative. For instance, the Commission should consider recommendations that fit under the heading: dialogue, cultural security, advocacy, and Indigenous Australian input, improve complaint mechanism and community education.

- Improvement to the law of indirect discrimination so that it is clearly stated in the Equal Opportunity Act the requirement to make reasonable adjustments (ie: duty to overcome the effects of indirect discrimination).
- Positive duty not to discriminate as this would mean systemic issues are addressed and the Act is in line with the Charter which includes a positive duty.

Power and Functions: Option 2

VALS can see merit in all of the proposed powers and functions options:

1) Educator: The Indigenous Australian community has need for an educator as there is a lack of awareness of their rights. The general community needs education about systemic discrimination as there is a lack of awareness about it. It is important that education for the Indigenous Australian community is not seen as one way (ie: Commission teaching Koorie people). Education is a two-way street where the Commission can learn from Indigenous Australians about how to improve the system.

2) Facilitator: The Indigenous Australian community has need for a facilitator that can assist them in the process of achieving justice. It is important that the facilitator is accessible to the Indigenous Australian community and that there is advocacy support for Indigenous Australians throughout the process either within or independent of the Commission.

3) Enforcer: The Indigenous Australian community has need for an enforcer as some have expressed dissatisfaction with outcomes as agreements have not been enforced. This leads to public sentiment about the Commission being poor.

VALS argues that whatever powers and functions the Commission adopts the remaining powers and functions that it does not adopt, need to be adopted by another body. There is need for a body that can provide education, facilitation and enforcement. VALS sees these three options as the package deal. If the Commission becomes a facilitator then another body should adopt an enforcer role and vice versa.

VALS prefers the options in the following order:

Preference 1: Option 2 (facilitator);

Preference 2: Option 3 (enforcer);

Preference 3: Option 1 (educator).

The reasoning behind this order of preference is that Option 2 offers aspects of the full range of options: educator, facilitator and enforcer. A facilitator role is what VALS hears community members expecting from the Commission. VALS places the Commissions potential role of enforcer behind the role of facilitator because another body may be in a better position to provide enforcement and the Commission cannot be both a facilitator and enforcer (ie: conflict).

VALS does not agree with the sentiment that the facilitator or enforcer roles conflict with the role of educator and this is why VALS has ranked the role of educator last. VALS considers that educator should not be a single role in itself but should complement the role of facilitator

or enforcer. This is indeed reflected in the descriptions of option 2 and 3 as both are inclusive of education.

An education role will provide the Commission with contact with the community. The educator role is also ranked last because it does not substantially change the current role of the Commission.

A body that could have a facilitator role, inclusive of education, if the Commission does not adopt this role, is an Aboriginal and Torres Strait Islander Social Justice Commissioner. VALS has long been advocating for this since it was recommended in the Royal Commission into Aboriginal Deaths in Custody Implementation Review (2005). The role of this Commissioner would also be relevant to addressing systemic discrimination.

Dispute Resolution Options: Option 2

VALS prefers a modified version of option 2 (choice between Commission and VCAT). There should also be the choice of an Indigenous Australian specific dispute resolution service.

VALS argued in its latest submission that the Commission should provide an advocacy service only and transfer responsibility for dispute resolution elsewhere, such as the Dispute Settlement Centre or VCAT.

VALS wishes to amend this suggestion and say that there should be a choice between mainstream dispute resolution and Indigenous Australian specific dispute resolution. The mainstream dispute resolution could be sourced out of the Commission or the Dispute Settlement Centre. The Indigenous Australian specific dispute resolution could operate out of a new centre called the Koorie Dispute Settlement Centre that builds upon the Dispute Settlement centre model.

VALS argues that the existence of an Indigenous Australian specific dispute resolution service does not mean the mainstream dispute service is relieved from the responsibility of also providing a culturally appropriate service to Indigenous Australians also. The Commission could learn a lot from the Dispute Settlement Centre in this regard if it is considered by the Department of Justice to be the appropriate mainstream service provider over the Dispute Settlement Centre.

VALS' preference for option 2 is in recognition of the VALS' experience that often due to a power imbalance the person the Indigenous Australian is opposing will stall true engagement in the dispute resolution process until the VCAT stage.

Also, it is VALS' experience that the requirement of going to the Commission before going to VCAT acts as a barrier to Indigenous Australians who want to go directly to VCAT and it prevents some accessing the Commission or following through with a complaint. VALS does not prefer Options 1 and 3 which do not provide a choice between dispute resolution bodies. Also, if VCAT was only available, cost may be a prohibitive factor.

