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Review of Services to Victims of Crime in the Victorian Indigenous Community –sent August 2004

Overview

The report would be improved by adding some form of correction to the misinformation that people have about VALS.

The recommendations in the report would be improved if there was a process for doing what the two first recommendations suggest: Discuss the report with the community(1.1)and debate the merits of the recommendations (1.2)

The Victims of Crime Assistance Act and it's administration could be improved by:

- Making provision for Stolen Generation claims to be heard even though they will be more than two years old.
- Removing the requirement to consider the person's prior criminal history
- Simplifying forms and language and making it clear who will help people fill in forms.
- Increasing the amounts paid for special financial assistance particularly for the more serious matters.

Assistance to victims could be improved if there was a greater provision of free culturally appropriate counseling. Free counselling means that a person are not required to access it via forms or VOCAT approval.

There are broader community development and community strengthening initiatives which could be achieved via a two stage process.

- Involving the existing agencies in a round table and then a joint referral protocol.
- Funding a community education project which also did training with mainstream services.

Funding VALS to have two additional regional female Client Service Officers to play a training and support role and to help recruit CJP and other people who can support people who have to deal with VOCAT.

1. Introduction

This review highlights that there is a lack of support for victims of crime. It also makes far reaching criticisms about almost every aspect of the nature of services available, their accessibility, their relevance and people's knowledge of them. The report highlights that Indigenous services are under great pressure and have difficulty keeping up to date with what other services do.

VALS is concerned that the list of recommendations is not necessarily affordable or the most strategic way to approach the issue. Although the Review is critical of many matters it does not cover several important issues. These issues will be mentioned in the next section.

VALS supports the review's findings that more needs to be done. However the legislation governing victim services has not been considered as worthy of review; a clear, realistic and Koorie friendly statement of what people can expect to achieve under the present law is required. The range of services, who provides them, pathways to services and protocols between service providers can not be effectively spelled out if there is no clarity about the present law and policy and what it can provide. This review raises a broad range of concerns and a wide range of possible strategies but does not provide a clear strategy forward.

Some of the comments made on page 26 about VALS are patently incorrect and these issues are discussed in the final section of this report.

2. The Present Options

Counselling and Medical

The review does not appear to have examined whether people are accessing counseling at Victorian Aboriginal Health Service or via Mental Health and Well Being services. In most cases these sources of counselling would be more culturally appropriate. For people to access counselling through these venues is free. There are no forms to fill out to access services.

Alternatively people can get a referral from their local doctor to go to a Psychiatrist. Lack of access to bulk billing Psychiatrists means that people particularly in country areas may be forced to pay the difference which is a significant obstacle.

Section 56 of the Victims of Crime Assistance Act 1996(as amended) allows for interim orders to be made for urgent psychiatric or counselling assistance. These applications require a doctor's or psychologist's report.

Obtaining reimbursement for medical costs and counselling is fairly straight forward if a person has the skills to fill in the forms. Completing forms is a difficulty for many people. If the tribunal later decides that a grant should not be paid they can ask for repayment

The VOCAT approach of making grants of assistance re counseling in batches of five might be seen as careful use of tax payers funds but could also be seen as an additional bureaucratic hurdle for people who lack skills in form filling and bureaucracy.

VOCAT will usually make decisions about medical and counseling payments without having a hearing. If the victim has to bear the cost on an interim basis this will be a significant disincentive for any low income victim.

Loss of earnings is also fairly easy to prove if a letter is obtained from the employer.

The only area in relation to accessing VOCAT services where there is a significant level of discretion and possibly the need for more detailed legal advice is where a person wants to apply for special financial assistance.

There are three main factors to look at : Criminal history and conduct of victim, the nature of the offence, medical and psychiatric reports.

