



# Victorian Aboriginal Legal Service Co-operative Ltd.

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**VALS Submission in response to the ‘Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Victorian Criminal Justice System’ Report - sent 17 October 2005**

## **Introduction:**

The Victorian Aboriginal Legal Service Co-operative Limited (VALS) is generally happy with the content and recommendations included in the ‘Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Victorian Criminal Justice System Report’ (Report).

The definition of the term systemic racism and discussion of systemic racism are clear and reflect a wholistic assessment of the uses of the term.

In our view the tendency for an “all or nothing” approach to the issue of systemic racism, which has been criticised, is one that threatens to trivialise and/or polarise people looking at the issue of systemic racism.

Our concern is that the following key messages need to be highlighted:

- that the Report research is looking at outcomes rather than intentions and attitudes of those administering the criminal justice system;
- that the level of over-representation of Indigenous Australians in the criminal justice system cannot be accounted for solely either by greater levels of Indigenous Australian offending or in terms of the prejudices of individuals.

The point of systemic racism as a concept is that it focuses on outcomes rather than attitudes or intentions of those administering the criminal justice system and this point needs to be stated and restated, as it has not been commonly stated in policy analysis in Victoria previously. There is currently a failure to adequately incorporate the concept of systemic racism into policy development processes. The occurrence of systemic racism needs to be restated, and ways of making systemic racism more visible and ways of reducing the incidence of systemic racism need to be mentioned. Attachment One contains a list of VALS’ suggestions of how to reduce the incidence of systemic racism.

The Victorian legal system has not had a mandatory sentencing regime but through a range of policy and legislative changes (ie: trend towards harsher sentencing), the number of Indigenous Australian people in prison has continued to increase. There is little or no consideration of this aspect of harsher sentencing proposals. The advantage that Victorian Indigenous Australian and non-Indigenous Australian people have enjoyed, through lower levels of imprisonment in Victoria in comparison to other States/Territories, is being eroded by punitive sentencing policies. These policies increase the already existing systemic disadvantage which Indigenous Australian peoples experience through the higher level of over-representation in the criminal justice system in comparison to non-Indigenous Australians.

### **Indigenous Australian Imprisonment:**

The over-representation rate of Indigenous Australian prisoners in Victoria is only slightly below the national average of the over-representation rate of Indigenous Australian prisoners.

The fact that the Report indicates that Victoria has lower imprisonment figures than some States or Territories, on some indicators, should not obscure the fact that Victoria has a relatively high over-representation rate of Indigenous Australians in the prison system.

### **Comments about the Recommendations:**

#### Recommendations 12-16

Recommendations 12-16 will, prior to implementation, require further discussion with Government and community to clarify priorities, funding and implementation issues.

#### Recommendation 35 - Home Detention:

Home Detention is only available to people who pose no risk to the community. Therefore, there is no reason in terms of safety for these people to be in jail. VALS suggests that the people eligible for Home Detention could be released on an early release program, or some other program, other than electronic bracelet Home Detention. The money on the bracelet technology for people who are no threat to community safety could well be much better spent on education, support or training programs.

VALS has in the past opposed Home Detention on the following basis.

- It turns the home and the family into the prison.
- Even if a woman who's partner is facing the prospect of home detention, is given the option to say "no" to home detention occurring, she may feel that she has no 'real choice'. Her decision to consent to Home Detention is complex as it may not be voluntary, but influenced by fear that her partner will harm himself in prison or will be violent to her when he is eventually released, if she says "no". How do you redesign something which is fundamentally flawed?

VALS is critical of the fact that the Report contains no mention of VALS playing any role in trying to combat systemic racism. In July 2005 VALS submitted a response to the Review of the Implementation of the Royal Commission into Aboriginal Deaths in Custody Recommendations. Much of this response was an attempt to advocate for measures which reduce systemic racism. The first section of recommendations which are of a general nature are included below.

It would be useful if the importance of a wholistic approach to reducing systemic racism was recommended in the Report. This is clearly implied by the range of areas which have been identified in the Report as needing attention, but not specifically stated.

VALS is only one of many organisations attempting to raise the issue of systemic racism. However, it appears that at a Commonwealth Government level there is a complete lack of recognition that this is a strategic, valid and important role for Aboriginal and Torres Strait Islander Legal Services.

