

Victorian Aboriginal Legal Service Co-operative Ltd

Newsletter May-June 2006



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Criminal Law Update

A young man was charged with two counts of armed robbery. VALS challenged the evidence and the Office of Public Prosecutions withdrew all charges at the Committal Hearing.

Role of VALS at Koori Court

During May 2005, VALS received the following correspondence that highlights the positive work VALS solicitors are doing in the Koori Court:

"I just wanted to let you know that I visited the Children's Koori Court yesterday and observed a matter where one of your solicitors a Mr Scott Ashley representing a young woman and did so in a very sensitive and professional manner. Mr Ashley with the consent of the Magistrate and the Elders and Respected Persons allowed a number of people around the Koori Court table who provided the court with important background information on the young person and her family which enabled the sentencing conversation that took place around the table to achieve the best outcome for the young person".

Civil Law Update: Are you missing your favourite watering hole because of discrimination?

VALS is aware that many Indigenous Australians are experiencing discrimination on the basis of race at some Hotels because of alleged incidents caused by other groups of Indigenous Australians. VALS is assisting some people with complaints of discrimination against Hotel proprietors who have refused service to Indigenous Australians. These complaints have been lodged with the Equal Opportunity Commission of Victoria. VALS is interested to hear from you if you are missing your favourite watering hole because of discrimination.

Family Law Update

The Family Law Amendment (Shared Parental Responsibility) Act 2006 (Act) will take effect from 1 July 2006 and will change the family law system. The Act was described by the Attorney-General's Department and Minister for Families, Community Services and Indigenous Affairs in a joint media release as: marking "...a major cultural shift in the family law system that will help families to deal co-operatively and practically with relationship difficulties and separations".

The reform means that the right of children to know both their parents, to spend equal amounts of day-to-day routine time with both parents, and to be protected from harm will be promoted. The reform also means the responsibility of parenting should be shared equally, the role of grandparents is important and that parents and children benefit more after separation when parenting arrangements are resolved outside the Court system.

VALS has gone on record saying the change is likely to create a false expectation that Joint Residence, or residence to the father, will be more likely under these amendments. Joint residence is statistically the most unlikely outcome. The incidence of Joint Residence Orders had steadily declined from 5.1% to 2.5% over the seven years from 1994-95 to 2000-2001.

Also, Family Relationship Centres (FRC) will be established (Ringwood, Sunshine, Mildura and Frankston) from July 2006 onwards. The FRCs provide family dispute resolution services (mediation) and have a prevention of family break up and information sharing role also. Currently, it is not compulsory to attend the FRCs before attending Court but it will become compulsory in 2007. Further information about FRCs is at: http://www.facs.gov.au/internet/facsinternet.nsf/family/frsp-selection_process.htm.

VALS has gone on record saying:

- The impact of FRCs on victims of family violence may be disadvantageous.
- Legal advice is a fundamental human right. Legal advice should be guaranteed.
- Just as family dispute resolution outcomes are more likely to be workable and fairer if there is legal representation available earlier, the Family Dispute Resolution outcomes are more likely to be more meaningful, relevant or workable for Indigenous Australians if the counselor provides a culturally sensitive service to Indigenous Australians. There should be Koori mediators available.

Staff update

After spending an initial period in the Fitzroy office, undergoing induction, Joel Orenstein (Solicitor) is now at the Bairnsdale office.

VALS is in the process of filling the position of Client Service Officer – LaTrobe Valley. Client Service Officers (CSO) act as a bridge between the legal system and the Indigenous Australian community. Upon notification that an Indigenous Australian is in custody (via the E*Justice system) the CSOs contact Indigenous Australians in police custody to provide assistance. CSOs also provide clients with support at Court and assist with communication between clients and Solicitors.

VALS is in the process of filling the following positions, which are newly created roles:

- Client Service Officer – Grampians Region: the Grampians CSO will be based in Ballarat and VALS is in the process of establishing an office.
- Project Worker - Koori Legal Access: the Project Worker will investigate and document access to law and legal services issues affecting Koorie people in Victoria. Interviews are currently being conducted and we hope to employ the Project Officer in the very near future.

Human Rights Charter Update

The Charter of Human Rights and Responsibilities Act was introduced into Parliament in May 2006. The Bill can be downloaded from <http://www.dms.dpc.vic.gov.au/>. The Bill has failed to reflect concerns raised by VALS and the Monash University Castan Centre for Human Rights about excluding the right to self-determination and economic, social and cultural rights from the Charter.

Aboriginal Justice Agreement Mk II

The Aboriginal Justice Agreement Mk II (AJA2) was launched on 2 June 2006. It is a partnership between the Victorian Government and the Koorie Community. The original AJA (AJA1) was signed in 2000 and led to initiatives, such as the Koori Court. The AJA2 will expand upon the AJA1, such as establishing more Koori Courts. The AJA2 will also introduce new initiatives, such as Koori Offenders Support and Mentoring Program which aims to decrease the rate at which Koories breach Community Based Orders. For further information on the AJA2 please contact the Indigenous Issues Unit (Department of Justice) on 8684 1766.

