

Victorian Aboriginal Legal Service Co-operative Ltd

Newsletter October-December 2008



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Seasons Greetings

The Directors and Staff of VALS wish you and your loved ones the compliments of the season. We sincerely hope that you have a safe and happy Christmas and New Year.

Staff

VALS welcomes Louise Hicks to the role of Research Officer. Louise completed a 30 day placement at VALS as part of her Social Sciences degree at RMIT University. VALS also welcomes Ingrid Giles and Karina Atchia to the role of criminal law solicitor.

County Koori Court

Frank Guivarra attended training at Wulgungo Nglau Learning Centre for the new Koori County Court. The Koori County Court is the [first higher jurisdiction Court of its kind in Australia](#). In an article Rosi Smith, involved in introducing the Court, said 'Victoria is leading the way when it comes to making access to justice better for Aboriginal people'.

Research, Planning and Development Unit Update

Update Police Cautioning and Youth Diversion Program

VALS' Police Cautioning and Youth Diversion Pilot Project (stage 1) and Police Cautioning and Youth Diversion Program (stage 2) are funded by the Victorian State Government. The pilot commenced in the 2006-2007 financial year in two sites, Mildura and the Latrobe Valley. The pilot [was evaluated in the 2007-2008 financial year leading to the roll-out of the project to new locations](#) and its change of status from a pilot to a program. The evaluation revealed that in quantitative terms 94% of individuals involved in the pilot did not re-offend. The qualitative value of the project is apparent in case studies, which highlight how for example youth re-engaged in school as a result of the follow-up that occurred as part of the project.

VALS has been fortunate enough to have Nicole Bluett-Boyd, who project managed the pilot, to project manage the roll-out to: Swan Hill, Shepparton, Warrnambool, Bairnsdale, North-West corridor of Metro-Melbourne (Darebin and Yarra). The launch of the Program at Swan Hill occurred in December 2008.

VALS provided reasons why the Program works when appearing at a Public Hearing before
[October - December 2008](#)

the Drugs and Crime Prevention Committee which was inquiring into strategies to prevent high volume offending by young people. VALS stated:

- Indigenous Australian youth are nearly 14 times as likely to enter juvenile justice supervision as non-Indigenous Australian young people.
- Attempts to address Indigenous Australian youth offending should:
 - ⇒ Identify and target the specific needs of Indigenous Australians.
 - ⇒ Acknowledge and utilise Indigenous Australians as they are experts on the issues that affect them. Indigenous Australians should be involved in the development and implementation of programs.
 - ⇒ Acknowledge and utilise protective factors specific to Indigenous Australians (i.e. culture & community).
 - ⇒ Address the multitude of risk factors that Indigenous Australians experience. This should be done in a holistic manner (i.e. referral and follow up components etc).
 - ⇒ Acknowledge that in some instances the relationship between police and the Indigenous Australian community is poor and put in safeguards to improve relations between the two.

The effect of ‘Tough on Crime’ policies on Indigenous Australians: A critique of current practices and an exploration on ‘Smart on Crime’ alternatives

In the second half of 2008, VALS engaged RMIT student Louise Hicks in a research capacity as part of an internship program. Her research project aimed to address the effects that “tough on crime” policies have on marginalised communities. While drawing on international examples, her research focuses on the response of Australian States and Territories to crime and the resulting effects on Indigenous Australians. Topics examined include:

- “Tough on Crime” policies and the role of fear of crime;
- Zero tolerance policing, including a discussion of the use of public space, move on laws, and offences such as public drunkenness;
- Mandatory sentencing;
- The breach of human rights principles at the hands of punitive measures; and
- Counter arguments to the “tough on crime” approach which involves a discussion of restorative justice and the need to shift to a ‘smart on crime’ framework.

Measures such as zero tolerance policing and mandatory/minimum sentencing play into, and result from, systems of power and fear, with serious consequences. With the aid of populist justice we see punitive trends endure, failed systems endorsed, human rights violated and alternatives to the current law and order approach to criminal justice continuously marginalised.

