

Victorian Aboriginal Legal Service Co-operative Ltd

Newsletter August 2005



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VALS welcomes Licia Arimatea to the position of Word Processor- Legal. Licia previously worked at VALS as a Temp. Sarah Rozenbes, Family Law Solicitor seconded to VALS by Victoria Legal Aid, has taken up the position of Criminal Law Solicitor at the Cairns Regional Office of the Townsville and Surrounding Districts Aboriginal and Torres Strait Islander Community Legal Service. VALS and Victoria Legal Aid are in the process of recruiting a replacement. Cilla Brookes has accepted the position of Senior Family Lawyer. Cilla previously worked in the Criminal Law Section at VALS.

UPCOMING EVENTS

VALS hosted the Indigenous Australian Human Rights Forum (Forum) at the Aborigines Advancement League on 10th August 2005. The purpose of the Forum was to enable members the Koorie community to discuss how the human rights of Indigenous Australians in Victoria should be protected. The introduction of a Victorian Bill of Rights was discussed. The Forum was funded by the Human Rights Consultation Project (Department of Justice) and seven Indigenous Australian organisations supported the Forum. Seventy five people attended the Forum and the feedback about the Forum was positive.

The recommendations of the Forum are as follows:

- A request should be made to the Victorian Government to immediately appoint an Indigenous Australian person to the Human Rights Consultation Committee.
- A second meeting should be held during the evening to enable more members of the Koorie community to have their say on human rights.

The outcome of these recommendations are that:

- VALS sent a letter, dated 12 August 2005, to Attorney-General, Rob Hulls, requesting that an Indigenous Australian person be appointed to the Human Rights Consultation Committee. VALS called for the Koorie community to send similar letters. If you would like a copy of the VALS letter to use as a basis for your letter please contact Greta Jubb (9419 3888 or gjubb@vals.org.au).
- VALS organised a second meeting and the details are as follows:

Community Meeting

All members of the Koorie community are welcome

Wednesday 7 September 2005

7.00pm - 9.30pm

Aborigines Advancement League – 2 Watt Street, Thornbury.

Light refreshments provided. For catering purposes please RSVP to Greta Jubb on 9419 3888 or gjubb@vals.org.au by Friday 2 September 2005.

Professor Haddon Storey QC (member of the Human Rights Consultation Committee) will attend.

The Human Rights Consultation Project (Department of Justice) is funding the meeting.

The following organisations support the meeting:

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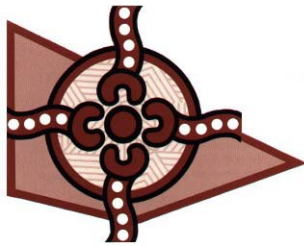
Victorian Aboriginal
Legal Service Co-operative
Limited



Victorian Aboriginal
Child Care Agency



Aboriginal Housing
Board of Victoria



Victorian Aboriginal Community
Controlled Health Organisation
League



Aborigines
Advancement



Victorian Aboriginal Education
Association Incorporated



Victorian Aboriginal Health Service



Victorian Aboriginal Community
Services Association Limited

VALS Does Not Tell People to Plead Guilty

On 3KND Radio Station on Thursday 11 August 2005 the perspective was aired that VALS tells Koorie people to plead guilty.

Approximately 85% of cases heard in the Magistrates' Court result in a guilty verdict. This high level of guilty verdicts is result of several factors:

- Police either find incriminating evidence and/or people admit to police during an interview that they have committed an offence.
- Police usually will not charge a person unless they are reasonably sure of obtaining a conviction.
- The Court process discourages some people from pleading not guilty because it means multiple appearances at Court.

- Police are usually more expert at giving evidence in Court than Defendants.
- The sentencing system rewards people who plead guilty with a discount on their sentence.

VALS will do 'not guilty' pleas or brief a barrister to do so where the client wishes to plead not guilty and where there is 'a reasonable prospect that the charge will be dismissed'. 6% of the criminal matters VALS does are not guilty pleas, this does not include matters contested prior to pleas being entered (ie: contest mention and further mention for better materials etc).

The criminal law cases outlined below under the heading Criminal Law Update are evidence that VALS does not tell people to plead guilty or only act for people who plead not guilty.

