

Victorian Aboriginal Legal Service Co-operative Ltd

Newsletter April—June 2008



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Staff Update

VALS welcomes Nicole Bluett-Boyd to the position of Project Officer – Police Cautioning and Youth Diversion Program. We congratulate Tessa Theocharous and Peter Hood on the birth on their son. We farewell Wayne Walsh from the position of Swan Hill Client Service Officer. Wayne is now the Koori Court Officer at the Swan Hill Koori Court. We welcome Verna Eade to the position of Client Service Officer at Swan Hill. We welcome the following new employees: Paul Pitsaras (Civil Law Solicitor), Martin Ha and Patrick Kelly (Criminal Law Solicitors). We also congratulate Carly Marcs for her scholarship to study human rights in Washington DC.

Criminal Law Update

Statement of Co-operation - Greater Shepparton Police Service Area

On 12th June 2008, VALS with a number of other organisations signed a Statement of Co-operation relating to the Greater Shepparton Police Service Area. The Statement of Co-operation is a local agreement created to address issues involving Aboriginal and Torres Strait Islander peoples in policy custody and to provide clear guidelines in relation to the care and management of Aboriginal and Torres Strait Islander peoples in police custody. The other parties to the agreement are the Aboriginal Community Justice Panel, Hume Regional Aboriginal Justice Advisory Committee, Rumbalara Aboriginal Co-operative Limited and Victoria Police. Elements of the agreement are as follows:

Police and Aboriginal Justice Agency Meetings:

- ✦ Formation of a District Aboriginal Liaison Team made up of members of the agreement who will meet bi-monthly to discuss any problems, real or perceived, by Aboriginal and Torres Strait Islander peoples or Police.
- ✦ The primary focus of the meetings will not be lodgement of complaints, but will be service delivery and developing positive initiatives programs and strategies.

Co-operation and communication between VALS, Aboriginal Justice Panel and Police

- ✦ The Police Aboriginal Liaison Officer will, as soon as practicable, introduce newly appointed Police personnel to the area to the Aboriginal Community Liaison Officer and arrange for an introduction to VALS' Client Service Officer (CSO) and Aboriginal Community Justice Panel (ACJP) personnel.
- ✦ Cross-cultural training of Police.
- ✦ Police will provide the CSO and/or an ACJP representative with up-to-date information regarding the status of investigations, dealings and health of a person in custody.

- ✦ The CSO and ACJP representatives are to provide police members, if known and where possible, with information concerning any significant health risks or behavioural issues likely to affect an Aboriginal or Torres Strait Islander person in custody.
- ✦ Police are to consider the ACJP/Koori Night Patrol as an alternative to arrest for public drunkenness.
- ✦ If the suspect/defendant and/or the CSO are unable to contact a solicitor within a reasonable time, then member/s of Victoria Police will recognise that CSO can advise the suspect of his/her rights prior to an interview.

Koori Court

The launch of the Swan Hill Koori Court occurred on 20th June 2008. There are now seven Koori Courts in Victoria.

County Koori Court

The State Government announced that it will introduce Australia's first County Koori Court. Mr Rob Hulls, Victorian Attorney-General, wrote an article in support of the Koori Court in "The Australian" (16 May 2008). Mr Hulls noted that "[a] small but vocal group of critics - the usual suspects, many of whom have never set foot in a Koori Court - claim Koori courts are a soft option, a 'separate' justice system for Aboriginal people. Peter Faris QC went so far as to repeat on these pages a ridiculous claim that he has used before - that the Koori Court dispenses 'apartheid' justice." Mr Hulls continued: "[n]ot only do I find these comments appalling, but they are misleading and false. I'd like to set the record straight". He outlined amongst many the following points:

- "In the mainstream court system, offenders can hide behind their lawyers. In the Koori Court, defendants have to speak for themselves and answer questions on why they committed an offence. They are forced to take full accountability for their actions in a way that is far more confronting than the mainstream court process."
- "What people generally don't understand about the Koori Court is that it is a sentencing court for people who have already pleaded guilty. Proceedings are led by a magistrate who must use the same sentencing options used in conventional courts."
- "What has made the Koori Court so successful in slashing the rate of recidivism is the presence and advice of elders and respected persons."
- "The elders' ability to shame, humble and help an indigenous offender, combined with a magistrates' sentence, has proven to be a hugely successful approach."
- "In Koori courts, where appropriate, non-custodial sentences are structured, long-term and rehabilitation-oriented. Certainly, if the situation calls for it, defendants are sent to prison."
- "Many Kooris find the experience of appearing before the Koori Court so traumatic that they would rather not appear before it. They do not get a lighter sentence, but they do get a system that is far more meaningful to them and a system with which they can readily engage."

