

Victorian Aboriginal Legal Service Co-operative Ltd

Newsletter September-October 2007



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Staff

VALS welcomes Trevor Terrick to the role of Client Service Officer in the LaTrobe Valley region. VALS welcomes Carly Marcs and Emily Buchanan to the position of Criminal Law Solicitor. Carly is a part-time employee and Emily is full-time. VALS farewells Clint Lingard who held the position of Civil Lawyer for 5 months replacing Mike Zaccaro who was on annual and long service leave.

Legal Update

VALS is acting for the family of a man who was hit and killed by a truck after having been left on the highway by police. The matter is listed for a Directions Hearing where the date for a Coronial Inquest will be set. VALS has secured the services of Senior Counsel to aid with the Coronial Inquest. VALS is seeking an open inquest as opposed to an 'in-Chambers' ruling by the Magistrate.

VALS represented a young man in the County Court at Melbourne. His matter proceeded to trial on rape charges. Our client pleaded guilty and the outcome of the trial was that he was found not guilty.

A woman with no history of offending came before the Magistrates' Court with serious charges relating to an incident whereby she caused serious injury to two victims. The Magistrate took into consideration at the Plea Hearing the many underlying issues that contributed to her actions. The Magistrate was interested in her having supports from the local Indigenous Australian community and appropriate services rather than simply punishing her. She was placed on an adjourned undertaking to be of good behaviour for two years. There were no conditions attached, allowing her to search for healing without the pressure of being forced to do so.

Useful websites re Northern Territory Intervention

LSTEN Up! is a coalition of concerned organisations and individuals seeking a better response to Aboriginal and Torres Strait Islander disadvantage. You can support the campaign by signing the pledge. Go to: <http://www.listenupaustralia.org/>.

A useful resource about the Northern Territory intervention is the Women for Wik website: <http://www.womenforwik.org/>. Women for Wik are monitoring the Federal action in the Northern Territory.

VCOSS Congress

A VALS representative attended the VCOSS Congress in August 2007. The topics were particularly relevant to Indigenous Australians as the title of the Congress was 'Beyond Citizenship: Visions for Rights and Real Engagement'. Also, the Congress marked the 40th anniversary of the 1967 Referendum. Papers presented at the Congress are available at: <http://www.vcross.org.au/what-we-do/congress-other-events/index.htm>

Women in the Law Calendar 2008 – Women in the Law- Inspiring Success

Terrie Stewart (Director of VALS) features in the University of Melbourne "Women in the Law Calendar 2008 - Women in the Law: Inspiring Success". The calendar celebrates women who work in the law. The following information about Terrie is included in the calendar:

The Victorian Aboriginal Legal Service Co-operative Limited is proud to nominate Terrie Stewart because of her outstanding and total commitment, over the past sixteen years, to assisting Indigenous Australians who enter the criminal justice system. Terrie has worked tirelessly for her community, such as serving as a VALS Client Service Officer and Client Service Officer Team Leader. Terrie is currently the Koori Justice Worker at the Broadmeadows Koori Court and has been in this role for four and a half years. In the above roles Terrie acted as an intermediary between the Indigenous Australian community and justice system in order to make the justice system more accessible. Terrie has also served as a Director on the VALS Board for 9 years. Terrie's approach with clients is sensitive to their needs and she is respected by the Indigenous and non-Indigenous Australian community.

If you would like a copy of the calendar contact Greta Clarke at VALS.

United Nations Declaration on the Rights of Indigenous Peoples

The Declaration on the Rights of Indigenous Peoples was adopted by an overwhelming majority (143 to 4) in the United Nations General Assembly on 13th September 2007. However, Australia along with Canada, United States and New Zealand (the CANZUS group) voted against the Declaration. VALS commented on this in a media release titled: "United Nations Declaration on the Rights of Indigenous Peoples – A Cause for Celebration and Discussion - Not Fear" (3 October 2007) which contained the following:

- Opposition to the Declaration is based on misunderstandings and scaremongering.
- The Declaration is "a milestone for the world's Indigenous peoples and for the United Nations" (Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, 2007).
- The opinion of the Government that self-determination may amount to a unilateral right to secede from Australia is incorrect as there is "no historical precedent or basis in international law for the suggestion that a State could be dismembered unilaterally. It is in fact such an absurd suggestion that the only conclusion that can be drawn from the Government's reliance upon it is that it is a deliberate untruth aimed at raising fear and opposition from non-Indigenous people (Dr William Jonas Aboriginal and Torres Strait Islander Social Justice Commission 2002)."
- The Declaration itself, at Article 46, highlights that the Declaration does not create the right to secession: "Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial

integrity or political unity of sovereign and independent States.”