Louise’s research revealed that tough on crime measures do not reduce crime rates, do not reduce recidivism rates, mandatory sentencing does not act as a crime deterrent, and prisons remain the primary tool of criminal justice despite established and emerging alternatives. [Alternatives to tough on crime mechanisms were found to exist, and beg to be given serious attention if *real* and *viable* solutions to address crime are ever to be achieved.](#) While existing restorative justice mechanisms are given due recognition by some Australian Governments and organisations, a clear need for investment in the extension of these initiatives is argued for. ‘Smart Justice’ approaches recognise that genuine public safety from the effects of crime has more to do with education, housing, health, community safety and supporting the family

unit than with what can ever be achieved by simply imprisoning people.

Louise argues that a shift to ‘smart on crime’ initiatives proves essential if we are to move away from privileging increasingly punitive tendencies. It is with this change in focus that sustainable and long-term capacities and solutions can be sought. The sum of these issues, such as the uncertain funding support of Aboriginal and Torres Strait Islander Legal Services among others, represents ‘unfinished business’ that needs to be continuously brought to the minds of those around us who guide the preoccupations of wider Australia.

Access to Justice presentation

Frank Guivarra took part in a panel discussion at the National Access to Justice and Pro Bono Conference in November, 2008. The topic discussed was ‘Commonwealth and State Governments’ Agenda’. Frank made the following points:

The State/Territory and Federal Governments have a big task on their hands when it comes to improving access to justice for Indigenous Australians. To set the context, as at 30th June 2006, *“Indigenous prisoners represented 24% of the total national prisoner population”*. The source of this statistic and the following quotes is an article by Chris Cunneen and Melanie Schwartz titled ‘Funding Aboriginal and Torres Strait Islander Legal Services: Issues of Equity and Access’ (2008, 32 Crim LJ 38) .

According to Professor Chris Cunneen and Melanie Schwartz: *“the figures on over-representation translate into an acute need for proficient and accessible Indigenous-specific legal advice and representation”*.

However, in 2003 it was estimated that the annual shortfall for funding of Aboriginal and Torres Strait Islander Legal Services [ATSILS] compared to Legal Aid Commissions [LACs] was approximately \$25.6 million. *“The number of criminal cases dealt with by ATSILS increased by 67% between 1998 and 2003; yet, despite this massive increase, funding for these services did not substantially increase in the period”*.

Cunneen and Schwartz argue *“...the static funding environment that ATSILS operate in results in compromised capacity to provide adequate services to the sector of the population that arguably needs the best possible quality legal services ... the issue of the adequacy of legal representation for Indigenous people goes to the heart of questions of access, equity and the rule of law”*.

The State/Territory and Federal Governments should work together on two aspects of the topic of Access to Justice:

- [a] Improve the quantity of legal assistance: and
- [b] Improve the quality of the justice system, not only in terms of just outcomes, but also process.

There is a role for Pro Bono assistance in these areas, but at the same time, the willingness of some to provide such assistance should not enable the Government to shirk away from its responsibility to adequately fund ATSILS.

Agenda

The agenda of Governments over the next two years should be to:

- Devise and implement a strategy on how to adequately fund ATSILS.
- Recognise the primary role of ATSILS as legal service providers, in policy and nurture them through sustainable, consultative, inclusive and timely sector policy development.
- Implement all 339 Recommendations of the Royal Commission into Aboriginal Deaths in Custody.
- Address the underlying issues that lead to the over-representation of Indigenous Australian in the criminal justice system.
- Replace a ‘tough on crime’ with a ‘smart on crime’ approach.
- Subsidise cultural awareness training for Law Firms who undertake pro bono work for Indigenous Australians.
- Introduce a Legal Aid Impact Statement prior to new legislation being presented to Parliament.
- Contain a notion of social inclusion that does not forget about the need for cultural inclusion.
- never ‘mainstream’ service delivery as there is a need for both Indigenous specific legal services and mainstream services and not just mainstream services.