VALS prefers option 2 as it is a way of fast-tracking resolution. VALS is in favour of a speedy process and has advocated for this in the past (ie: triage model based on urgency). VALS prefers that the Commission model that is available in option 2 provides a formalised 'inquiry meeting' process. There is a need to legislate for the process as currently aspects

are not covered by the Act (ie: not covered by confidentiality provisions and not certified by the Chief Conciliator/registered at VCAT).

VALS wishes to engage with the Commission about the 'inquiry meeting' process can be further enhanced. VALS would like to be included in discussions about the fast-tracking process before it is formalised. The practical process of choosing which dispute resolution body is involved in a matter is that a complainant ticks either the box for the Commission or VCAT.

VALS is supportive of indications in the Options Paper that the Act would be amended to ensure that a range of ADR processes could be used by the Commission, rather than just conciliation.¹ VALS considers that this flexibility will enable to the Commission to better meet the needs of Indigenous Australians and learn from the manner in which the Dispute Settlement Centre engages with the Indigenous Australian community in mediation.

Legal advice: Option 2

It is essential that legal advice is available in all options posed. VALS prefers option 2 in relation to legal advice and representation. Funding should be increased to existing legal services rather than to the Commission or an independent statutory office. The reason for this is that:

- The community is familiar with Community Legal Centres (CLCS)
- CLCs did civil law work in the past before funding was limited so CLCs are familiar with the work.
- The withdrawal of funding has contributed to the problem of unrepresented complaints.

OTHER INQUIRIES/PROPOSALS

VALS expressed in response to the Discussion Paper the need to bring together enquiries (integration rather than isolation). The inquiry can benefit from knowledge of the following:

Victorian Parliament Law Reform Committee

A VALS' submission to the Victorian Parliament Law Reform Committee in relation to Alternative Dispute Resolution. Please note that the Committee has engaged VALS to organise a meeting with the Indigenous Australian community about dispute resolution. The paper can be summarised as following Alternative Dispute Resolution is problematic for Indigenous Australians because it is a Western construct. There is need to improve the dispute resolution process to make it more appropriate for Indigenous Australians.

VALS' suggests targeting the needs of Indigenous Australians and adopting a community based co-mediator model which creates space for the provision of legal advice. There is need to create space for the utilisation of Indigenous Australian knowledge in the development of ADR models.

VALS identified the following issues of access to ADR for Indigenous Australians:

¹ Equal Opportunity Review Options Paper, March 2008, page 80

Gaps: There are no Indigenous Australian specific ADR services and the only mainstream service attempting to provide a culturally sensitive service is the Dispute Settlement Centre which has an Indigenous Liaison Officer role and Koori mediators.

Alienating: ADR reflects Western cultural values and alienates Indigenous Australians who have different cultural values and are consequentially disadvantaged by a power imbalance. According to Smith “the ability to decentre the Western worldview in order to understand Aboriginal ones is important to the ADR movement”²

VALS’ suggestions are influenced by Larissa Behrendt, an Indigenous Australian lawyer, who also provided an analysis of the Equal opportunity system. She argues that despite the advantages of ADR it is still a problematic alternative for Indigenous Australians as it is a non-Indigenous Australian product that is incapable of addressing the power inequality created by racism and institutional discrimination.”³

The model that Larissa Behrendt argues for:

- Goes beyond merely transferring the dominant programs of ADR into the Aboriginal community with mediators who have had cultural training or Indigenous Australian mediators.⁴
- Is one that is implemented by Indigenous Australians in their own communities, which recognise traditional cultural values and traditional structures of decision making.

The model of ADR that VALS prefers is as follows:

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

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.

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.

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.

² Victor Wenona, ‘Alternative Dispute Resolution (ADR) In Aboriginal Contexts: A Critical Review’ April 2007, page 2 as at http://www.chrc-ccdp.ca/pdf/adrred_en.pdf page 24

³ Behrendt Larissa, *Aboriginal Dispute Resolution: A Step Towards* Self Determination and Community Autonomy, Federation Press, 2005, p 70

⁴ Ibid, p 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.⁵

Legal advice: see above

Triage: see above

Address systemic issues: see above

In light of the above model VALS is concerned by the following:

Cultural Awareness

It is a concern that the Options Paper list of key principles that underpin an effective dispute resolution system omits mention of cultural appropriateness or recognition of diversity. The latter is broader and would take more than culture into account (ie: disability).⁶

Impartiality

The emphasis in the Options Paper on conflict of interest affecting the choice of options makes apparent a preference for an impartial conciliator.⁷ However, some Indigenous Australians do not emphasise neutrality.

