



Victorian Aboriginal Legal Service Co-operative Ltd.

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Ms Ruth Andrew
Assistant Director
Policy and Legislation
Courts and Tribunals Unit
Level 1, 436 Lonsdale Street
Melbourne Victoria 3000

Dear Ms Andrew,

Re: Draft Coroners Bill 2008

Thank you for the opportunity to provide comment on the Coroners Bill 2008.

VALS acknowledges that there are positive aspects to the Bill. However, VALS has some concerns with the Bill. The concerns relates to failure to address points raised in VALS' previous submissions in relation to the reform of the Coroners Act 1985. VALS now wishes to emphasise:

- Centrality of the Royal Commission into Aboriginal Deaths in Custody 1991 (RCIADIC);
- Prevention;
- Cultural appropriateness;

VALS' general concern in relation to the above is that the proposed Bill does not go beyond the status quo of current coronial practice. VALS argues that there is need to go further in order to achieve progressive change of the coronial system. On VALS reading, the Bill tends to address discrepancies between current practice and an out of date Act rather than go beyond this and change the coronial system as it currently exists.

For instance, the Bill introduces the Coroners Court which serves to bring the Coroner's Act 1985 up to date with practice, rather than introduce progressive change. Whilst it is important to have legislation and practice which correlate, it is important to seize opportunities to reform legislation that go beyond such correlation. This is especially the

VALS Letter to the Courts and Tribunals Unit in response to the Coroners Bill 2008 – sent October 2008

case as flaws in the status quo of the coronial system have already appeared and it will be a substantial time before the Act is reviewed again.

Centrality of the Royal Commission into Aboriginal Deaths in Custody

VALS notes with a sense of positivity that the Victorian Parliament Law Reform Committee Discussion Paper and Report and Victorian Government response to the Report gave regard to the RCIADIC to varying degrees. For instance, the Discussion Paper and Report included as an appendix, the RCIADIC Recommendations relevant to the coronial system.

The Paper discussed the RCIADIC in the body of the Report and gave it the centrality it deserves through asking questions such as...“should the Act specifically require Coroners to have regard to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody relating to the investigation of deaths in custody?”

However, VALS is concerned that the Bill does not give enough consideration to the RCIADIC. For instance, the Bill does not adopt the broad definition of a death in custody as stated in Recommendation 6. Specifically, the definition in section 3 of person placed in care or custody does is not inclusive of the scenario included in RCIADIC where;

- b. .. death is caused or contributed to by ... lack of proper care whilst in such custody or detention.;* Section ... only includes
- c. .. deathof that person escaping or attempting to escape from prison custody or police custody or juvenile detention. (1: 170).*

VALS is equally concerned that the RCIADIC Recommendations, relating to prevention, that VALS extensively discussed in its submissions are not addressed.

Prevention

The entire Bill needs to reflect the new purpose of prevention and VALS is pleased with the amended purpose. It is not enough to simply mention prevention in the purpose of the Bill and preamble and make minimal provision for prevention in the remainder of the Bill. VALS questions whether the Bill goes beyond the status quo to the extent required to make a real difference.

Section 72 of the Bill relates to reporting of recommendations. The Bill only states that the Coroner may report to others (ie: Attorney-General or Public Statutory Authority). VALS argues that the Coroner ‘must’ make such reports. VALS argues that the recipient of the Report should also report on the implementation status of the recommendation. It is only then the purpose of prevention can be achieved. The means to meet the purpose of prevention need to be put in place. The purpose cannot be implemented without such means.

VALS supports the Coronial Council. It is positive that it is to provide advice to the Attorney-General and can do this on its own motion (s110). It is also positive that and prevention and cultural diversity are potential subject matters of such advice. However, the content of the Annual Report does not go far enough as it only relates to operations of the Council (s113). It should go as far as Report Recommendation 85: *That the Act be amended to require the State Coroner to include in their annual report to Parliament i) a summary of all investigations in which recommendations were made, and ii) a summary of responses to the recommendations made, including a list of those still awaiting implementation. That this be tabled in Parliament and published on the State Coroner's Office website.*

VALS is concerned that the status quo on publication of Reports has been retained (s72 of the Bill and s21 of the Act) in relation to:

- (1) *A coroner may report to the Attorney-General on a death or fire which the coroner has investigated.*
- (2) *A coroner may make recommendations to any Minister, public statutory authority or entity on any matter connected with a death or fire which the coroner has investigated, including recommendations relating to public health and safety or the administration of justice.*

The wording has remained the same in the Bill and Act. VALS would have liked the Bill to have gone further and required that those who receive the Report also report on the implementation status of the recommendations. VALS is concerned that preventative role of the Coroner is undermined. Such reporting is a concept found in the RCIADIC (Recommendations 14 – 17) and the Parliament Law Reform Committee Report (Recommendation 85), the findings of which should be reflected in the Bill.

VALS is not satisfied with the status quo and argues that the current coronial system is not effective in preventing death because the potential of the coronial process to prevent avoidable deaths is not fully realised. VALS had hoped that the Bill would do this.

Cultural Appropriateness

VALS is concerned that Indigenous Australian's understanding of kinship networks is not reflected in the Bill. Recommendations 91 and 93 of the Parliament Law Reform Committee Report have not been adopted. These recommendations relate to an inclusive definition of senior next of kin: a person who had, in accordance with the customs or traditions of the community of which the person was part, responsibility for, or an interest in, the welfare of the person who has died. This has implications in terms of an objection to autopsy (s27).

The Coroners Act (Northern Territory) 2006 defines "senior next of kin" in section 3 as

- a) where a person was, immediately before death, married – the person's spouse;
- (b) where the person was not, immediately before death, married or, if married, the spouse is not available – the person's son or daughter of or over 18 years;
- (c) where a spouse, son or daughter is not available – the person's parent;
- (d) where a spouse, son, daughter or parent is not available – the person's brother or sister of or over 18 years;
- (e) where a person is an Aborigine – a person who, according to the customs and tradition of the community or group to which the person belongs, is an appropriate person; or
- (f) where paragraphs (a) to (e) inclusive do not apply or a person who would be the senior next of kin under those paragraphs is not available – a person who immediately before the death of the deceased person had a relationship with the deceased person that, in the opinion of the coroner, is sufficient for the purpose of being the senior next of kin;

VALS is at a loss to see why Victoria does not have a similar provision which contains a hierarchy of relationship.

VALS is concerned that the Bill does not define family member.

VALS is concerned that the Bill reflects a preference to take an easy option and exclude Aboriginal concepts of family or next of kin. VALS is disappointed that VALS has not been approached in relation to a protocol about autopsies in line with RCIADIC recommendations 38 and 39.

If you have any queries please contact Greta Clarke, Executive Officer – Research Planning and Development Unit on 9419 3888 or gclarke@vals.org.au.

Yours Sincerely

Victorian Aboriginal Legal Service Co-operative Limited

Frank E. Guivarra
Chief Executive Officer

