



# 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

## **VALS submission in response to the Attorney-General's Justice Statement titled 'Community engagement is the key to building better Justice outcomes' - sent September 2004**

### **Introduction**

The Victorian Aboriginal Legal Service recognises the significant work done via the Victorian Aboriginal Justice Agreement in seeking to improve access to justice for Indigenous people. The Attorney General's Justice Statement provides a new opportunity to improve access to justice for Indigenous people in the context of wide ranging improvements to the justice system. Whereas the Aboriginal Justice Agreement was framed in the context of the Royal Commission into Aboriginal Deaths in Custody recommendations the Justice Statement with its broader focus and future orientation provides a bigger picture to tackle justice issues.

VALS acknowledges that there is money being spent and initiatives being implemented and that in some respects Victoria is outperforming other states. Given the level of overrepresentation in prison, child protection and family violence matters and broader policy trends which undermine access and equity more generally VALS believes significant qualitative and quantitative improvements are nevertheless very necessary.

### **Key Challenges**

VALS agree with the key challenges listed in the Justice Statement however a comprehensive list of matters affecting Indigenous people's access to justice would also include:

- Commonwealth cuts to legal aid
- Commonwealth Government policies which embrace mainstreaming of service provision, tendering and effective funding cuts
- Effective abandonment of self determination, self management and organisational capacity building including withdrawal of support to participate in United Nations forums
- Post Hanson community attitudes which undermine respect for multi cultural diversity and tolerance
- Media and government preoccupation with punitive criminal law approaches to social problems at the cost of rehabilitation and prevention
- Perpetuation of negative stereotypes about Indigenous organisations which almost completely obscures the positive activities which are occurring.
- Policies which fail to adequately respond to the scale of problems, rate of change and interconnectedness of individual and community disadvantage.

The last dot point above is in some respects an issue which underpins all the other issues. The scale of the problems, the rate of change and the interconnectedness of individual and community disadvantage are all with varying degrees of certainty known. However the concept of an *adequate* response is far more problematic. How specifically has the state government taken account of changes such as rapid Indigenous population growth, Commonwealth Government policy and program changes to Indigenous services And punitive community groups? VALS argues that too little is being done, too late and with too little community ownership:

### **Implementation of Deaths in Custody Recommendations undermined by the ‘Injustice plan’**

The VALS submission to the Review of Implementation of RCIADIC Recommendations argued that the response to the recommendations including the Victorian Aboriginal Justice Agreement is significantly compromised and undermined by what amounts to effectively to the operation of a parallel “injustice plan”. The Commonwealth Government has a more virulent form of ‘injustice plan’ but the State government also has one.

One of the key measures of the “injustice plan” is the increase in prison populations. “There were 3,763 prisoners in the Victorian prison system on 30 June 2003. This represented an increase of 54% on the 30 June 1996 figure of 2,440.” (Source: Prisoners in Australia 2003 - Australian Bureau of Statistics)

Frieberg in his review of Victorian sentencing highlights that sentencing rates are increasing ahead of crime rates. “In Australia, as possibly elsewhere, there is little evidence that increasing imprisonment rates have significantly affected crime rates. Victoria’s crime rate over the last decade, which has shown small annual increases for the most part, appears to be unrelated to the numbers in prisons..” (Pg 41 Frieberg 2002)

VALS recognizes that some sections of the community want more punitive sentencing that does not mean that it is defensible in criminological, economic, social, or community safety terms. Consistent increases in prisoner numbers should be like the miner’s canary in alerting us to systemic problems. Instead it appears we are hooked on punishment as a solution rather than seeing it as a symptom of social problems

The core components of the ‘injustice plan’ are:

- a failure to build adequate support for respect of difference, equity and natural justice
- a failure to stop the expansion of the prison population
- and a failure to prioritise prevention and community capacity building

Community attitudes can hardly be helped by sensationalist, punitive and superficial treatment of many justice issues by the media. If the community are told that systemic disadvantage is the fault of the individual and that the solution to crime is more punishment, both of these demonstrably false propositions will undermine the willingness and capacity of Government and community to take appropriate action to improve access to justice. In general terms the broader government policies or in some cases lack of policies to support social justice, respect for diversity and human rights, community development and

prevention rather than punishment undermines the capacity of indigenous specific programs to achieve results.