Indigenous Australian	Non-Indigenous Australian
Communal	Individual
Wholistic approach	Life as a divisible whole
Time spent on relationship building	Time spent on intensive negotiation
Mediator’s personal involvement/first hand knowledge is valued	Mediator’s neutrality valued.

Koorie Dispute Settlement Centre

VALS produced a funding submission for a Koorie Dispute Settlement Centre (Appendix A). The proposal is an attempt to put into practice the findings of the research prepared for engaging with the Victorian Parliament Law Reform Committee.

Consumer Affairs Victoria: Re Private Rental

VALS has become aware that Consumer Affairs Victoria has been recommended by a recent report (*Indigenous people and private rental housing: a review of the Australian literature*

⁵ Behrendt Larissa, *Aboriginal Dispute Resolution: A Step Towards Self Determination and Community Autonomy*, Federation Press, 2005, p 63

⁶ Equal Opportunity Review Options Paper, March 2008, page 70

⁷ Ibid, page 77

with special reference to Victoria, December 2007) to ⁸. Recommendation 4: CAV in collaboration with other organisations to explore the potential to prevent and address discrimination in the private rental market by reviewing Indigenous access to CAV and VEOHRC complaint mechanisms.

Justice Statement 2

The Attorney-General, Mr Rob Hulls, is in the process of consulting about the Justice Statement 2. It was indicated at the Community Legal Service meeting with Mr Hulls that there is a preference to move away from adversarialism and towards appropriate dispute resolution.

Equal Opportunity Protocol

VALS formed a working group in 2004 on the back of a member of the Indigenous Australian community highlighting dissatisfaction with the Equal Opportunity process. The Working Group developed draft protocols to improve to Equal Opportunities processes for Indigenous Australian people which VALS has recently rediscovered. See Appendix C

Increase Concept of Illegal Discrimination

VALS briefly repeats the need for extend the grounds for a complaint so that the discrimination on the basis of the following attributes is included in section 6 of the Equal Opportunity Act: criminal record, social status, homelessness, drug use or employment status. Discrimination against an Indigenous Australian on the basis of criminal record has ramifications in relation to the following: employment, volunteering and visiting people in prison.

CONCLUSION

VALS preferred options are as follows.

Framework: Option 3 (framework to address systemic discrimination and create equality). VALS prefers this option because it is the broadest. VALS is specially pleased to see systemic discrimination included in the framework, updating of the law of indirect discrimination and a positive duty not to discriminate.

Power and Functions: Option 2 (facilitator): Option 2 offers aspects of the full range of options: educator, facilitator and enforcer. VALS emphasises the need for a body that can provide education, facilitation and enforcement. VALS sees these three options as the package deal.

Dispute Resolution Options: Option 2 (choice between Commission and VCAT) which is modified to include Indigenous Australian specific dispute resolution. VALS prefers option 2 as it is a way of fast-tracking resolution and respond's to VALS client's experience caused by a power imbalance which means the person they are opposing will stall true engagement

⁸ Long Stephen, Memmott Paul Indigenous people and private rental housing: a review of the Australian literature with special reference to Victoria (Australian Housing and Urban Research Institute) December 2007

in the dispute resolution process until the VCAT stage. VALS argues that Indigenous Australians should have a choice between mainstream and Indigenous Australian specific dispute resolution.

Legal advice: Option 2 (funding Community Legal Centres). Legal advice should be available in all options posed and funding should be increased to existing legal services as the community is familiar with the centres and the centres have experience in doing (particularly when funding was provided).

The other process that VALS highlights as needing to be considered when preparing a report on the inquiry are:

- Victorian Parliament Law Reform Committee inquiry into Alternative Dispute Resolution
- VALS funding application for a Koorie Dispute Settlement Centre
- Consumer Affairs Victoria re private rental work
- Justice Statement 2
- VALS 2003 Working Group protocol

VALS highlights flaws in the Options Paper in relation to cultural appropriateness in that it excludes cultural awareness from the list of key principles that underpin an effective dispute resolution system and appears concerned about avoiding conflict of interest. This is arguably a western value in the context of dispute resolution as some Indigenous Australian prefer a mediator who has personal involvement in a matter.

VALS finishes with a reminder that there is need to extend the grounds for a complaint of discrimination. VALS calls for the following to be classified as attributes protected by the Act: criminal record, social status, homelessness, drug use or employment status.

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RESTORATIVE JUSTICE

Tell us what your project is about. What is the primary objective/outcome of your activity? (i.e. what will you achieve)? What actions, activities and services will be carried out by your organisation using the proposed funding?