Inquiry of Stolen Wages – Tell your Story about Stolen Wages

On 13 June 2006 the motion by Senator Andrew Bartlett (Australian Democrats Deputy Leader) that a Senate Inquiry be conducted in relation to the issue of Stolen Wages was passed. The Senate Inquiry will investigate State and Territory Governments' confiscation of wages earned by Indigenous Australians for most of last century. Submissions are due on 28 July 2006 and the Legal and Constitutional References Committee (Committee) will Report on 7 December 2006. VALS is a member of the Victorian Stolen Wages Working Group and will produce a submission.

The Terms of Reference of the Inquiry are available at:

http://www.aph.gov.au/senate/committee/legcon_ctte/stolen_wages/index.htm. For further information, go to the following website: <http://www.andrewbartlett.com/issues-stolen-wages.htm>. Australians for Native Title and Reconciliation have produced a Plain English guide to making a submission which is available at:

http://www.antar.org.au/index.php?option=com_content&task=view&id=265&Itemid=108

VALS encourages you to write a submission. If submissions are written in Victoria it is more likely that the Committee will conduct Public Hearings in Victoria. Tell your story about Stolen Wages.

The Drugs Poisons and Controlled Substances (Volatile Substances) (Extension of Provisions) Act 2006

“Volatile substances” or “inhalants” refer to everyday household products such as paint (“chroming”), glue, paint thinner, deodorants and petrol, when inhaled for an intoxicating effect. As they can be purchased legally and inexpensively, they are readily obtainable by young persons as well as adults.

The Drugs Poisons and Controlled Substances (Volatile Substances) Act 2003 (Act) had its origins in the Inquiry into the Inhalation of Volatile Substances, which was undertaken by the Drugs and Crime Prevention Committee (DCPC) in 2001. The Inquiry examined the factors contributing to inhalant abuse, considered the options to reduce and prevent inhalant abuse, and reviewed the adequacy of existing strategies. The Inquiry Report was tabled in the Victorian Parliament in 2002 and made 16 Recommendations. One of these Recommendations was that legislation be enacted to provide the police with the power to take preventative action to deter the use of volatile substances.

The Act does not criminalise inhalant abuse, but enables police to provide an early intervention to protect the health and welfare of young people. Under the Act, police can apprehend

young people under 18 years who are reasonably suspected of abusing volatile substances. They can search young people, seize volatile substances and items used to inhale, and link young people to suitable care, eg parent or other caregiver, hospital, or drug treatment agency. Adults can also be apprehended if police have reason to believe that they intend to provide a volatile substance or item used to inhale to a person under 18, for the purpose of inhaling. Young people cannot be held in a police cell or lock-up. If the young person cannot be released into the care of a responsible adult and no longer appears to be at risk to themselves or others, they can be released independently. A Protocol between Victoria Police and relevant agencies has been developed to support the use of the legislation (see below).

Some young people are taken straight home from a public place. If a young person is taken back to a police station, the police contact is registered on the Victoria Police E*Justice System. If the young person is identified as Aboriginal or Torres Strait Islander an email is generated to Victorian Aboriginal Legal Service (VALS) and Victoria Police Record Services. Record Services are also required to phone VALS.

The Volatile Substance Abuse Protocols Advisory Committee oversees the implementation of the legislation. It has wide representation from the community sector and across Government. VALS is represented on this Committee by the Chief Executive Officer

The impact of the legislation is being reviewed. The Department of Human Services has been collecting data from Victoria Police, alcohol and drug agencies, and child protection. The preliminary (first year) data shows that there have been over 80 individual contacts under the legislation by police with young people. Young people have been connected to their families and/or residential placements, drug and alcohol services, or hospitals for emergency care. Some of these contacts have been repeat events with the same young people.

The 2003 Act was due to sunset on 30 June 2006. A new Act, the Drugs Poisons and Controlled Substances (Volatile Substances) (Extension of Provisions) Act 2006 has just been passed which extends this legislation for a further two years, to 30 June 2008. This will allow for the completion of the review of the impact of the legislation. Work is continuing to collect data from Victoria Police and relevant agencies, in order to provide more information about the way the legislation is working, and outcomes for young people. This will inform recommendations regarding the future of the legislation.

Further information about the legislation and other government initiatives on volatile substance use can be obtained from <http://www.health.vic.gov.au/drugservices/pubs> Documents that can be downloaded include the Volatile Substances Protocols 2004; Management Response to Inhalant Use: Guidelines for the community care and drug and alcohol sector; and Inhalant Abuse Information Kit for the Koori Community. The Responsible Sale of Solvents: A Retailers Kit can be obtained from Meredith Kiraly, phone 9096-2821 or email Meredith.kiraly@dhs.vic.gov.au Feedback on the use of the legislation is welcomed.

Contact Details

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