There is a range of ways that the policy climate and community awareness of the need for RCIDIAC issues implementation could be improved. These were outlined in our submission to the RCIADIC Implementation Review a copy of these recommendations is included in Attachment 2. The Attorney General's Justice Statement provides an opportunity to improve the climate for justice and make greater levels of success in implementing the RCIADIC recommendations possible.

### **The vital role of community attitudes**

The Attorney General's Justice Statement (Pg 22) highlights several important challenges. Some of these clearly recognise the importance of the community and community attitudes others don't. The first challenge mentioned is "Safer communities through reduced rates of offending..." This has been happening however media treatment of crime and the action of groups "against lenient sentencing" ramp up the community concern about safety and sentencing. Recent new commitments to longer sentences made by the Attorney without anything approaching a balanced or informed debate appeared to be a direct response to recent pressure group activity. Longer sentences impact disproportionately on disadvantaged groups and Indigenous people in particular. The failure to effectively build community knowledge about the limitations of sentencing strategies as a pathway to safety undermines the capacity to deliver a fairer justice system for disadvantaged groups.

Some of the other key challenges (pg 22) include an explicit recognition of the role of community attitudes. These include "A community that values diversity and is more aware of its rights and obligations with reduced incidence of discrimination" and "A community that is engaged with and supportive of the justice system" VALS agrees that these matters are critical challenges

### **Recognising Indigenous people in the constitution**

In our submission on the proposed change to the Victorian Constitution VALS recommended an amendment which is a commitment to consider the interests and views of Indigenous communities prior to developing major policy or law reform.

In our RCIADIC we recommended:

Any proposed new legislation should, prior to development, be subject to an analysis by people with Indigenous, non-Indigenous and academic perspectives of its impact on Koorie people. The analysis could encourage things such as alternatives to legislation to be considered, how consistent the proposed legislation was with other legislation, capacity of the legislation to cause confusion, ambiguity and cost, impact on other disadvantaged groups, impact on legal aid, and human rights impacts.

VALS is calling for a commitment to consider the needs of Indigenous people at the beginning of the policy development process not simply at the end. This initiative would be strengthened and complemented by the Government adopting a non legislative declaration of rights.

## **Rights protection and enhancement**

VALS believes the Justice Statement discussion of different models of rights protection is useful but the fundamental issue is the extent to which the community cares about the issue or about any model of rights protection.

Almost twenty years after the Victorian Parliament held an investigation into rights protection it is surely time for some action. The recommendations from that committee were to adopt something akin to the then Canadian model which ensured greater scrutiny of legislation which impacted on human rights. Hilary Charlesworth who was one of the people who drafted the recent ACT Bill of Rights proposal made several interesting observations about the ACT experience. Very few people attended the forums to discuss the issue. Several Government departments attempted to undermine the proposal using a fear campaign and in retrospect she stated that greater reliance on working with people who could reach the community was necessary.

The Attorney General's Justice Statement highlights the different ways of achieving better rights protection. VALS believes that a commitment to a non legislative declaration would be a relatively easy first step to get rights protection on the agenda and to develop some 'better practices. There would be more likelihood of obtaining multi party support for a non legislative declaration. There is likely to be less fear and suspicion around such a process than a legislated charter of rights. After a few years operation of such a system it may be easier to move to some form of legislated charter.

A non legislative declaration provides scope for government to develop more inclusive processes on matters of high importance. The Government could adopt a process of reviewing its policy and legislation program to identify issues with high rights impact. The Government could develop some consultation policies and guidelines which would seek to provide some standards and timelines re consultation, draw some distinctions between high impact issues and low impact issues and between highly contentious and less contentious issues.