The Project primary objective of the Project is early intervention of family disputes in a culturally appropriate manner that is inclusive of agencies, victims, offenders, and Indigenous Australian communities. VALS will use the Project to expand and enhance early intervention and prevention options for Koorie communities in relation to family law, child protection and family violence situations. The objective is to provide dispute resolution prior to going to the Family Court, Children's Court or the Magistrate's Court. The project could assist with cross-jurisdictional matters.

The intended outcome of the service is dispute resolution, community strengthening and reduction in the incidence of family separation and family violence. The project is community focused and assumes that a stronger better informed, skilled and committed community will provide a healthier environment for families and individuals.

The service that will be carried out by VALS in an arms length manner using the proposed funding is a Koorie Dispute Resolution Service. The service would provide paid positions to staff and sessional mediators to provide dispute resolution to Indigenous Australian people in the South Eastern metropolitan and Latrobe regions of Victoria. Training will be provided for Indigenous Australian dispute counselors and such people will be paid for attending training.

Tell us why your project is needed. Is it in response to an identified need? What evidence is there of the need for this Project? (Refer to surveys, reports or community plans, local council or state/territory plans and other information which supports the needs for this project, if relevant)

The project is needed as it is a response to need outlined below.

Relevant recommendations

Need for further development of dispute resolution services to Indigenous Australian was identified in the National Alternative Dispute Resolution Advisory Council Indigenous Dispute Resolution and Conflict Management (2006). Statement of Principle 1 recommends that a dispute resolutions service for Indigenous Australians be based on:

- Recognition of Indigenous perspectives on disputes and their resolution;
- Consultation with Indigenous people at the local level;
- Flexibility and adaptability of services;
- Long term and sustainable outcomes and;
- Integrated approaches across program, process and jurisdictional boundaries.

The Labor Government recognized the need for alternative dispute resolution in its Party Policy Platform in 2006 which is outlined below.

Culturally appropriate and targeted at Indigenous Australians

According to the New South Wales Review of Community Justice Centres there is need to develop culturally appropriate dispute resolution:

“In light of the dispossession and oppression of Indigenous people, the provision of mediation services to Indigenous communities is important because it may help Indigenous communities to achieve the resolution of disputes without recourse to the formal justice system. There is the potential, within community mediation, for Indigenous people to develop methods of resolving disputes that are appropriate to Indigenous culture and needs. However, this is not to say that community mediation currently does, or will, deal adequately with Indigenous culture and needs. (NSW Law Reform Commission, Report 106: Community Justice Centres, 2005)”

There is research about why there is need to make the ADR system more culturally appropriate and how to do it. According to Indigenous Australian academic Larissa Behrendt, Indigenous Australians should be involved in the ADR model and western ADR notions, such as the independence of mediators, may need to be rethought in an Indigenous Australian context (Larissa Behrendt, *Aboriginal Dispute Resolution: A Step Towards Self Determination and Community Autonomy*).

The model that Larissa Behrendt argues for:

- Goes beyond the programs of mediation, arbitration and negotiation which exist within the dominant legal structures being merely transferred into the Aboriginal community with mediators who have had cultural training or Indigenous Australian mediators (page 6)
- A model that is implemented by Indigenous Australians in their own communities, which recognise traditional cultural values and traditional structures of decision making.

Which is based on the following thoughts that despite the advantages of ADR it is still a problematic alternative:

- “despite the advantages ADR methods provide for the non-Aboriginal community “their benefits are not so easily transferable into the Aboriginal community. Although these methods are more flexible than the court system and facilitators of these forms of dispute resolution can be trained so that they are sensitive to cultural issues, there are some fundamental problems in incorporating these methods into disputes with Aboriginal people and/or communities as cultural conflict still arises”(page 53).
- “Any mechanism that is the product of the non-Aboriginal community, will be incapable of addressing the power inequality created by racism and institutionalised racism towards Aboriginal people”. It treats Aboriginal people as assimilated and ignores community’s ability to settle disputes (page 70).

Also, according to Smith the ability to decentre the Western worldview in order to understand Aboriginal ones is important to the ADR movement and the proper resolution of inter- or intra-cultural conflict/need to “decolonize methodologies” (Smith, 1999 as cited in

Victor Wenona, 'Alternative Dispute Resolution In Aboriginal Contexts: A Critical Review' April 2007, page 24)

Success in other places

The Many Rivers Aboriginal Women's Annex report stated that the service enjoyed a high level of successful outcomes. The success of the Western Australian Aboriginal Alternative Dispute Resolution Service, the model of which was adopted in Community Justice Centres in New South Wales.

