



## Victorian Aboriginal Legal Service Co-operative Ltd.

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21 May 2005

Ms Sue Finucane  
Senior Project Officer  
Family Violence Division  
Court Services  
Department of Justice  
Level 1, 436 Lonsdale St  
Melbourne 3000.

Dear Sue,

### **Re: Training Needs Analysis Report**

Thank you for the opportunity to provide comment on the Training Needs Analysis of the Family Violence Court Report. VALS takes this opportunity to provide feedback on related issues. It is totally inadequate that VALS staff received the Training Needs Analysis Report on Tuesday 17 May 2005 and have only been provided four days to respond to the Report. It is indicative of the approach to date of the inclusion of the Indigenous Australian community in the Family Violence Court Pilot. VALS has the following comments

#### **SUMMARY:**

- Diversity awareness should be incorporated throughout the training, rather than tacked on at the end.
- All Stakeholders need to be involved in clarifying what they understand family violence to be or not to be. We acknowledge that everyone will not agree, but there needs to be some working definition of family violence before further steps can be taken.
- Indigenous Australians need to be involved in informing and delivering the training. Indigenous Australians need to have ongoing involvement in the Family Violence Court Pilot in general.

#### **CROSS CULTURAL TRAINING**

VALS welcomes the acknowledgment at page 21 of the report (para 3.6.5) of the need of:

- cross-cultural skills about how cultural impacts Court room demeanor and help-seeking behaviour.
- Skills in supporting Indigenous Australian Applicants and Defendants.
- Referral process.

VALS notes that training around referrals for Indigenous Australians by non-Indigenous Australians should be informed by an awareness of the following issues:

- It is important that Indigenous Australians are given a choice between Indigenous Australian and non-Indigenous Australian service providers.
- Some Indigenous Australians prefer to access Indigenous Australian services as they find them more accessible than non-Indigenous Australian service providers.
- Some Indigenous Australians choose not to access Indigenous Australian organisations for reasons such as being in a relationship with a person who works at the organization (ie: privacy issues).
- It is important that the person making the referral is aware of the cultural sensitivity or appropriateness of a particular service provider.
- It is important to be able to evaluate the success of referrals (ie: follow up where appropriate).

### **Koorie Worker**

The training of the Koorie Worker at the Family Violence Court will need to take into account the following issues:

- How to deal with repercussions or backlash from the Indigenous Australian community for getting involved in personal matters involving family violence. Backlash from the community is often experienced by people in positions such as the Koorie Worker.
- Who to seek support and assistance from in performing the role of Koorie Worker and how to establish networks. It is a common experience of Koorie workers in mainstream organisations to feel isolated. They are not part of the mainstream organization, nor of the Indigenous Australian organization, but are a hybrid of the two.
- How best to represent both the interests of a victim of family violence and a perpetrator of family violence.

#### *Other issues:*

VALS is concerned that by making provision for only one Koorie Worker that conflict of interest issues will arise. The Koorie Worker will be in a conflict of interest as they will provide assistance to both victims and perpetrators of family violence. Perhaps there should be an Applicant and Defendant Koorie Worker as is the case for the mainstream Applicant and Defendant Worker. Alternatively, the Koorie Worker should only provide information to both the applicant and defendant to avoid conflict of interest.

### **Concerns about the Minutes of the meeting on 2 May 2005 in relation to cross cultural training**

#### *Summary of minutes*

VALS is concerned by the summary of the findings of the Indigenous Australian focus group on page 27 of the Report. Whilst the minutes of the meeting on 2 May 2005

record the need for cross cultural skills and Indigenous Australian specific training, the summary does not seem to reflect this. The summary contains no explicit mention of the need for cross cultural training for Family Violence Court staff and officials. Instead the summary concentrates on Indigenous Australian information sessions and intensive training for Indigenous Australian organisations. We acknowledge there is a place for informing Indigenous Australians about the Family Violence Court, but the emphasis should not only be on this. We repeat the argument outlined above in the section titled information to the community.

#### *Accuracy in identification of needs*

The comments made at the Indigenous Australian focus group meeting with Maria Dimopolous on 2 May 2005 is not effectively represented in the Report. The result of this is that the precise identification of needs is an essential starting point of the development of information and training strategy (an objective outlined at page 7, para 2.1 of the Report) is not achieved. VALS is concerned that the lack of consultation with the Indigenous Australian community put the consultants in a position where they could not precisely identify needs.

#### *Need 1: Involvement of Indigenous Australians in cross cultural training*

The minutes mention the need for cross cultural skills and Indigenous Australian specific training to ensure culturally appropriate responses. However, the minutes do not reflect the discussion that Indigenous Australians need to be directly involved in and provide such training. Indigenous Australians are in the best position to provide cross cultural training and should be engaged to achieve this.