Mr Hulls concludes by saying "I believe our higher courts can and should operate in a way that is more culturally accessible, acceptable and comprehensible to the Koori community. For too long we have ignored the gross over-representation of Aboriginal offenders in the Australian criminal justice system." VALS agrees with the above statements.

Coroner's Court

On 21st April 2008, a Coronial Inquest began before Her Honour Judge Coate into the death of Mr Paul Carter. Late in the night of 6th August 2006, Mr Carter was placed in a divisional van by members of Victoria Police with a view to returning him to his parent's address, some three kilometres away.

In the early hours Monday 7th of August 2006, two Police officers made the inexplicable decision to drive Mr Carter past the Mildura Airport, 15 kilometres from the town centre, to a location on the Sturt Highway. Mr Carter was left at this location and shortly thereafter struck by a heavy transport vehicle and was killed instantly.

VALS strongly contends that the death of Mr Carter is an Aboriginal death in custody, however Victoria police are denying this. VALS contends that the actions of the Police expose both an inadequate assessment of risk and possible negligence in relation to the duty of care that should have been afforded to Mr Carter. VALS contends that the lack of a continuum of care witnessed in this case reflects a broader systemic problem within Victoria Police in relation to responses to intoxicated persons.

VALS contends that the circumstances of Mr Carter's death have caused great anxiety within the local Indigenous Australian community specifically, and the Indigenous Australian community across Victoria more generally. As such, VALS is calling upon members of the community to come forward if they have received or heard of similar practices of the Victoria Police, particularly in relation to the transportation of individuals out of town. Those individuals are invited to contact Ms Jillian Prior as soon as possible on 9419 3888.

Her Honour Judge Coate has listened to three weeks of evidence and will give her ruling in August 2008.

Client Service Officer Update

Five of VALS' Client Service Officers (CSOs) attended the National Field Officer Program at Tramby College in Sydney in April 2008. The CSOs found it useful.

Research, Planning and Development Unit Update

VALS CEO and Research Officer attended a meeting, in Sydney, of Research and Policy Officers employed by the Aboriginal and Torres Strait Islander Legal Services (ATSILS). These meetings are convened under the National Communication and Resource Sharing Program, which is funded by the Attorney-General's Department (Cth). It was a good opportunity to learn what each ATSILS is doing about law reform and policy development.

VALS is pleased to see that the Victorian Law Reform Commission has a Community Law Reform Officer. VALS will engage with this officer to ensure that the areas of reform that will meet the needs of Indigenous Australian will be brought to the attention of the Commission.

VALS has been fortunate enough to have Nicole Bluett-Boyd, who developed the Police Cautioning and Youth Diversion Pilot Project, to project manage the roll-out of the program to other areas.

VALS is pleased to see that the Department of Justice is devising a restorative justice policy framework. VALS has been involved in the consultation process.

VALS recently drafted the following submissions:

- VALS' submission to the Productivity Commission in response to the 'Review of Australia's Consumer Policy Framework Draft Report' (sent 20th March 2008). VALS argued that the consumer policy should take into account the needs of vulnerable and disadvantaged consumers, such as Indigenous Australians.
- VALS' Submission to Consumer Affairs Victoria in Relation to 'Indigenous People and Private Rental Housing' Research Paper (sent 25th March 2008). VALS argued that in order to implement the findings of the research paper a whole of Government approach is needed.
- VALS' submission to the Standing Committee on Legal and Constitution Affairs in response to the Inquiry into the Stolen Generation Compensation Bill 2008 – sent 11th April 2008. VALS argued that compensation should be provided to members of the stolen generations and the model of compensation should be appropriate.

Human Rights Forum: 19th March 2008

VALS and the Victorian Equal Opportunity and Human Rights Commission hosted a Human Rights Forum on 19th March 2008. The Commission changed its name from the Victorian Equal Opportunity Commission around the time the Charter of Human Rights was introduced. The forum was an opportunity to discuss the Charter in the context of the needs of Indigenous Australians.