Benefits of early intervention

There is evidence of benefits of early intervention in conflict though ADR as ADR is less costly than legal proceedings. It is often more cost effective to provide support in dealing with family conflict at an early stage than to wait until Court action is required (Victorian Parliament Law Reform Committee 'Alternative Dispute Resolution Discussion Paper' September 2007, p 58).

Appropriateness of mediation in family context

The question of whether mediation in the context of family violence is needed or appropriate often leads to different answers. VALS prefers the answer reflected in research of the New South Wales Review which argues that a list of factors should be taken into account in deciding whether a matter is suitable for mediation.

RECOMMENDATION 7

The CLCs Act should include a list of the following factors that must be taken into account when considering whether a particular dispute is suitable for mediation:

- the safety of all parties to the mediation;
- any ADVOs or APVOs that may have been granted or that are pending;
- the degree of equality (or otherwise) in the bargaining power of the parties;
- the occurrence of violence and/or the risk of future violence between the parties or between one of the parties and a third party (including children of the relationship);
- the mental, physical and psychological state of the parties;
- the relationship between the parties;
- whether one of the parties may be using the mediation tactically to gain delay or some other improper advantage;
- the extent to which the issues in dispute are related to any violence between the parties;
- whether the party who has committed or threatened violence is a child; and
- any other matter relevant to the proposed mediation and the parties.

Restorative Justice in the Family Violence Context

There is a need to cement a legitimate space for restorative justice approaches in the justice framework, particularly in the context of family violence. If a space is created for restorative justice then restorative justice approaches can be tried and tested and then their level of success can be determined. If restorative justice projects are tried and proven successful then confidence in restorative justice as an appropriate option will rise. However, it appears that space is not created for restorative justice and this is motivated by fear of the unknown. For instance, despite VALS providing information about the success of restorative justice in Australia and overseas to the Victorian Law Reform Commission reviewing family violence laws, the Commission opted to recommend further research into restorative justice rather than incorporate the concept of restorative justice into the reform of the system.

Evidence for a restorative justice approach can be found in research commissioned by VALS and undertaken by Bluett-Boyd ([In Search of Justice in Family Violence - Exploring Alternative Justice Responses in the Victorian Indigenous Australian Community, University of Melbourne September 2005](#)) that was based on similar research in Qld (*In Search of Justice In Domestic and Family Violence*, Griffith University Queensland October 2003). It was found that Indigenous Australian women placed less emphasis on the formal criminal justice system to deal with family violence than some mainstream groups. The advantages of a restorative justice approach identified by women questioned by Bluett-Boyd include: a healing element; shame-for the offender due to the exposure to the wider community; greater visibility of the issue; validation of the victim's story and involvement of Elders and Respected Persons. Connected to this preference for restorative justice in the family violence context is dissatisfaction with the criminal justice system (ie: less intervention orders that one would expect given the incidence of family violence).

Evidence about need and support for a restorative justice approach is apparent in the outcome of a VALS Indigenous Women's Justice Forum that focused on restorative justice in the context of family violence. Loretta Kelly, an Indigenous Australian lawyer and mediator who has extensive experience of establishing holistic models addressing family violence, presented a paper. It was recommended by participants at the forum that a Koori woman's position be developed at VALS and this person would be responsible for promoting and developing the legal and restorative justice needs of Indigenous Australian women.

Community involvement

Need for the development of Indigenous Australian community conflict management skills was identified through research done by the Dispute Settlement Centre in their "Koorie Community Consultation Program" 1998. The research indicated that there is a strong interest by communities in development of conflict management skills.

There is evidence of interest by Indigenous Australian women in restorative justice approaches in relation to family violence. The Bluett-Boyd research highlights the importance placed on community ownership of the problem of family violence.

Gap

There is a need for the project because there are the following gaps:

- The Dispute Settlement Centre does not undertake mediation in relation to family conflict.
- There are no Family Court approved Koorie family mediators who can deal with families before they go to the Family Court. Similarly, there are so such mediators in relation to family violence before a matter goes to the Magistrate's Court.
- Section 12 of the Children Youth and Families Act (2005) cannot be implemented consistency because there are limited organisations that provide a Koorie Family Decision Making Conference that is independent of the Department of Human Services. Section 12 is progressive in that it recognises the right to self determination:

12. Additional decision-making principles

In recognition of the principle of Aboriginal self-management and self-determination, in making a decision or taking an action in relation to an Aboriginal child, the Secretary or a community service must also give consideration to the following principles—