### **“...we must build the law's authority on lucidity and inclusion...” Rob Hulls An annual consultation plan and other measures**

To achieve greater lucidity and inclusion there needs to be a simpler, slower and more integrated approach to tackling justice issues. One step towards this would be to develop a consultation plan.

A consultation plan for the year would enable duplication of issues to be minimised and give some clarity to community organisations and members about what was happening and when. Government consultation with the community and community participation are scarce resources. In the interest of obtaining quality results there needs to be some effort in to integrating and planning how this occurs...

A non legally binding commitment could enable some better inter and intra department collaboration processes to be trialled as well as a more integrated community consultation approach. VALS believe that a more strategic approach would mean fast tracking only the

most urgent pieces of legislation while the issues with high rights impacts would generally benefit from a slower more inclusive process of law reform and policy change. This would be likely to increase the level of community engagement and understanding and reduce the level of cynicism in the community. While this may slow down the process of passing legislation there is a real chance that the process of implementation would not be so difficult or problematic if legislation is well thought through and has a high level of community support.

VALS as the main provider of Indigenous legal services has a range of information and statistics which it provides to Government and other organisations in an attempt to improve particular laws, policies and systems. Our capacity to do this effectively is handicapped by the range of issues which arise and the lack of inter and intra departmental cohesion. Like other organisations who seek to advocate on behalf of disadvantaged communities it takes time to consult and there is a good deal of scepticism about the benefits of participating. Mainstream organisations often encounter difficulties responding to government consultation timelines and discussion papers. For disadvantaged communities and the organisations who advocate on their behalf the challenge is that much greater. This is why VALS is recommending a more systemic approach to improving the justice system.

Much of the Justice statement is about oiling squeaky wheels and catching up with increasing demands. That is not going to make a systemic difference. There needs to be a commitment to a rights protection and a rights enhancement approach and that commitment has to unfold into a series of doors and windows that the community can contribute to. If there are no new initiatives to increase the capacity of government departments and also courts to consider the needs of disadvantaged groups and receive input from communities about issues from time to time then the level of community connectedness to the justice system will be very low.

We also have yet to take into account the scale of unreported sexual harassment, discrimination, family violence and other crimes. The legal system would become a huge log jam if increasing numbers of these people used the legal system. We need to seriously consider Julian Gardener's comments at one of the justice vision stakeholders meetings when he said we need to get better at what we do but we also need to look at how to reduce the need for courts. Investing in a more informed and connected community on justice issues will be critical to our capacity to deal with the emerging and changing challenges to the justice system and social wellbeing in the future.

## **Attachment One**

### **VALS Recommendations to the Implementation review of RCIADIC Recommendations**

1. Reaffirm the importance of working in partnership with the Koorie Community and finding ways to do this more effectively.
2. Programs and policies to increase knowledge about and discussion of rights protection mechanisms and the role of human rights standards and other mechanisms to establish a fair and just system of resource distribution and dispute resolution. By

- Parliaments, Governments and Courts. (This could help debunk the myth that treating everybody the same is the only or the best means of achieving justice)
3. Law making, implementation and policy making has to be more inclusive and transparent to reduce the level of cynicism about the role of Government and Courts.
  4. The idea that new laws and longer sentences are effective means of achieving compliance needs to be recognised as one that has limited effectiveness.
  5. The importance of community understanding and engagement in problems and solutions associated with critical social and justice issues needs to be promoted.
  6. A more comprehensive Government commitment to reducing systemic disadvantage using a range of strategies. A subset of this policy would be promoting awareness that disadvantaged groups and minority group's views and interests should be respected and listened to.
  7. Any proposed new legislation should, prior to development, be subject to an analysis by people with Indigenous, non-Indigenous and academic perspectives of its impact on Koorie people. The analysis could encourage things such as alternatives to legislation to be considered, how consistent the proposed legislation was with other legislation, capacity of the legislation to cause confusion, ambiguity and cost, impact on other disadvantaged groups, impact on legal aid, and human rights impacts.
  8. Consultation with the community generally and Indigenous Australian communities in particular should be subject to a set of policy guidelines which recognise the value of consultation, the different forms it may take, time frame and structures which may be employed, the need for standards in relation to size and complexity of written material provided, time frames and need to provide feed back. There needs to be community input to these guidelines.
  9. Consultation and the public capacity to respond to Government needs and priorities should be recognised as a scarce resource. The Koorie community in particular has difficulty responding to a multitude of inquiries, law reform and policy development processes from all levels of Government and from many Government departments.