Opportunities

The opportunities for Governments to work better together, to ensure that Indigenous Australians have access to justice, are to:

- Tap into the Standing Committee of Attorneys General (SCAG) process as “Indigenous Law and Justice” is a standing agenda item of SCAG.
- Utilise the National Indigenous Law and Justice Advisory Body that the Federal Government plans to introduce.
- Speak to those States and/or Territories that have made some progress in achieving a “Whole-of-Government” approach.
- Some guidelines on how Governments should work together are:
 - ◇ Avoid cost shifting;
 - ◇ Be prepared to work towards a “Whole-of-Government” approach; and
 - ◇ Be jointly accountable to the Indigenous Australian community.

Lastly, increased collaboration between Governments is a necessity in order to eliminate the hurdles that stand in the way of Indigenous Australians achieving access to justice.

Stolen Wages information for Indigenous Australians from New South Wales

The NSW Government has announced that the deadline for making a Stolen Wages claim in NSW has been extended.

The new registration deadline is 31 May 2009.

What are Stolen Wages?

Stolen Wages is the money that was taken from Indigenous peoples' wages, pensions, child endowment payments, inheritances, and lump sum compensation payments. It was either not paid or was put into trust funds. These trust funds were administered by the Aborigines Protection Board, later the Aborigines Welfare Board. In many cases people didn't know that they had a trust fund and of course, many did not give permission for the Government to take their money.

What is the New South Wales Aboriginal Trust Fund Repayment Scheme?

The New South Wales (NSW) Government established the Aboriginal Trust Fund Repayment Scheme in 2005, to try to repay Stolen Wages to people who were the victim of the practice of stealing wages in NSW. Using Government records, the Repayment Scheme looks for evidence that money had been put in a trust fund for a claimant and was never paid to them.. Repayment amounts are not fixed. The amount owed to someone is worked out by looking at how much the money owed is worth today. While the Repayment Scheme is far from perfect, it has paid some members of the NSW Aboriginal community, the Stolen Wages that are rightfully owed to them.

Who is eligible?

Anyone who believes they may be owed money by the New South Wales Government can make a direct claim. These might include people who were working or had children before 1969 and whose lives were controlled by the Aborigines' Protection and Welfare Boards. If those people have passed away, their descendants can make a claim.

How do I make a claim?

If you know someone who wants to register a claim with the Repayment Scheme, they can phone,

1. The Repayment Scheme directly on freecall number 1800 765 889; and / or
2. PIAC's Indigenous Justice Program Senior Solicitor, Keppie Waters on 02 8898 6527.

For further information you can also look at www.atfrs.nsw.gov.au and <http://www.piac.asn.au/system/indig.html>.

Victorian Equal Opportunity and Human Rights Commission

The Victorian Equal Opportunity Commission has a new name which is the Victorian Equal Opportunity and Human Rights Commission. The Commission helps people resolve complaints of discrimination, sexual harassment and racial and religious vilification by offering

a conciliation service that is confidential, impartial and free. To assist the Commission to work effectively with the Victorian Indigenous community the Commission has two Indigenous Australian staff members. Taryn Lee is the Indigenous Education and Complaints Officer and Holly Ireland, is the Indigenous Community Engagement Officer. A part of their role is to provide information and advice to the Indigenous Australian community about discrimination, sexual harassment and racial or religious vilification. Other aspects of the roles are to:

- liaise with the Victorian Indigenous Australian community and the Commission on issues affecting Indigenous Australians;
- provide advice and support to the Commission and its staff, to ensure that services, products and processes within the Commission are culturally appropriate and accessible to the Indigenous Australian community;
- develop and implement education programs and strategies for Indigenous Australian communities on equal opportunity laws, human rights and role of the Commission.

If you feel like you would benefit from hearing more about the Commission, or wish to discuss local concerns, Taryn (9281 7112, taryn.lee@veohrc.vic.gov.au) or Holly are available to visit your community on request.

Some training courses on the Charter of Human Rights and Responsibilities Act 2006 are currently being run at the Commission. The courses are free for community organisations and individuals. For further information about training contact 03 9281 7122 or education@veohrc.vic.gov.au.

The Commission is also interested in hearing from you as to how they can work effectively with the Indigenous Australian community.

Contact Details

If you require further information about the contents of this newsletter or wish to subscribe to the mailing list, please contact VALS. Previous newsletters are available on the VALS website: www.vals.org.au. VALS is in the process of re-developing the website and recent newsletters will be available from the website shortly.