- (a) in making a decision or taking an action in relation to an Aboriginal child, an opportunity should be given, where relevant, to members of the Aboriginal community to which the child belongs and other respected Aboriginal persons to contribute their views;*
- (b) a decision in relation to an Aboriginal child, should involve a meeting convened by an Aboriginal convener who has been approved by an Aboriginal agency and, wherever possible, attended by—*
 - (i) the child; and*
 - (ii) the child's parent; and*
 - (iii) members of the extended family of the child; and*
 - (iv) other appropriate members of the Aboriginal community as determined by the child's parent;*

List the primary location(s) where the Project will take place, i.e. communities, outstations, cities, towns or other locations. Where relevant, outline how the activities will be delivered in these locations if not covered elsewhere.

The Co-ordinator (full time) and Intake Worker (part time) roles operate out of VALS head office in metropolitan Melbourne. The Project Worker will establish a Koorie Dispute Resolution Service in two regions: Latrobe and South-East Metropolitan. The Co-ordinator will develop in each region at least two sites where a dispute resolution session can take place so that there is flexibility about the location of the mediation. The sites may range from Aboriginal Co-operatives and organisations, Local Government Offices, libraries and Community Health Centres.

2. List any other location(s), i.e. communities, outstations, cities, towns, or other locations, that will be impacted by or benefit from the Project and outline what those impacts or benefits will be.

The other locations that will benefit from the Project are those that are in travelling distance to the Koorie Dispute Resolution Services. Also, if the pilot is successful it has the potential to be rolled out to other locations.

Tell us how you will undertake the project. (e.g. Will your organisation carry out the Project with existing personnel, or employ new staff, or will you sub-contract it?) What experience and resources does your organisation have that will help you manage this Project (include details of the history of the Project if applicable)? If you propose to use other service providers, those details can be included in the Question on Linkages below)

The experience and resources of VALS that will help in the management of the project are:

- The agencies listed below that will be invited to join a Local Advisory Group:
 - Dispute Settlement Centre;
 - Victorian Aboriginal Health Service Co-operative Limited;
 - Victorian Aboriginal Community Services Association Limited (VACSAL);
 - Victorian Aboriginal Child Care Agency;
 - Aboriginal Co-operatives;
 - Aboriginal Family Violence Prevention and Legal Service;
 - Elizabeth Hoffman House
 - Family Mediation Centre;
 - Indigenous Family Violence Prevention Program in the Department of Human Services.
- VALS' staff, such as Client Service Officers who have links with local communities, solicitors, Community Legal Education Worker and researchers. Also, the Board of Directors, who come from a range of areas throughout Victoria and have links to a number of different services, are a valuable resource.
- VALS' history of liaising with relevant organisations such as those suggested above in relation to the Local Advisory Group and the Courts.
- VALS has access to the knowledge gained by the Dispute Settlement Centre in devising a model of training for Koorie mediators.
- VALS has negotiated a Memorandum of Understanding with Victoria Legal Aid. VALS has a Statement of Co-operation with Melbourne University Criminology Department and Monash University Law School's Castan Centre for Human Rights Law. VALS is an active member of the Federation of Community Legal Centres.

Tell us how you will undertake your Project by:

**Breaking your Project activities and services into tasks/stages/
milestones;**

Linking these tasks/stages/milestones to timelines;

Including a proposed start and finish date; and

Identifying approximate costs for each task/stage/milestone.

VALS will undertake the project by breaking the project down into the stages and milestones outlined below. The proposed start date of the project is 1st July 2008 and finishing date is 29th June 2009.

Proposed Model

The Co-ordinator will commence employment in July 2008 and develop a Koorie Dispute Settlement Centre (Centre) model that will be at arms length from VALS. The Co-ordinator will establish a partnership with another organisation in order ensure probity of the model. The Intake Worker will commence employment in April 09 once the model has been devised and the Centre is ready to start operations.

The model will be an adapted version of the model provided at the Dispute Settlement Centre (DSC) to deal with family conflict. For instance, VALS may engage the services of Koorie mediators at the DSC on a sessional basis, who have been trained to assist with neighbourhood, other civil and organization disputes. As these mediators do not deal with family disputes they will need to be trained in this area. Also, different intake protocols and intake screening criteria from the DSC would need to be established for this Project. The model would utilise the experience of the Dispute Settlement Centre in training and supporting Koorie mediators. The work of the DSC is consistent with NADRAC recommendation 4 which states that mainstream services should 'address barriers that affect the effectiveness of their services' and recommendation six which includes a recommendation that training programs for both Indigenous Australian and non-Indigenous Australian practitioners should be developed and evaluated.

