



# Victorian Aboriginal Legal Service Co-operative Ltd.

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Jo Metcalf  
Department of Justice  
Director, Legal Policy  
436 Lonsdale Street  
GPO Box 874  
MELBOURNE VIC 3000

Dear Ms Metcalf,

## **Re: Justice Legislation (Sexual Offences and Bail) Bill**

VALS is in agreement with the proposed amendment to the Bail Act 1977 to repeal section 4(2)(c). VALS has long supported such an amendment and approached the Victorian Law Reform Commission in May 2001 to review the operation of section 4(2)(c) of the Bail Act 1977. As a result the Law Reform Commission produced a Draft Recommendation Paper titled 'Fail to Appear in Court in response to Bail' (Law Reform Commission Paper) and called for submissions. VALS sent a submission to the Commission calling for reform of the Bail Act 1977.

In 2004 VALS welcomes moves to implement the recommendations of the Victorian Law Reform Commission paper to repeal s 4(2)(c) of the Bail Act 1977, but notes with regret that such a change has been a long time coming.

VALS agrees with the arguments put forward in the Law Reform Commission paper for repealing s4(2)(c) of the Bail Act 1977. The Bail Act 1977 has a significant and unfair impact on indigenous defendants by making it harder to obtain bail in cases where a defendant has been released on bail, fails to appear in court on the required date, is arrested for failing to appear and again applies for bail.

The effect of section 4(2)(c) of the Bail Act 1977 is that courts are restricted in what they can take into account in deciding whether to grant or refuse bail (ie: limited to circumstances where failing to appear was beyond the control of the defendant). The effect of repealing section 4(2)(c) of the Bail Act 1977 will be that the court will be placed in a better position to take into account wider factors than circumstances beyond the control of the defendant when deciding whether to grant or refuse bail. The amendments will give the courts more flexibility in re-establishing the bail of defendants who fail to appear, as the courts will be empowered to consider cultural, socio economic and environmental factors such as the following:

- Forget court date or mistake as to the date: The reality of poverty means that many Aboriginal people will not have a calendar or private organizer.
- Low literacy and numeracy levels: Some Aboriginal people have difficulty in understanding numbers or being able to read the date.
- Transport difficulties: Some Aboriginal people have a lack of money or a lack of access to public or private transport, particularly if the court is some distance away.
- Culture: Aboriginal people are often expected through custom and social obligation to move around to see relatives or attend funerals and other such community events.
- Frequent change of address or no fixed address: Aboriginal people may not receive correspondence about appearing at court if they frequently change their address or have no fixed address.
- Misunderstanding: Aboriginal people may misunderstand the need to appear in court (ie: they think that the court will deal with the charges in their absence).

The effect of s4(2)(c) is that it is 'not uncommon' for Aboriginal people to be detained in custody [Royal Commission into Aboriginal Deaths in Custody (RCIADIC 1991), Volume 3, para 21.4.27]. This is significant given that the findings of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC 1991) that Aboriginal deaths in custody occur more often whilst on remand. The effect of s4(2)(c) is that Defendants who fail to answer bail for a minor offence, but are not guilty, choose to plead guilty to avoid being detained on remand in the hope that they will receive a sentence that does not involve imprisonment. The effect of repealing s4(2)(c) will mean that Magistrates and Bail justices will be empowered to address the unfair impact the Bail Act 1977 can have on Aboriginal peoples by considering all the circumstances that prevent Aboriginal people appearing in court.

In summary, VALS supports the proposed amendment to the Bail Act 1977 to repeal section 4(2)(c).