It is important that the services of an accredited cultural awareness trainer are engaged. Cultural awareness trainers can provide a general overview of cultural issues, such as the relationship between Indigenous Australians and the judicial system in the context of family violence and in other contexts. Other people who work in the field of family violence, and are aware of its impact on Indigenous Australians, can then build upon the general cross cultural training with more specific information about family violence. VALS argues that this should be the format of training at least when focused training occurs (role specific training). However, we would argue that a cross cultural perspective helps *all* stakeholders understand some of the similarities and differences that women experience in dealing with family violence.

#### *Need for a Communication Strategy*

The minutes overlook the argument made at the meeting on 2 May 2005 for ongoing involvement of Indigenous Australians in training processes and the Family Violence Court in general. VALS refers to page 13 (para 3.2.3) where the needs for communication between various components of the system is discussed as well as developing a communication strategy. VALS endorses this recommendation and calls for Indigenous Australians to be linked into to this communication strategy. Indigenous

Australians need to be given an opportunity to contribute that the vision can truly be called a shared vision.

VALS is concerned by dialogue VALS has had with Myriad Consulting and the Department of Justice about future communication meetings. Firstly, Indigenous Australians have relayed concerns to Myriad Consulting and the Department of Justice that Indigenous Australians have been overlooked and not been consulted widely enough on the Family Violence Court, particularly in relation to training needs. In effect Indigenous Australians are saying 'listen to us and let us teach or train you about what you need to do to make the Family Violence Court work best for Indigenous Australians, we are in the best position to know how to do this'.

Secondly, Myriad Consulting and the Department of Justice have responded that meetings are planned with the Indigenous Australian community in the future to provide information about the Family Violence Court in an attempt to alleviate concerns. In effect Myriad Consulting and the Department of Justice are saying 'We want to teach or train you about the Family Violence Court rather than let you train us'.

*Other issues with the minutes:*

Other issues that were discussed at the meeting that needed to be mentioned or fleshed out in the Report were:

- Training of Court officials, staff and legal personnel (ie: duty lawyers) needs to include cultural awareness training. Duty lawyers need training around issues of confidentiality and the development of specialist skills.
- Need for Koorie interpreters.
- Issue of safety as at one Court it depends on what entrance you use as to whether you come into contact with security.
- Child friendliness of the Court.

**OTHER ISSUES ON THE TOPIC OF CROSS CULTURAL TRAINING:**

- There are training needs for non-Indigenous Australian staff in order that they feel comfortable asking if someone is of Aboriginal or Torres Strait Islander descent and the most sensitive way in which to do this.
- VALS notes that it is recorded at page 8 of the Report that Elizabeth Hoffman House was represented at the focus group for Indigenous Australians and this is not the case.

**Shared Vision/Model that includes Indigenous Australians rather than tacks them on the end**

VALS wishes to reinforce the comments made during the meeting on 2 May and represented in the minutes of the need for a comprehensive strategy: "such a strategy should not be seen as a short term response that is simply token, but something that is integrated into the entire process. Indigenous issues are not an afterthought but are key to ensuring justice".

A comprehensive strategy should involve Indigenous Australians from the beginning. The needs of Indigenous Australians should not be treated as something to be tacked on the side of mainstream core needs. It is the perspective of many Indigenous Australians that core competences or skills and key training needs include cross cultural skills. I refer to page three of the Report where the *most commonly cited perceptions of core competencies or skills* and *key training needs* are noted. VALS notes that the concepts of cross cultural skills and working with Indigenous victims and offenders are not mentioned under the two mentioned headings, but mentioned under the heading *additional training needs*. VALS argues that the fact that cross cultural skills etc were not considered the most commonly cited perceptions of core competences or skills or key training needs is reflective of the inadequate consultation process with Indigenous Australians or other culturally and linguistically diverse groups.

Diversity Awareness should not be a distinct training need (Training Need 4) but incorporated into the remaining four Training Needs (team building, dynamics of family violence, men's counseling and referrals).

#### **Diversity: Training around what constitutes family violence?**

The report indicates that there are concerns, and differing perceptions, about the definition of family violence which will be operating at the Family Violence Court. At page 28 the Report states that it is important to note that definitions provided by participants extend beyond that provided by Court and legal respondents. There are a number of other references to different perceptions by the community and Court in relation to what family violence is.

The first round of training that is aimed at specialist groups does not appear to be a useful step to address the lack of understanding of why people do not leave a family violence situation or the team building challenge when content issues around what family violence remains unaddressed. The training needs summary identifies two key themes one of process and organizational development and the other of content driven needs. VALS would argue that lack of agreement about what family violence is is linked to both of these themes. It is not clear how the five training needs listed on page 41 address this lack of agreement or the need to address content and process matters.

#### **Differing perspectives – how can we reach a shared vision?**

There is not only a need to address the tensions that exist between how the community and the law understand family violence and its dynamics and how it should be dealt with. There is also need to address tensions that exist amongst community on this topic, such as different understandings in different cultures so that a shared understanding of vision of the Family Violence Court can be achieved.