The model will:

- Be culturally appropriate as it would be informed by the views of Indigenous Australian Elders and Respected Persons and service providers.
- Be available prior to court or police involvement only after both parties had received legal advice. VALS would liaise with other legal service providers to ensure that there was quick access to legal advice services for people who wanted to use the Koorie Dispute Settlement Centre. Legal advice is important to protect the individuals using the Centre as well as the credibility of the Centre. One of the criticisms made of ADR is that it cannot work effectively where there is a significant power imbalance between the parties. There are differing views about what this means in practice and how to effectively screen inappropriate matters. However, providing legal advice to each side helps overcome power imbalance caused by not understanding the ADR process and legal system. It also helps ensure that participants are aware that they are not obligated to participate and that they can cease participating at any point in the process.
- Provide mediators with legal professional privilege to protect privacy and prevent mediators being called to appear in Court later if Court action occurs.
- Be a co-mediator model (eg: two mediators). For instance, where the dispute is between a man and a woman, the Centre would provide a male and female mediator.

Key Stages of the Pilot:

- Establish a Local Advisory Group in south east metropolitan and Latrobe valley. Some relevant Statewide organisations will sit on the South-East Metropolitan Advisory Group, along with local people and organisations. The Statewide organisations will have informal input to the Latrobe advisory group that will be made up of local people (July 08).
- Produce research report on ADR models in Indigenous Australian communities.
- Finalise model of service and training module (July 08-Sept 08);
- Finalise structure of service including governance and accountability arrangements and sites to hold mediation sessions. This will be documented in a partnership agreement or memorandum of understanding with the partner organisation that is involved in order to enable the Project to be at arms length from VALS. (Oct 08-Dec 08);
- Finalise funding for the Project post June 2009.
- Finalise position descriptions and training procedure (Dec 08) (the bulk of travel expenses will have been spent by this stage);
- Advertise for Intake Worker and sessional mediators (March 09) and the costs for the employment of both is \$43,000;
- Train mediators (April 09) (cost \$15,000);
- Advertise service and publicize through the Local Advisory Groups (April 09);
- Commence Koorie Dispute Settlement Centre (May 09).
- Provide Community Legal Education and information sessions in local community on dispute counseling and legal options (ongoing),
- Meet with Local Advisory Group by way of follow up (ongoing)

Milestones:

- Development of Koorie Dispute Settlement Centre model
- Secure funding for the Project post June 2009.
- Training Package in relation to dispute resolution
- Provision of Training workshops and payment to those who attend the workshop (15 Participants).
- Evaluation reports.
- Provide dispute counselling service to 30 people.

Outline how the proposed Project addresses the priorities and objectives stated in the Program Funding Guidelines.

The Project addresses all of the priorities and objectives in the Program Funding Guidelines. The Project does this by adopting the objectives in the guidelines as objectives of the Project and completing the tasks outlined above.

The project is in line with the general purpose of funding that relates to restorative justice:

- The Project has the potential to divert Indigenous Australians away from adverse contact with the legal system. The resolution of family conflict can divert Indigenous Australians from the Family Law Court and other Courts in relation to criminal matters.
- The Project will aid early resolution of disputes through restorative justice practices that involve agencies, victims, offenders, and Indigenous Australian communities. The Project primary objective of the Project is early intervention of family disputes in a culturally appropriate manner that is inclusive of agencies, victims, offenders, and Indigenous Australian communities.
- The funding is supplementary rather than primary and VALS will apply for funding from the Legal Services Board for the Project to continue post June 2009 in the form of the Koorie Dispute Settlement Centre.
- The Project establishes protocols with relevant Government agencies and the non-government sector, outlining the respective roles and responsibilities of the service provider, other agencies and/or organisations. The Co-ordinator will liaise with agencies about forming a partnership that will enable the Centre to be at arms length from VALS. The partnership will agree on powers, duties, cooperation arrangements and standards of service and be formally documented in a partnership agreement or memorandum of understanding.
- The Project offers accessible and culturally appropriate services to Indigenous Australians regardless of gender, sexual preference, family relationship, location, disability, literacy or language.

The project is in line with the specific purpose of the funding that relates to restorative justice

The restorative justice Project promotes the involvement of, families, communities, victims and offenders in developing mechanisms for early dispute resolution as outlined above. The Project provides an appropriate alternative to conventional sentencing procedures in relation to family violence. The Project goes further than the criminal justice context and provides alternatives to conventional family law procedures. In relation to both criminal and family law a conferencing procedure will be adopted.