Criminal Law Update

1. Outcome: Finding of Not Guilty

A VALS' client was charged with Recklessly Make Threats to Inflict Serious Injury and Unlawful Assault. He instructed VALS that he was refused service at a liquor shop on the basis of his Aboriginality. He was racially vilified by the store employee who then made a complaint to the Police alleging that the client threatened to kill the employee and that the client had a gun in a bag which he threatened the employee with. The client firmly instructed VALS that this did not happen and he pleaded not guilty to both the charges.

The matter was heard as a Contested Hearing in August 2005 at the Melbourne Magistrates' Court. The Magistrate found the client not guilty on both charges and expressed surprise that the matter was brought to Court given the sketchy nature of the evidence against the client, and ordered the Police to pay VALS \$800.00 in costs.

2. Outcome: Police Withdraw Charges

VALS' Criminal Law Solicitor in Mildura acted for a client who was charged two years after an event had taken place. He was charged with serious assault offences alleged to have arisen from an assault in a home in Mildura two years ago.

According to the client he attended a premise with a nephew who wanted to talk with the occupant. After the nephew was inside for a few minutes the client heard cries for help. He went inside and saw his nephew being slashed on the legs with a meat cleaver. He hit the attackers and dragged his nephew out of the house. As the client arrived at the door he was hit on the side of the head with a meat cleaver, receiving a 15cm cut to his head, which required stitches, and yet he was charged. VALS contested the matter based on the defence of 'defence of another' and all the charges were withdrawn at the Contest Mention date. VALS Civil Law Solicitor is now processing the client's Victim of Crime Assistance Tribunal claim.

3. Outcome: Message Sent to Police about Over Zealous Arrests and Excessive Force

In Mildura in 2004, two Indigenous Australian girls were beaten by members of Victoria police. VALS contested what would otherwise be considered very minor charges (summary offences) of resist and assault police. VALS briefed two very experienced Barristers and ran a three day Contested Hearing. Whilst the Magistrate found against the clients, it was a

victory in that a very clear message was sent to the police that VALS would make them accountable for over zealous arrests and excessive force. Both girls were very proud of themselves for going through with the Hearing.

VALS Analysis of the Above Cases

The first two cases highlight a trend that VALS has identified. Indigenous Australians are more visible to Police than non-Indigenous Australians which results in charges being brought against clients that have no merit and the over-representation of Indigenous Australians in the criminal justice system. There are costs involved when Police charge Indigenous Australians when they have no basis to and drag Indigenous Australians through the Courts. There is a cost to the client as they go through an unnecessary traumatic experience. There is a cost to the relationship between the Indigenous Australian community and Police, such as increasing the level of distrust the Indigenous Australian community has towards the Police. There is a cost to society as tax payers have to pay the bill that mounts up when Police prosecute in the Courts cases that ultimately results in verdicts of not-guilty, Costs being awarded against the Police and the withdrawal of charges.

The third case highlights a trend that VALS has identified. Indigenous Australians are *still* the victim of inappropriate use of force by some members of Victoria Police.

Indigenous Family Violence Prevention Legal Service

In a Media Release dated June 21, 2005 the Commonwealth Attorney- General's Department indicated that it will deliver on its commitment to double Indigenous Family Violence Prevention Services. One of the new thirteen Indigenous Family Violence Prevention Legal Service Units will be established at Mildura and service Indigenous Australians in Victoria and New South Wales.

Children's Koori Court

The Children's Koori Court will be launched on Friday 9th September 2005 at the Melbourne Children's Court. The Children's Koori Court is an adaptation of the highly successful adult Koori Courts which have been established at Shepparton, Broadmeadows, Warrnambool and Mildura. Initially, the Court will sit at Melbourne Children's Court but it is envisaged that it will eventually move to the proposed Koori Justice Centre at Preston.

Submissions

VALS completed the following submissions in August:

- VALS submission to the Office of the Advocate for Children in Care in response to the Development of a Charter of Rights for Children and Young People in Care Discussion Paper (May 2005), sent 22 August 2005.
- VALS preliminary submission to the Human Rights Consultation Committee in response to the Have Your Say about Human Rights in Victoria, Human Rights Consultation Community Discussion Paper, sent 30 August 2005.