Criminal history and conduct of victim

The first factor is one that may apply to any request for assistance and that is Section 54 of the Act which states:

*....in determining whether or not to make an award of assistance ...the tribunal must have regard to the following: The character, behavior (including past criminal activity and the number and nature of any findings of guilt or convictions....)
and in section c ...whether the applicant provoked the commission of the act of violence...*

This would appear to be designed to preserve the budget for middle class victims, be an additional penalty on top of any penalty already served for an offence and operate to the disadvantage of many Kooris. As Kooris are significantly overrepresented in the criminal justice system this rule will affect Kooris more than other groups.

Nature of Offence

The Act divides offences into four categories A-D. There are different minimum and maximum amounts for different categories of offences. For an assault you may be entitled to between \$100 and \$500. If you suffered serious injury or conduct endangering life you may be entitled to between \$500 and a \$1000. Category A is the highest category and the maximum payable here is \$7500.

Medical and Psychiatric Reports

Medical and/or Psychiatric reports which indicate the impact of the offence against the victim will need to be provided to the tribunal.

Advice to Clients

When VALS provides legal advice on the likely success of a claim for special financial assistance it involves analysis of the event, the medical and psychiatric reports and the person's criminal history and contribution to the event.

Categories C and D which would account for the majority of potential claims have a \$500 and a \$1000 maximum respectively. A victim could easily spend several hundred dollars in time, travel and gathering evidence. Understandably many lawyers are reluctant to do work in this area as there is no legal aid payment only a payment from VOCAT. Due to VALS limited time and money and its policy guidelines, VALS will only brief a lawyer to appear in these matters where there is a reasonable chance of success and usually only where the matter involves a more serious offence eg, category A or B offences.

VRAS services do have a list of lawyers who will give initial advice on these matters. VALS provide advice on these matters and can help people who come to the office but in country areas we often try to refer people to a local lawyer or VRAS.

The other potential sources of assistance are suing the defendant, TAC, Workcover and insurance. Successful claims in these areas usually mean any interim payments from VOCAT will have to be repaid.

Special Financial Assistance

VALS told the review that demand from victims of crime declined after the Kennett Government cut all compensation payments. The report then quotes a forum member saying that ...monetary compensation should not be seen as a solution or cure.(pg 24) It appears that the report writers share this forum member's assessment because that is the last time that there is any mention of compensation or special financial assistance (as it is now called) in the report.

The 2001-2002 VOCAT Annual Report indicated that total claims registered dropped from approximately 12,000 to approximately 1000 between 1996/7 and 1997/8. This coincides with the introduction of the Victims of Crime Assistance Act 1996 which removed entitlement to compensation for pain and suffering. The next significant boost to the number of claims lodged occurred in 200/2001. This coincided with the amendment to the Act which reintroduced special financial assistance.

A man who VALS assisted under the pre 1997 legislation obtained \$20,000. Today a person with the same circumstances would be lucky to obtain the maximum financial assistance payment of \$7500.

There is no serious attention in the report given to the fact that the existing legislation provides a far lower level of financial assistance than was available prior to the Kennett Government cuts. In New South Wales up to \$40,000 can be paid as financial assistance. Last year a woman in NSW, who was a member of the Stolen Generation, obtained permission to bring an out of time claim about an assault and was successful in obtaining

\$34,000. Perhaps this sort of service might be relevant to Koories. It appears not to have been considered.

Money is not a solution but particularly for low income people it may be of assistance. The very low level of payments available and the bureaucracy that must be negotiated are likely to be a significant obstacle and disincentive to many people.

On top of this there is a requirement in the legislation that a person's criminal history and contribution to the act must be taken into account. The criminal history requirement creates some uncertainty about how VOCAT will decide a matter. It is likely to affect Koori people disproportionately.

3.Report Findings: Services are irrelevant versus people don't know about services ?

The first finding is that Indigenous people do not know about services for victims of crime. The importance of this is emphasized by the quote at the beginning of the Executive Summary. We believe that this finding is probably an accurate generalization. If it is generally correct that people don't know about the services then most of the findings that follow in the report are necessarily fairly speculative and based on a generalised critique of services.

