



# Victorian Aboriginal Legal Service Co-operative Ltd.

*Head Office:*  
6 Alexandra Parade,  
P.O. Box 218  
Fitzroy, Victoria 3065  
Phone: (03) 9419 3888 (24 Hrs)  
Fax: (03) 9419 6024  
Toll Free: 1800 064 865

29 October 2004

Ms Elizabeth Eldridge  
Criminal Law Police  
Department of Justice  
GPO Box 4356QQ  
MELBOURNE VIC 3000

Dear Ms Eldridge,

## **Re: Proposed References on the Laws of Evidence and the Bail Act 1977**

The Victorian Aboriginal Legal Service Co-operative Limited supports the Attorney General Rob Hull's proposal to refer terms of reference to the Victorian Law Reform Commission in relation to the Bail Act 1977 and the laws of evidence. Consideration should be given to reviewing the impact of the Bail Act 1977 and laws of evidence on Indigenous Australians given that Indigenous Australians in Victoria are twelve times more likely to enter the justice system.

VALS agrees with the terms of reference, except in relation to the following matters. In conducting the review the Victorian Law Reform Commission should have regard to the following:

### **Laws of Evidence**

- The cultural sensitivity of the laws of evidence.

### **Bail Act 1977**

- What can be done to simplify the bail process? (ie; language used).
- The process of granting bail should be considered within the scope of the Inquiry. The nature of conditions of bail should also be considered within the scope of the Inquiry. The ability of Indigenous Australians to meet such conditions should be considered.
- The Inquiry should clarify the purpose of bail. Is the purpose of bail to avoid people failing to appear at Court or to ensure the safety of the community? What is the appropriate balance between these two factors?

- Do the above purposes of the bail process result in onerous conditions being imposed on disadvantaged/marginalized groups. What balance should be struck between meeting the objectives of the bail process and ensuring that the bail process does not have an onerous impact on disadvantaged or marginalized groups?
- What impact will the proposed recommendations that will come out of this inquiry have on Indigenous Australians?
- The need to not only look at the needs of marginalized and disadvantaged groups, but the impact of the Bail process on marginalized and disadvantaged groups. Some questions that could be asked are:
  - does the Bail process have a disproportionate impact on disadvantaged groups?
  - Are Indigenous Australians less likely to be granted Bail on their own undertaking?
  - Does low socio-economic status impact the likelihood of being re-bailed (ie: no accommodation).
- Consideration should be given to the over-representation of Indigenous Australians in both the bail and remand process because Indigenous Australians are less likely to be placed on summons than non-Indigenous Australians. The inquiry should not be limited to the remand process.
- Is the Bail process culturally sensitive or responsive? Consideration should be given to the context of recent amendments to the Bail Act 1977 resulting in the repealing of section 4(2)(c), which has the potential to enhance the cultural sensitivity of the bail process.
- The extent to which officials granting bail are aware of issues impacting the Indigenous community. The consistency of the bail process with recommendations of the Royal Commission into Aboriginal Deaths in Custody (1991).
- The need to review the law in relation to ‘failure to appear’ (ie: what is a lawful excuse for failure to appear). Arguably, the punitive Court attitude to ‘failure to appear’ works to entrench Indigenous Australians further into the justice system (ie: less likely to be granted bail).
- The Inquiry into Warrant Powers and Procedures by the Victorian Parliament Law Reform Committee (VPLRC). In the VALS submission in response to the VPLRC Discussion Paper, VALS identified links between the warrant and bail process. For instance, the manner in which warrants to arrest are executed has an impact on the likelihood of being granted bail. A person who surrenders and attends a police station to have a warrant executed is more likely to be granted

bail. However, the failure to formally inform Australians of the existence of a warrant to arrest denies them the opportunity to choose to surrender. Also, some warrants contain the condition that the offender is only to be re-bailed by a Magistrate, which means that Indigenous Australians may be detained unnecessarily.

- Custody Management Issues, such as the condition of people held on remand in Custodial Centres and Prisons. Is there a difference in the condition of people held on remand in prisons and sentenced prisoners?
- Bureaucratic obstacles that get in the way of being granted bail. Inconsistency in police approach in matters related to bail (ie: undue delay in drafting paper work).
- The manner in which refusal to grant bail is reviewed. Should there be an automatic review of the bail process in individual cases (ie: monthly basis)? The requirement to show that new circumstances exist when reapplying for bail should be reviewed. Consideration should be given to placing the onus on police to argue why bail should not be granted.
- What is the bail process like in other jurisdictions? Arguably, in New South Wales there is more of a sympathetic culture to the bail process.

**Additional issue:**

VALS wishes to raise a grammatical issue in relation to the reference to ‘Indigenous people’ on page two of your letter. Arguably, the reference to Indigenous people could be taken to mean all Indigenous peoples world wide, rather than Indigenous Australians. The terms of reference should read as following: “the over-representation of Indigenous Australians held on remand”.

Yours Sincerely

**Victorian Aboriginal Legal Service Co-operative Limited**

**Frank E. Guivarra**  
**Chief Executive Officer**