Community Legal Education Funding

VALS has been granted funding to deliver a project titled "Legal Ways for Young Kooris". The project is funded by Kildonan Uniting Care: School Focused Youth Service Brokerage Funding. The project is a partnership between the Indigenous Consumer's Unit of Consumer Affairs Victoria, VALS and Illbijerri Aboriginal & Torres Strait Islander Theatre Co-operative Ltd. The outcome of the project will be role plays (4 in total) that enact legal and consumer issues to Indigenous Australian youth from two schools.

Aboriginal English in the Courts – 30 June 2008

VALS launched the Aboriginal English in the Courts Kit on 30th June 2008. The intended audience of the Kit, which collates information about Aboriginal English, is people who work in the Courts, such as Judges, Magistrates, Barristers, Solicitors and Court Officials. The knowledge and language leading to confusion, which most lay people experience when dealing with the legal system, is compounded for Aboriginal Australians by a substantial cultural gap. The existence of this gap means that Standard Australian English speakers need to have some knowledge of the differences if communication with Aboriginal English speakers is going to be effective.

It is important to be aware of differences between Standard Australian English and Aboriginal English in terms of:

- ✦ Pragmatics
- ✦ Linguistics
- ✦ Non-verbal Language

Pragmatics

The Report found that in the Koori Court, Elders and Magistrates used the most examples of using Aboriginal English where both groups scored 80%. During the pre-court solicitor client interviews VALS' solicitors used a relatively high number of examples of Aboriginal English (81%). The solicitors achieved this score because their approach was interpersonal as opposed to impersonal: ie: *you are in much better health than when we last met*. An area in which the solicitors could improve is to ask indirect questions which enable a contextualised narrative answer as opposed to direct questioning (ie: what, where, why). Indigenous Australians perceive direct questioning as rude and embarrassment about such rudeness can lead a person to answer 'I don't know' when this in fact is not the case. This reaction may be misinterpreted as a sign of guilt. The Report also found that Indigenous Australians have a tendency towards gratuitous concurrence which means saying 'yes' to please another person even though the answer to the question is not yes.

Linguistics

- **Kinship terms:** The Indigenous Australian family is an extended family (kinship network). Indigenous Australians commonly refer to non-biologically related people as their sister (sis) or brother (bro) or cuz. The terms Aunty and Uncle are used far more widely in Indigenous Australian culture than they are in non-Indigenous Australian cultures and a person is referred to as an Aunty or Uncle as a term of respect. Whenever there is reference to a kinship term, check who is being referred to: *you went to stay with your mother—that's Margaret, right?*

- **Prepositions:** In Aboriginal English, the way a preposition (a word governing a noun or a pronoun) is used may not follow the pattern of Standard Australian English (SAE) which can lead to misunderstandings of the sentence 'I go back up to the policeman'. The intended meaning in SAE is 'I went back to the policeman' and the solicitor should use SAE to repeat the answer the client gives them: 'You went back to the policeman?'

- **Plurals:** In SAE, the plural form of a noun is usually indicated by the addition of 's' or 'es' to the end of a word. In Aboriginal English, the plural is often signalled by context rather than being marked by the noun. Solicitors should check whether the sense is singular or plural. They could do this by asking further question of their client who said 'my kid' to clarify such as; 'Were all you kids with you?'

Question Signifiers: Question signifiers in Aboriginal English are '...is that right?' at the end of the sentence or with a rising intonation after a statement, instead of at the start which is a pattern of SAE.

Non-verbal language

Many Indigenous Australians are reluctant to make direct eye contact as a show of respect which is not a display of rudeness.

ADR

VALS assisted the Victorian Parliament Law Reform Committee to find out the Indigenous Australians view on Alternative Dispute Resolution (ADR). ADR services help people solve conflicts outside of the Courts (eg: mediation to resolve disputes with family members, neighbours, co-workers, businesses or Government Departments). The forum was attended by 17 people who provided feedback, such as there is need for culturally appropriate ADR.

Public Drunkenness

VALS' article on public drunkenness was published in the Indigenous Law Bulletin of May 2008 (volume 7, issue 5). The article titled "The Survival of Public Drunkenness Laws in Victoria" contained the argument that until the issue of public drunkenness is moved out of

the criminal and into the public health sphere Victoria will continue to lag behind other jurisdictions in its treatment of the issue.