The recommendation that Victims Referral and Assistance Scheme (VRAS) needs to improve the relevance of their services is preemptive if the Koori community is unaware of what the services are. How do we know VRAS services are irrelevant if most people are unaware of them. It would be necessary to accurately and comprehensively explain the services before it was possible to conclude that they were irrelevant. Accessibility would need to be improved before we could conclude that they were irrelevant.

It is surely an important issue to clarify whether the existing services are irrelevant and if so what scope there is within existing budgets and legislation to create new policies and relevant services?

Suing the defendant

Apart from the work that VALS does in relation to people seeking to use VRAS or VOCAT VALS also sues a small number of offenders on behalf of victims. There is a small number of cases where suing the defendant is a realistic option. The cost of suing people is often prohibitive and the defendant may have no resources. However when the police or a hotel owner for example commits a crime then it is sometimes possible to sue that person and obtain a payment for the victim. Where this is successful it can also create publicity which warns other potential offenders to think about their actions.

This is often time consuming work that requires VALS to expend money on reports and barristers in the hope that they will win the case and the victim will be able to repay the legal service's expenses on reports and a barrister.. Not all potential cases can be taken on as in many cases the evidence is either too old or too inconclusive to provide much chance of succeeding. In some cases the potential client has too many other issues happening or is unwilling to go through the court process.

Who will help Filling in Forms

VALS helps people with forms at our Fitzroy office. The Victims of Crime Assistance Tribunal Information guide lists the registrar at your local court as being able to help. VALS raised the issue that Registrars of Courts are often not willing or lack time to help fill in forms. Local solicitors may be unwilling to fill in forms as they will not be paid for this. This is a basic problem that needs to be overcome. It can also be seen as part of a larger problem of racism and disempowerment but someone should at least have the job of helping people fill in forms for VOCAT.

Some of the criticisms made in the report about service providers and some of the proposed solutions imply a much more proactive approach by providers of services and different kinds of services are required. Some of the issues raised about people not feeling confident about approaching services and not knowing their entitlements are identical with a wide range of other legal issues where Communities are either unaware of their legal entitlements and/or not willing to invest time and money in trying to exercise their rights.

VALS via its Client Service Officers, solicitors and Community Legal Education workers is painfully aware of this problem. The development of our "Be Strong - Use Your Rights Kit" is an attempt to be proactive in working on this problem. The reason VALS believes there needs to be some evaluation about how to proceed in dealing with this problem is that it is extremely difficult to adopt a proactive approach to an issue when working with community organizations who are already overloaded. Even RAJAC's which have a proactive policy role and no service delivery role have quickly become extremely busy with tasks.

The role of CJP's, VALS, VACCA, Police, Courts and VRAS are all important in dealing with this problem. Some people might assume that the Aboriginal Health Service or other Koorie Mental Health and Emotional and Spiritual Well Being services might also be part of any future improvement to the provision of counselling services but there is no mention of them in the report or the role they might play.

VALS is not convinced that creating several new services is the first step to take. Rather than create new services across the state and then later think about what the core services are doing, it would be worth starting with the services that exist and whether there are realistic improvements that these services could make. This would seem particularly important given the reports findings about the pressure that Indigenous services are under now.

4. Comments About the Recommendations

VALS general comments about the recommendations are:

- If most people are unaware of services available the first step is to state clearly what the existing potential range of services and entitlements are including free counseling services and suing defendants

- Some of the criticisms of services appear to some extent to relate to the areas of legislation, policy and funding; it is important to distinguish these from more administrative and accessibility problems
- The extent of the proposed recommendations reflect an assumption that large amounts of money are available
- Although recommendation 1.1 states that further development of the recommendations is necessary there is no process for that to occur outlined.
- Unless there is significant funding available there will be considerable tension between creating additional services, growing and enhancing existing indigenous services and improving the effectiveness and accessibility of mainstream services.
- Phase two “Building Indigenous Communities Capacity” is more likely to be effective if it is a phase one action.
- The proposal to create regional family violence services with lawyers appears to unnecessarily duplicate already existing VALS, Family Violence Prevention Unit, Victoria Legal Aid and private lawyers.
- The enthusiasm for using lawyers to solve family violence matters has to be balanced against the need for a range of other services such as dispute resolution, housing and the need for community based solutions.
- It is not clear how “ zero tolerance for violence” as a policy is practical.

