

# Victorian Aboriginal Legal Service Co-operative Ltd

## Newsletter November-December 2006



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### Staff Update

VALS welcomes Sarina Gentile to the position of Admin Assistant Grade 1.

### Civil Law

#### *Good Result in Response to Racism*

In a regional area an incident occurred where an employee of a licenced Club called local members of the Koori community, who were drinking at the club, a racist and derogatory name. With the assistance of a VALS solicitor, an affected community member wrote to the Club highlighting how offensive and illegal the incident was. As a result of this the VALS solicitor and the community member agreed to meet with the Chief Executive Officer and employee of the Club at the VALS office. The parties agreed to the following undertakings:

- That all 40 staff members of the Club will undergo cultural awareness training through the Equal Opportunity Commission.
- The employee will meet with local Elders to discuss the incident and why it was offensive. Both the employee and the Club are to write a formal written apology to the affected community members.

The formal apologies have been received and the training and meeting with Elders are scheduled to take place early in the New Year. This is a great result for the community. This experience of some Koori people shows that racism is alive and well in some parts of the State.

#### *Lack of Access to Justice*

VALS has identified a trend where Aboriginal clients, who allege they have been assaulted by police, are facing difficulty getting legal assistance. This is partly because of constraints on funding for civil litigation. Also, private law firms, who do pro-bono work (ie: no cost), are increasingly reluctant to take on such cases. This is partly because:

- The private lawyers have acted or currently act for Victoria Police which means they could have a conflict of interest if they acted for people assaulted by police officers. Arguably, acting for Victoria Police is more economically attractive than doing pro-bono work for alleged victims of police.
- Complexity of the law, which in turn creates uncertainty, as it is unclear whether to sue the police, the State or both. Victorian legislation (section 123 of the Police Regulation Act 1958) creates immunity for Police for anything necessarily or reasonably done, or omitted to be done, in good faith in the course of their duty. If the immunity is activated the State is liable. Court cases thus become about whether the actions of the Police were reasonable and whether the Police officer, State or both are

liable. Lawyers are reluctant to take on cases against the State.

Other problems that Indigenous Australians, who are allegedly victims of police, face are:

- Harassment and intimidation by police who they are complaining about.
- Difficulty establishing the proof required to satisfy a Civil Court of law (on the balance of probabilities).
- Requirement of medical and psychological specialist's reports.
- High cost of litigation.
- Length of time litigation can take before getting to Court for a hearing.

### **Koori Complaints Project**

The "Koori Complaints Project" is about facilitating complaints about Police mistreatment or misconduct and is a partnership between the Indigenous Issues Unit (IIU, Department of Justice) and Victoria Police, which is endorsed by the Aboriginal Justice Forum. The project is running from November 2006 until June 2007 and the project managers are looking for Koori community members who have complained about Police misconduct, or wanted to complain but did not. Koori community members will be interviewed to find out what their experiences have been and their details will be kept anonymous. Frank Guivarra, CEO of the Victorian Aboriginal Legal Service Co-operative Limited (VALS) is one of the members on the project Steering Committee, together with Ms Antoinette Braybrook (Aboriginal Family Violence Prevention and Legal Service), Mr Andrew Jackomos (IIU) Marion Green and Larry Kanoa (Regional Aboriginal Justice Advisory Committee Chairpersons). The Aboriginal Justice Forum will be receiving regular reports on the project.

If you or someone you know would like to talk to the project officers, please contact:

- Amanda Young (IIU) on [amanda.j.young@justice.vic.gov.au](mailto:amanda.j.young@justice.vic.gov.au) or 0438 390 983; or
- Mick Simpson (Victoria Police) on 9247 3403, 0409 607 704 or [michael.simpson@police.vic.gov.au](mailto:michael.simpson@police.vic.gov.au).

### **Koori Youth Cautioning and Diversion Pilot Program**

In April 2003, an action paper was presented to the Aboriginal Justice Forum concerning the Cautioning of Koori Youth. The paper drew on a range of literature and research regarding culturally specific difficulties faced by Koori Youth in regards to cautioning and diversion. As a direct result of a Cautioning Workshop held in December 2003 it was proposed to develop a Pilot Program, aimed at increasing the effectiveness of both Police cautioning and diversionary efforts for Koori youth. It was emphasised that this would be a joint effort between Victoria Police and the Indigenous Community, and that such efforts would be aimed at improving the relationship between these two parties.

The Pilot proposal was developed in accordance with the Victorian Aboriginal Justice Agreement (2000). Funding was secured from the Victorian Attorney-General's Office and the Department of Justice. VALS was entrusted with the development and implementation of the Pilot.