Internship - re Indigenous Australian Women Post-Release

A student doing Honours at the University of Melbourne, Department of Criminology, has completed an internship at VALS. Her research report on the post release needs of Indigenous Australian women was supervised by Greta Clarke. The report is titled "A Little More Visible: Exploring the needs of Indigenous women post-release from the Victorian Correctional System". The report contains the following arguments:

1. "VALS has been referred to as situated at the 'tertiary end' of the criminal justice system. Its primary role is to provide legal aid and assistance to Aboriginal and Torres Strait Islander peoples. VALS does not directly work with Indigenous women re-entering the community from prison. However, the high rate of re-offending among Indigenous women in Victoria suggests that if Indigenous women were supported during their transition from the correctional system to the community, there would be a decreased chance that they would have to utilize VALS' services in the future. Given the extent of the problem, it will take all Government and community organisations at every stage of the criminal justice system to work together to improve services for Indigenous women."
2. "There are currently few post-release programs that are developed for Indigenous women. The post-release period can sometimes be perceived as 'the last stage' of rehabilitation. However, for some Indigenous women it can be seen as the start, the start of healing and identifying the cause of their offending. It is vital that Indigenous women have access to culturally appropriate services and facilities to support them during this period."
2. "The findings of the report support issues identified in the literature review, including problems Indigenous women experience with services, such as finding adequate housing and addressing their financial difficulties. The data suggests that Indigenous women experience a number of frustrations and lack of access to services. In particular, indirect discrimination within the correctional system affects the extent to which their required needs for re-entering the community can be met."

The report recommends:

- Improvement in the accessibility and number of client positions in current drug and alcohol treatments in the correctional system and the community.
- The Koori Transitional Support Program be mandatory for the first year and be reviewed in 2010.
- Consideration of locating Koori Transitional Support caseworkers across Victoria.
- Secure financial assistance for Melbourne City Mission Structured Training and Employment Project to employ an Indigenous woman to conduct the program, with a minimum of twelve client positions.
- Increase the amount of the crisis payment.
- Health care cards should be received by Indigenous women prior to release from prison.
- Greater flexibility for Government organisations, including Centrelink, when working with Indigenous women during the post-release transitional period.
- Development of a new research project into the needs of Indigenous women during

the pre and post release transition stages. Relevant literature should be drawn upon. This project should be undertaken in conjunction with Government, non-Government agencies and Indigenous Australian women.

EVENTS

National Indigenous Legal Conference: 12-13 September 2008

The 2008 National Indigenous Legal Conference will take place on Friday 12th and Saturday 13th September 2008. The conference will bring together lawyers, Judges, Barristers, solicitors, policy makers, service providers, researchers, Community Elders and many other stakeholders. In particular, the Conference will focus on topical issues such as Native Title, the Stolen Generations, Indigenous issues at the United Nations, and the Northern Territory Intervention. This conference will be of particular interest and relevance to lawyers, law students, Barristers, solicitors, Judges, Indigenous community workers, Indigenous Community Elders, Community Legal Centres, local Government, Aboriginal Legal Services, Land Councils, Native Title Representative Bodies, academics and public servants. The Brian Willis National Indigenous Legal Ball will take place on Saturday 13th September 2008. The Ball will be held in the prestigious main ballroom of the Melbourne Town Hall, with a sumptuous three course dinner provided. Entertainment for the evening will showcase some of Australia's best Indigenous talent. Visit www.tarwirri.com.au to download a registration form. Registration closes on Friday 29th August.

Mediation Certificate

The Institute of Arbitrators & Mediators Australia has an established reputation as Australia's pre-eminent provider of mediation training. The Practitioner's Certificate in Mediation course complies with the new National Mediator Accreditation Standards (NMAS). The course is designed to equip busy professionals across a wide range of disciplines with a practice-oriented qualification in mediation. It is a 6-day interactive workshop combining theory and practice with one-on-one coaching by experienced mediators. On successful completion of the course and membership of the association, participants are eligible to apply for accreditation as Mediator with the Institute. The details for the course are as follows:

- ✦ Date: 19-22 and 26-27 August 2008
- ✦ Where: Melbourne CBD – Queen Street

All enquires and registration: (03 9607 6908 and vic.chapter@iama.org.au)

Website Reconstruction:

We advise that VALS' website is currently undergoing reconstruction and the updated version will not be available for some time. We apologise for any inconvenience but hope to have the delay kept to a minimum.

Contact Details

If you require information about the contents of this newsletter or wish to subscribe to the mailing list, please contact VALS on 03 9419 3888.