Recommendation 1.1

Although further consultation is recommended there is no process outlined for this to occur.

Recommendations 1.2 and 1.3 require a clearer statement of outcomes before they would be achievable. In 1.2 again there is a statement that implies there will be discussion about the merits of the recommendations but there does not seem to be a process for this .

Recommendation 1.4 and 1.5 are the same. VALS is not sure whether an additional person attached to these groups is the most effective way to ensure the recommendations are implemented.

VALS is not sure that a community legal education service mapping project is necessarily a good starting point. There needs to be a round table of key services and then an attempt to develop a service referral protocol just to clarify who is doing what. The report does not give a very comprehensive picture of this.

Recommendations 3,4,5and 8 recommend a 24 hour information service, an Indigenous Victims Support Workers network across the state, a culturally relevant VRAS, Improving VALS and CJP’s and KLO’s and Indigenous Family Violence services again in each regional area.

VALS is not convinced that a state wide 24 hour service is the highest priority for expenditure. The report indicates that existing indigenous services are under resourced; VALS clearly is under resourced. VACCA have to provide services around the clock and they are under resourced. CJP’s have had no increases to their tokenistic funding for a decade. How will the creation of another service, assuming the money is available to run a proper service, solve the pressure that other indigenous services are under.

It is unrealistic in our view to recommend this level of increase in Indigenous services across the state .The recommendations above would cost \$3-5 million. VALS would regard expenditure on housing, dispute resolution services, education and community development projects which strengthened communities and community organisations as also being a high priority and as contributing to reductions in the level of crime and victimisation.

VALS believe that the recommendations in 7.1-7.5 about victims in the criminal justice system are more modest and targeted recommendations and have the capacity to prevent reoffending. Ironically these are people who because of their criminal record would have any VOCAT claims scrutinized more closely.

VALS understand a Domestic Violence Court has been created in the last budget.

VALS believe that Building Indigenous Communities Capacity should be a higher priority and believe recommendation 12.2 should be a much higher priority and certainly not a phase two recommendation. The report highlights that Indigenous organizations are struggling now to meet demand. This means there are insufficient resources to enhance prevention, develop protocols, link with other services and help improve cultural awareness in mainstream services. The recent review of CJP's highlights the problem. The review calls on CJP's to be more preventative in their work after documenting a vast list of problems faced by the existing voluntary and poorly resourced services.

VALS believes that a modest expansion of its client service officer staff including some designated women's positions would be a cost effective and valuable way to increase services to victims, develop and deliver training to mainstream services and help provide information to the community.

The Client Service Officers already participate in programs and initiatives to try to sensitise police to some Koorie issues.

5. Comments About VALS

The comments made in relation to VALS are no doubt accurately recorded however many of the comments on Pg 26 about VALS are incorrect. Some of the comments do not reflect VALS policy, facts or experience. It is disappointing to us that VALS has not been more successful in countering this misinformation. It appears that although the authors quote the fact that VALS do victims cases on page 19 by page 26 this information is countered by contrary information.

Comments raised which do have some policy basis.

It is certainly true that given the level of demand for services VALS has limited resources. Mention as made earlier about cases that VALS does in relation to suing defendants particularly where the defendants are public authorities or businesses who have victimised our clients.

The comment is made in the report that -The legal service is more about committing the crime than victims of crime. It is worth remembering that many people who commit crimes have been victimized themselves. Over 20% of our clients with criminal matters are women.