The restorative justice Project has the potential to reduce the adverse contact of Indigenous Australians with the criminal justice. If family disputes, including family violence and child protection, are dealt with early that it is possible that contact with the criminal justice system will decrease. If family separation is reduced, then it is possible contact with the criminal justice system will reduce given that in 2002 maltreated Indigenous Australian children were

4.3 times more likely to subsequently offend than non-Indigenous Australian children.⁹ Also, given Indigenous Australians are nationally 45 times more likely to experience family violence, which is a contributing factor to the over-representation in the criminal justice system, then early intervention when used in appropriate circumstances will reduce contact with the criminal justice system by preventing family violence to escalate. However, the Project does not advocate the de-criminalisation of family violence.

Also, VALS has devised related objectives that will also assist VALS in meeting the guidelines. The related objectives contain unique elements, spell out and complement the Program Funding Guideline objectives:

- Develop an ADR model with community based expertise and values.
- Build awareness of ADR
- Empower communities to respond to and initiate actions in response to problems without the use of violence

Why is there a need for Government funding to undertake your Project?

There is need for Government funding to undertake the Project because:

- Indigenous Australians are over-represented in child protection and family violence statistics as indicated above. Early intervention can prevent family disputes escalating and requiring more formal intervention.
- The project fills a gap in service provision and provides a means of strengthening families.
- The improvement of Alternative Dispute Resolution for Indigenous Australians is consistent with the Commonwealth Government's focus on ADR prior to legal proceedings. Included in the Labor Party 2007 National Platform and Constitution in relation to 'ensuring community security and access to justice' are comments that are consistent with this sentiment about ADR and this funding application:

21. Labor will develop national model legislation and program delivery standards for victims of crime, including:

- promotion of alternative dispute resolution and restorative justice processes aimed at improving outcomes for both victims and offenders and reducing prospects of recidivism.

27. Restorative justice seeks to build a sense of community spirit and responsibility in the offender and aims to restore the victim and the community to their pre-offence state of security. Labor will promote the principles of restorative justice as a just and effective way to be tough on crime. Labor will support the introduction of programs that are consistent with victims' rights, based upon restorative justice.

⁹ Dr Anna Stewart, Dr Susan Dennison, Ms Elissa Waterson *Final Report: Pathways from Child Maltreatment to Juvenile Offending* (School of Criminology and Criminal Justice Griffith University) October 2002, p. 97 as in Australian Institute of Criminology Trends and Issues Paper in Crime and Criminal Justice no: 241.

36. In order to enhance the accessibility of justice, Labor will, without reducing the quality of access to the justice system:

- encourage the continued development of other affordable and simple primary dispute resolution mechanisms;
- encourage the development of a community approach to dispute resolution;
- encourage parties to conciliate or arbitrate disputes, where that is appropriate;
- encourage the continued development of other cheap and simple primary dispute resolution mechanisms;

67. Labor believes that community-based services aimed at preventing marital and family breakdown, such as relationship education, family skills training, marriage preparation and marriage counselling and adolescent and family mediation should be a priority and readily available.

68. Labor believes that the resolution of family disputes should focus on counselling and mediation with litigation as a last resort. The resolution of disputes should focus on keeping families together, where it is appropriate. Labor will ensure counselling and mediation services will be accessible and affordable.

73. Labor recognises that there is a gross over representation of incidents of family violence and abuse in Indigenous communities which is crippling the development, leadership and capacity of communities to become sustainable. This intolerable situation must be addressed through a re-invigoration of a national partnership approach with Aboriginal and Torres Strait Islander communities and the three tiers of government.

What are the key risks which may affect the successful completion of this Project on time and within budget? How do you plan to address these risks?

The key risks which may effect the successful completion of the Project on time and within budget are the twelve month funding period for the project and the extreme delay in the Govt making funding decisions. There is often a considerable time required to recruit suitable staff and induct and train them. Other than bringing this matter to your attention VALS has no control over this matter. A risk with the project is the sensitive nature of family conflict. As a result there is a need to be cautious and have ongoing discussions with the Indigenous Australian community who are experts on the model that should be implemented.

Provide details of:

the arrangements that exist between yourself and other service providers for this project if your organisation is a Resource Agency or Auspicing body;

other organisation(s) that this project is linked to if services are not fully delivered by your organisation.

The arrangements that exist between VALS and other service providers for this Project will be determined in the course of the Project. It is possible that VALS will be a Resource Agency and another body an Auspicing body given that the project needs to be conducted at arms length from VALS. VALS has good working relationships with services that are capable of performing this auspicing role.

APPENDIX B: PROTOCOL