- Before we take the dismissive views of the Government and media, such as Andrew Bolt, in respect of the Declaration, we should at least look at what more objective commentators and experts have to say about it. The majority of the Member States of the United Nations at the General Assembly voted that ‘the world must recognise the rights of Indigenous peoples’.

Cautioning

The Police Cautioning and Youth Diversion Pilot Project is an example of an attempt to reduce the over-representation of Indigenous Australian youth in the criminal justice system. A caution is a formal warning given by police to an offender as opposed to arresting them.

If a group of youths come to the attention of police it is common for the non-Indigenous Australian youth in this group to be cautioned and the Indigenous-Australian youth to be arrested. VALS’ research found that from July 2000 to June 2001, Indigenous Australian juveniles received fewer cautions in all crime categories (except rape) than non-Indigenous juveniles as “the level of under utilisation of cautioning of Indigenous Australian young people is in the order of 10-15% when you focus on people who have had no prior police contact”. This is a concern given that cautioning is a means of diverting juveniles away from the justice system as there is slightly more re-offending amongst Court processed juveniles than those who received a caution.

The Pilot has been developed in consultation with relevant parties (ie: Government, Police, Aboriginal people, youth, and workers involved with youth). The pilot commenced in March 2007 for a 12 month period in the following places and there is hope it will be introduced elsewhere:

1. Mildura in recognition of the under-usage of cautioning as Mildura has the lowest State average of cautioning of Indigenous Australian youth.
2. La Trobe valley in recognition of the ineffectiveness of cautioning there as whilst La Trobe Valley had the highest rate of cautioning there is a high re-offending rate after cautioning.

The result of the Pilot is that there is a Local Police Policy that applies to the Mildura and La Trobe regions that contains a caution and follow-up component.

CAUTION

- Police give a caution whenever appropriate (ie: admit offence, no more than third offence, consent of accused/parent).
- If Police do not give a caution they must complete a ‘Failure to Caution Form’ which provides a reason why no caution was given and this reason is reviewed to determine if it is appropriate.
- Police attempt to locate the parent to be present at the caution. This may require postponing the caution until the parent is available. Alternatively the Youth Resource Officer at the police station may choose another family member or elected Aboriginal community member to stand in for the parent.

- Police should consult with the local Koori Justice workers as to the most effective way to deliver a caution.
- The caution will be delivered by an elected Police Officer who is of high ranking to ensure consistency in the cautioning process.
- The following people should be present at the caution, and provided notice, or if not possible told that a caution has been given: Youth Resource Officer who reviews the caution, parent, support people, elected members of the community, justice worker and VALS Client Service Officer.
- The Youth Resource Officer (and possibly justice worker) creates a 'Background File' which contains information about the accused gathered at the caution (ie: factors involved in the offence such as alcohol and other factors such as whether the youth lives at home). A joint discussion occurs between the parties at the caution about who the youth should be referred to and whether a mentor is appropriate.
- A caution should take place at a neutral location, or where necessary, a less 'formal' room within the Police Station.

FOLLOW-UP

- A follow up meeting occurs 2-6 weeks after the caution. The meeting will be held with the offender, police representative, family or community member, Koori Educator and any other individual who has since been involved with the offender. The purpose of this meeting is to 'check-in' on the progress of the offender since receiving the caution. The follow up process can continue for up to 3 months.

Mediation

With mediation being adopted widely across the commercial, legal and Government sectors, an understanding of the practical application of mediation techniques is an important and useful professional skill.

The Practitioner's Certificate in Mediation course is designed to equip busy professionals across a wide range of disciplines with a practice-oriented qualification in mediation. It is a 5-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 are:

Date: 7 – 9 and 13 – 14 November 2007

Where: Melbourne CBD

All enquiries and registration: (03) 9602 1711 and vic.chapter@iama.org.au.

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. Previous newsletters are available on the VALS website.