ATSIC program guidelines state that priority should go to criminal matters. Eight out of the twelve VALS solicitors work on criminal law matters. A substantial proportion of VALS ten Client Service Officers are involved in criminal law and related matters e.g. prison visits, responding to people in police custody. So there may be a perception that this means we don't do other work.. This does not mean that the service routinely refers out women or does not provide services to women.

The other issue which has some policy basis is that VALS “ had been asking victims for confirmation of Aboriginality”. It is an ATSIC policy to require proof of Aboriginality as a criteria for service eligibility.

Statements in the report for which there is no policy or practice basis

The belief expressed that victims matters were civil and therefore outside the scope of VALS is incorrect. Not all ATSILS have a specialist civil lawyer. VALS has a solicitor who deals only with civil law matters. Assisting Victims of Crime is a priority. On occasion where the caller is from the country it may be suggested that the client use a local lawyer if the matter has to be filed in the nearest magistrates court. Also with country clients referral to the local victims support service is suggested as it is administratively easier for someone to deal with that service rather than sending information back and forth to Melbourne. Sometimes rural based Client service Officers can provide assistance.

The statement that a first in first served policy was seen to exclude victims may seem to be self evidently true. However the reality is that the present civil lawyer who has been at the service for six years has only had to refer matters out due to conflicts of interest on two or three occasions. Matters are sometimes referred out due to pressure of work, lack of expertise or due to the location of the client.

This highlights two further factors: “First in first served policy” will exclude some clients but certainly not all and second there are many people who would be eligible for assistance who are not seeking assistance for a variety of reasons.

It is not accurate to say that cases are generally outsourced. The Civil lawyer provides phone advice to approximately 400 people annually and opens about eighty new cases a year. Many of these cases run for several years. About forty cases are briefed out either wholly or partially. They are briefed out largely due to work pressure or due to the specialized nature of some of the cases. In many cases VALS acts as the solicitor (paperwork role) and briefs a barrister to do the court or tribunal appearance. They are usually not briefed out because of conflict of interest. So far this year twenty one out of thirty civil law brief outs were for male clients.

The proportion of female clients being assisted in relation to civil law casework in the six months to December 2002 was 55%.

In Family law (including Child Protection) it is not accurate to say “Currently an application to the Aboriginal Legal Service by an Aboriginal Woman for legal representation results in the case being outsourced to a generalist legal firm.”

The facts are that in the six months to December 2002 there were 310 active family law matters. 57% of active family law files involved women clients.

In the same period there were 71 cases partially or wholly referred out. 38 or 54% of these were female clients. In Family law, there can be many hearings or stages of the case that involve court appearance. One or more of these stages might be briefed out to a barrister due to time pressure or the need for some specialist skills.

Violence protection matters are the only area where there is clear predominance of referring out of women. The figures here are four female clients referred out and one male in nine months.

VALS established an Indigenous Women’s Justice network in 2001. This network has been meeting quarterly since then. VALS have also sought funds to establish an Indigenous Women’s Annex from ATSIC based on a model that was successful in Northern New South Wales. ATSIC ignored this proposal and established an Indigenous Family Violence Prevention Service without consulting communities or other services.

VALS has held a well attended forum about Restorative Justice approaches and Family Violence. VALS has obtained funding for an Indigenous Womens Justice project worker.

VALS has made written and verbal submissions to the Department of Justice Review of Indigenous Access to Justice explaining the extent of our work with women and the need for further funding support if we are to continue to provide a substantial majority of the criminal, civil and family law in this state.

It is important to recognise that Family law assistance is often useful in helping establish agreements about who will have residence of the children and how each parent or other family member will be involved in the care of the child. Although this service is not badged as a family violence service it can help to deal with issues which can worsen family conflict and provide a better environment for the children who can be the victim or secondary victim of violence.

6. Conclusions

The report would be improved by adding some form of correction to the misinformation that people have about VALS.

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