I refer to page 16 (para 3.3.1) where the meaning of family violence is discussed. VALS does not agree with the comment that a basic understanding of dynamics of family

violence could readily be assumed of court and legal personnel. VALS is aware of anecdotal evidence of racist attitudes of Court staff and officials.

### **Is the issue of the definition of family violence covered by Training Need 1: Team Building?**

This is a confusing issue. The Crimes Family Violence Act 1987 clearly extends the definition of family violence beyond physical violence. On the other hand, there is anecdotal evidence that Registrars and Magistrates do not necessarily accept the legitimacy of non physical family violence situations. Looking ahead the Victorian Law Reform Commission Consultation Paper on Intervention canvassed a codification of a wide range of non physical examples of family violence in revised legislation. Surely there needs to be some training around what family violence is and what it is not under legislation. A second step might be to identify how or what sort of advice would assist in deciding how to make the greyer cases clearer (ie: maybe family violence or maybe not).

### **What does seeking assistance via an Intervention Order process mean for people?**

One of the comments quoted in the Report is that some stakeholders cannot understand why women just do not leave family violence situations. If this is still a widespread concern then there needs to be some work not just in Training need 2, which relates to family violence dynamics, but in relation to team building and clarifying roles. If this is a widely held belief it will be a very fundamental obstacle to providing an effective response to Court users. Non Indigenous people who seek Intervention Orders may experience fear, embarrassment and uncertainty about whether an Intervention Order is the best way forward. Indigenous Australian people may experience these problems too but their experiences of dealing with police and Courts are likely to have been even less positive than non-Indigenous Australians experiences so the challenges the former face will often be greater.

Research in Queensland by Heather Nancarrow highlighted that Indigenous Australian women were less likely to want to use the criminal justice system to deal with family violence. The present pro-prosecution policy of the police and the Department of Human Services practice of telling people to take out an Intervention Order to prevent their child being taken away simply adds another layer of complexity and contradiction to what in many cases was a very problematic attitude to the use of Intervention Orders. In circumstances where a woman wants an Intervention Order and is not worried about the male going to jail the system can be streamlined to better achieve this. Where the woman does not want a criminal justice penalty outcome it is far more difficult for her to use the Intervention Order system. There needs to be a recognition in training modules that different women will have different expectations and be seeking different outcomes from Intervention Orders. Indigenous Australian women will often be more ambivalent about using Intervention Orders due to a concern to avoid deaths in custody and a concern to reconnect the offender to the family. This could mean that the first goal of the Court and stakeholders is to respect what an Indigenous Australian woman wants to do rather than

judge success by how many Intervention Orders are made or how many prosecutions are attempted.

### **Training needs in light of above**

The issues above about Indigenous Australian women being likely to have more reservations about using the Family Violence Court than non-Indigenous Australians could be used as a starting point and be included in Training need one: Team Building and Training Need Two Dynamics of Family Violence.

Indigenous Australian women will have some similar and some different views to each other and some issues in common and differences with other women. To compare and contrast the needs of diverse client groups throughout the other training needs modules would be likely to help stakeholders incorporate a more wholistic appreciation of the issues facing a range of women.

### **National Judicial Institute on Domestic Violence**

VALS endorses the National Judicial Institute on Domestic Violence (NJIDV) mission, goals, objectives and learning objectives, particularly those in relation to culture:

- Define culture and cultural competence, enhance respect for the dynamics of difference and identify ways in which culture is relevant in the Courtroom.
- Recognise cultural misinformation and avoid assumptions about a person or facts of a situation based on misinformation.
- Identify and evaluate potential biases that might influence Courtroom demeanor or interpretation of facts and making of decisions in domestic violence cases.

VALS queries to extent to which NJIDV will be integrated in the training for the Family Violence Court. This issue is not clear from the Report as many of the things mentioned in the NJIDV are only mentioned in the context of the NJIDV and not intergrated throughout the rest of the report (ie: peer education etc). VALS argues that the above aspects of the NJIDV and other aspects would be useful to intergrate into the training process.

## **OTHER RELATED ISSUES**

### **Resource Implications**

I refer to page 12 of the Report that discusses resource implications in the context of increased demand on police prosecutors. VALS wishes to raise the impact of the Court in terms of increased demand on community service providers who in many cases are struggling to meet demand as it is.

## **Evaluation**

There appears to be some themes that have run throughout the Report that are not apparent in the section that discusses evaluation. Perhaps an additional indicator that can be used to assess the success of the pilot is:

- Increased notion in the community that family violence is unacceptable. Perhaps the last criteria (increased community support for the concept of the Court) could be fleshed out in this vein.
- Protection of Children.
- Accessibility of the Family Violence Court, in particular to disadvantaged groups.
- There are training issues around safety not just for security guards but for all Court staff and officials.

Thank you for the opportunity to provide comment on the Training Needs Analysis of the Family Violence Court and related issues. If you have any queries please contact Greta Jubb (Research Officer)

Yours Sincerely

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

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