Through the collective participation of Koori Elders and respected persons at the local community level, it is proposed to establish protocols to:

- Decrease contact of Koori children and youth with the criminal justice system;
- Increase positive Koori contact with the justice system;
- Increase access to diversionary and other community supports;
- Increase the proportion of cautioning and improve cautioning outcomes for Koories, with an emphasis on community based options;

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- Increase the proportion of cautioning and improve cautioning outcomes for Koories, with an emphasis on community based options;
- Promote achievements against national benchmarks and best practice;
- Identify service gaps and map early intervention, family strengthening and diversionary needs.

### Protocol Development

The specific Protocols for each of the Pilot Sites (La Trobe Valley and Mildura), inclusive of individual roles and structure of Follow-up Network, have been negotiated at a local level. Protocol development was based on the resources and willingness of individuals at each Pilot site. However, the development of Protocols did comprise common elements.

### Pilot Implementation and Governance

The resulting Pilot can be conceptualised within two interrelated areas:

#### *Criminal Justice Component:*

Protocols have been designed to address previously identified concerns with Cautioning of Koori Youth, including low caution rates, 'No Comment' Interviews and inability to guarantee presence of parent. Protocols also address lack of "Follow-up" after cautioning by linking Police with a Follow-up Network.

#### *Community Based Follow-Up Component:*

- An established Network of diversionary services and mapping of gaps.
- Involvement of both Victoria Police and Community in Follow-up meetings and programs based on recommendations made at the caution.

Governance of the Pilot is a joint venture between the Victoria Police, Local Community and VALS, with the main point of liaison during the Pilot occurring between the Pilot Manager and delegated Youth Resource Officer. It is at this point that much of the refinement and necessary adjustments will be negotiated. It is envisaged that the Pilot will commence on 1 January 2007 and run for 12 months at each Pilot Site, at which time it will be evaluated for Statewide suitability.

### **Stolen Generations: Tasmania**

In November 2006 the Tasmanian Government passed legislation giving compensation to Tasmanian members of the Stolen Generations. About \$5 million compensation for members of the Stolen Generations and their descendants will be available. A Family can receive a maximum of \$20,000. The Government will appoint an eminent person to assess the claims for compensation. VALS urges the Victorian Government to follow the example of Tasmania. Currently, Victorian Indigenous Australians can access Stolen Generations Victoria (391 St Georges Rd North Fitzroy VIC, 9486 6122).

### **Underpayment of Wages**

In November in Queensland some Indigenous Australians were successful in suing the State Government for underpaying them for work they did on church run missions between 1975 and 1986. The Full bench of the Federal Court found that the historical underpayment of wages to Indigenous Australian workers was based on race, and therefore discriminatory. The Queensland Government faces a possible \$10 million payout.

## **Stolen Wages**

VALS welcomes the recommendations in the Senate Standing Committee on Legal and Constitutional Affairs Report titled 'Unfinished Business: Indigenous Stolen Wages', released in December.

The Committee recommended that: *the Commonwealth Government in relation to the Northern Territory and the Australian Capital Territory, and the state governments of South Australia, Tasmania and Victoria: urgently consult with Indigenous people in relation to the stolen wages issue; conduct preliminary research of their archival material; and if this consultation and research reveals that similar practices operated in relation to the withholding, underpayment or non-payment of Indigenous wages and welfare entitlements in these states, then establish compensation schemes using the New South Wales scheme as a model (Recommendation 5).*

The recommendations also cover issues such as access to archives, funding for research and education and revision of the Queensland Government reparation offer. The Report is available at:

[http://www.aph.gov.au/Senate/committee/legcon\\_ctte/stolen\\_wages/report/report.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/stolen_wages/report/report.pdf)

## **United Nations Declaration on the Rights of Indigenous Peoples**

The National Indigenous Times Website contains an article titled 'The Draft Dec - how we're doing so far' (16 November 2006). The article highlights just how far behind world thinking Australia is. For instance, if the 45 articles in the UN Declaration on the Rights of Indigenous Peoples (Declaration) were adopted Australia would be in breach of just about all of them. The adoption of the Declaration experienced a set back in December as the United Nations General Assembly decided to delay consideration of the Declaration for up to 12 months. This is in spite of the approval of the Declaration by the United Nations Human Rights Council on 29 June 2006. The contributing factors to this turn of events are:

- The representative of Namibia said that some provisions of the Declaration ran counter to the national constitutions of a number of African countries.
- In Parliament in December the Australian Government admitted that it used the Office of Indigenous Policy Co-ordination to lobby against the Declaration and to persuade New Zealand and Canada to join forces to oppose the Declaration.

VALS agrees with the following comments of Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma: "I am concerned that the Declaration has been stalled on the basis of arguments that have been roundly rejected by Indigenous peoples over 11 years of negotiations. For example, Indigenous delegations have previously stated that any recognition of a right to self-determination in the Declaration should be done in accordance with international law and pose no threat to the territorial integrity of nation states. There is a triple guarantee of this in the Declaration."

## **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.

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