## Attachment One:

### **VALS Recommendations to the Implementation Review of Royal Commission into Aboriginal Deaths in Custody Recommendations**

1. Reaffirm the importance of working in partnership with the Koorie Community and finding ways to do this more effectively.
2. Programs and policies to increase knowledge about and discussion of rights protection mechanisms and the role of human rights standards and other mechanisms to establish a fair and just system of resource distribution and dispute resolution. This is to be done by Parliaments, Governments and Courts. This could help debunk the myth that treating everybody the same is the only or the best means of achieving justice.
3. Law making, implementation and policy making has to be more inclusive and transparent to reduce the level of cynicism about the role of Government and Courts.
4. The idea that new laws and longer sentences are effective means of achieving compliance with the law needs to be recognised as one that has limited effectiveness.
5. The importance of community understanding and engagement in problems and solutions associated with critical social and justice issues needs to be promoted.
6. A more comprehensive Government commitment to reducing systemic disadvantage using a range of strategies. A subset of this policy would be promoting awareness that disadvantaged group's and minority group's views and interests should be respected and listened to (ie: create a space for them).
7. Any proposed new legislation should, prior to development, be subject to an analysis by people with Indigenous Australian, non-Indigenous Australian and academic perspectives of its impact on Koorie people. The analysis could encourage things such as consideration of:
  - alternatives to legislation;
  - how consistent the proposed legislation is with other legislation;
  - the capacity of the legislation to cause confusion, ambiguity and cost;
  - the impact of the legislation on other disadvantaged groups;
  - the impact of the legislation on legal aid
  - the impact on the legislation on the enjoyment of fundamental human rights.
8. Consultation with the community generally, and Indigenous Australian communities in particular, should be subject to a set of policy guidelines which recognise the value of:
  - consultation;
  - the different forms consultation may take (ie: time frame and structures etc)
  - the need for standards/guidelines, devised with input from the community, in relation to size and complexity of:
    - written material provided during a consultation process;
    - time frames for a consultation process;
    - provision of feed back in response to the consultation process.

9. Consultation processes themselves, and the capacity of the public to respond to the Government's needs and priorities during consultation process, should be recognised as a scarce resource. In particular, the Koorie community has difficulty responding to a multitude of inquiries and law reform and policy development processes from all levels of Government and from multiple Government Departments.

Attention should be given to key State Government Departments, non-Government organisations and semi Government Departments developing a clear forward plan to attempt to consolidate and integrate attempts to consult with Indigenous Australians on an annual basis (ie: communicate and plan with one another well in advance with the possible outcome of taking part in a joint consultation process etc). This would help to avoid:

- duplication of consultation processes;
- low levels of community response to surveys and consultations;
- the complaint that research and consultation information/feedback does not go anywhere;
- burn-out by community members who feel the burden of attending multiple consultations.

Indigenous Australians must be employed to assist in developing/implementing the above and Regional Aboriginal Justice Advisory Committees (RAJACS) and other groups could also assist. A consultation cycle on systemic issues (ie: racism) could be developed. The cycle could be based on the pattern of visiting communities several times a year in order to gather information on highly contentious or highly significant policy, program or justice related issues. Other matters might be researched via the telephone (ie: use the resource of already existing networks and organisations).

10. Establish an annual or twice yearly Indigenous Australian organisation 'good news stories' week to help counter the toxic and discriminatory approach that the media tends to have in relation to Indigenous Australian organisations and people (ie: bad news gets the majority of media coverage).
11. Instead of a 'whole of government' approach to implementation of the Royal Commission into Aboriginal Deaths in Custody (which is utopian and difficult to establish), a more strategic approach might identify key issues, key areas and key stakeholders. Thus an arc or matrix of people, capable of identifying possible responses to key issues and then strategies to implement them, could be established. This is a partial response to the criticism that the Victorian Aboriginal Justice Agreement was perceived to take a top down approach. Regular meetings of the Aboriginal Justice Forum and RAJACs have helped counter that problem and an integrated community consultation strategy could further help reduce that problem.

The arc or matrix idea is premised on the assumption that top down or bottom up approaches both take a long time and there are some issues which can be addressed by having a middle level problem solving approach rather than a top up or down approach.

12. Some key outcomes or indicators around specific issues could be established to provide a "road map". In relation to sentencing this could take the form of subscribing to the objective of reducing the total number of Indigenous Australian prisoners and the overrepresentation rate of Indigenous Australians in the prison system. It could also involve an Education Strategy to build community support.

This could involve the Sentencing Council, Crime Prevention Victoria, Corrections Victoria, RAJACs, community organisations and the media.

13. Other areas of critical importance, where headline indicators might assist continuing recognition of the issues, are in relation to self determination, education and relations between Indigenous Australian people and the following:
  - police;
  - the non-Indigenous Australian community;
  - child welfare.

Thank you for the opportunity to comment on the Report. If you have any queries please contact Robin Inglis (Executive Officer – Research, Planning and Development Unit).