Attention should be given to key State Government Departments, non-Government organisations and semi Government Departments developing a forward plan to attempt to consolidate and integrate attempts to consult Indigenous Australians on an annual basis. This would help avoid duplication, poor levels of response to surveys and consultation and the complaint that research and consultation information doesn't go anywhere. Indigenous Australians must be employed to help do this and RAJACS and other groups could also assist. This could mean that several times a year there is a systematic consultation cycle involving visits to communities to gather information on highly contentious or highly significant policy, program or justice related issues. Other matters might be researched via phone calls using already existing networks and organisations.

10. Establish an annual or twice yearly Indigenous organisation ‘good news stories’ week to help counter the toxic and discriminatory approach that the media tends to have in relation to Indigenous organisations and people.
11. Instead of a ‘whole of government’ approach to RCIADIC implementation (which is utopian and difficult to establish), a more strategic approach might identify key issues areas and key stakeholders. Thus an arc or matrix of people identify possible responses to key issues and then strategies to implement them. This is a partial response to the criticism that the Justice plan was perceived to be top down approach. Regular meetings of the Aboriginal Justice Forum and Regional Aboriginal Justice Advisory Committee (RAJAC) meetings have helped counter that problem and an integrated community consultation strategy could help reduce that problem. The arc or matrix idea is premised on the assumption that top down or bottom up both take a long time and there are some issues which can be addressed by having a middle level problem solving approach rather than a top up or down approach.
12. Some key outcomes or indicators around specific issues could be established to provide a “road map” which was easily identified. In relation to sentencing this could take the form of an objective of reducing the total number of Indigenous prisoners and the overrepresentation rate. It could also involve an Education Strategy to build community support. This could Involve the Sentencing Council, Crime Prevention Victoria, Corrections Victoria, RAJAC, community organisations and the media.
13. Other areas of critical importance where headline indicators might assist continuing recognition of the issues are in relation to self determination, education, Indigenous people and police and relations with non-Indigenous community and child welfare.

## **Attachment Two**

### **Victorian Aboriginal Legal Service - Policy, Law Reform and Networking**

- In the last twelve months VALS:
- research about improving diversion for young people has resulted in approval for pilot projects in two areas
- submission to the Victorian Law Reform Commission about changes to the Bail Act has led to draft legislation which will enable circumstances of Indigenous people to be considered more fully
- continues to coordinate the quarterly Indigenous Women's Justice Forums
- obtained agreement in a protocol (about new Chroming laws) that police would notify VALS when they had to take a young person who had been chroming to a police station
- has negotiated a Memorandum of Understanding with the Equal Opportunity Commission
- has made a submission about proposed changes to regulation of Gas and Electricity utilities which will threaten the safety and wellbeing of disadvantaged consumers.
- has made a submission to the Law Reform Commission on Defences to Homicide
- has made a submission about a review to Child Protection policies
- continues to participate in Corrections Stakeholder meetings, steering Committee on Systemic racism research, Juvenile Justice Ministerial Round Table meetings, Department of Justice Aboriginal Justice Forum meetings, metropolitan and five Regional Aboriginal Justice Advisory Committees, Victoria Police Aboriginal Policy Reference Group meetings, Department of Human Services Consultation about Child Protection, Victoria Legal Aid Community Consultative Committee and the Federation of Community Legal Centres.