



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 presentation to the Victorian Aboriginal Justice Forum October 2004

“Practical reconciliation does not attack the systemic and institutionalized aspects of impediments to socio-economic development.” Larissa Behrent Achieving Social Justice (pg 11,2003)

This morning I want to very briefly:

- Update you on the Commonwealth Government’s plans to tender Aboriginal and Torres Strait Islander legal Services
- Present some problems that VALS sees about achieving a better justice system and some possible solutions
- Mention the submission we have made to the State Government in relation to the Attorney General’s Justice Statement
- and mention some coming events and issues

The Tender

The Commonwealth government released a draft tender in March 2004. In July Ruddock announced that there would be changes to the proposed tender and that Victoria and WA would be tendered first. The tender will be released in November. The decision is supposed to be known in March 2005 and will take effect in July 2005.

If we win the tender we will still have lost.

We will have lost the funding to provide education, prevention, test cases, law reform proposals and responses, policy analysis and networking.

We will have lost resources because we will have to means test everyone and we will have additional time spent on the tender documentation. We don’t know yet what other issues and changes will be imposed via the tender. We don’t know the impact of a new funding formula and the end of fringe benefits supplementation.

We have lobbied actively on this issue and we hope that when the tender is released some of the more damaging proposals in the draft tender will be dropped from the final tender. Nevertheless the issues we have raised above mean the tendering process will be another

definitive step backwards by the Commonwealth Government in service provision for Indigenous Australians.

Achieving a better justice system

The State Government has introduced a Victorian Aboriginal Justice Agreement, is about to consider funding parts of the Attorney General's Justice Statement, has funded a detailed review of the Implementation of the Royal Commission recommendations and has funded a study into systemic racism. So what is the problem?

If we look at imprisonment the ten years following the Royal Commission were characterised by media campaigns for longer sentences, responded to by governments and the judiciary; less discretion for magistrates and less commitment to rehabilitation and prevention also occurred. The Victorian Aboriginal justice Agreement was introduced a decade after the Royal Commission by which time the number of people in prison had sky rocketed. It is now 50-60% higher than ten years ago. Not only is the over representation rate almost unchanged the total number of people has increased dramatically for Indigenous and non Indigenous people.

Recently., in response to media reports about lenient sentencing the Attorney announced a review of lenient sentencing. I am not convinced that there is lenient sentencing but that is not the point. The point is that every time the government increases sentences it impacts disproportionately on Indigenous Australians and their families and communities. So while there is positive movement via the Aboriginal Justice Agreement there is movement backwards in relation to Indigenous people on lots of other fronts.

We have had ten years of going backwards prior to the Aboriginal Justice Agreement and the media and pro prison groups are continuing to push for harsher sentencing and the Government are responding to that. Big picture economic and political agendas push consideration of Indigenous issues off to the side of the agenda.

There are a couple of ideas that VALS has put to Government about trying to strike a better balance. One is the idea of government making a commitment to consider Indigenous issues at the start of policy and legislation proposals not half way through or at the end or not at all. We recommended this principle for inclusion in the proposed change to the Constitution which proposed recognition of Aboriginal people as the original custodians of the land. We recommended this in our submission to the Review of implementation of the Royal Commission recommendations. 'Consider Koorie issues first' could be a whole of government policy development commitment. It could involve some sort of routine risk assessment and some form of assessment of opportunities for community strengthening with all major policies.

Further down the line there could be best practice guidelines for Indigenous inclusive legislation and policy development.

A second idea is to adopt the easiest model of better rights protection, the non legislative declaration approach. The Attorney General's Justice Statement describes a number of different rights models. VALS believes that the Justice Statement focus on community engagement is vitally important and needs to begin as soon as possible. Rather than have debate about what model of rights protection we should have (which would be a necessarily complicated and possibly vitriolic debate) the Government could lift the standard of engagement and rights protection almost immediately.

It could develop its own code of conduct re the content of legislation (eg. it will be in line with UN Human rights declarations and covenants) and establish a transparent process of community consultation and input for legislation and policy changes with significant human rights impact. This would at the very least slow down the capacity of governments to rush through legislation which threatens Human Rights. At best it would demonstrate how better rights protection works in practice and build support for more effective measures.

**“...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...

There are certainly other strategies for improving the justice and fairness of the present system. We need to be talking about what these are and how we move to a better system.

Submission to the State Government in relation to the Attorney General's Justice Statement.

The Attorney General's Justice Statement is clearly an attempt to respond to change and to produce more equitable outcomes. The Justice Statement provides an opportunity to achieve systemic change not just apply oil to the squeaky wheels. VALS argues that too little is being done, too late and with too little community ownership: A more strategic and inclusive approach to justice issues is fundamental to building support for, understanding of and interest in justice issues. The importance of community attitudes and the need to engage or perhaps reconnect the community with the justice system is vital to assist Indigenous people, other disadvantaged groups and society in general.

VALS believes a commitment to a non legislative declaration of rights and obligations and the policies associated with that would be a valuable first step to creating a healthier culture of rights protection and rights enhancement.

VALS has sought funding to enable it to contribute to systemic improvement to the justice system via contributing to Government proposals and by suggesting ways to improve policy and legislation and practice.

VALS is the only Indigenous state-wide organisation with some capacity to consider a broad range of law and policy issues. Due to Commonwealth Government policy changes VALS will no longer be funded to provide policy, prevention or law reform activity as of June 30th, 2005.

VALS is seeking funding to research and promote systemic advocacy. VALS is seeking assistance to continue to identify issues of importance and respond to law reform and policy initiatives. A list of some of the initiatives and submissions made in the last year is included at the end of this report.

Should the Government decide to initiate the introduction of a non legislative declaration of rights and/or develop a more strategic and systemic approach to community consultation on key areas of legislation VALS would welcome the opportunity to contribute to these initiatives.

Investment of funds sought \$75,640

Responding to the Introduction of Koorie Courts: Regional legal advocacy upgrade (Including Video conferencing capacity)

The introduction of Koorie Courts has improved the process, level of client understanding, connection to other services and appropriateness of sentencing orders and conditions. However the Koorie court process takes considerably longer than the equivalent Magistrate's Court hearing would take. Although there has been a small saving in time spent in hearings in the magistrate's court this has been total over shadowed by the additional time spent in the Koorie Court. The expansion of the Koorie Court program to three courts now has placed additional time pressures on VALS legal and para legal staff.

The rolling out of three more Koorie courts including a Koorie Children's Court will worsen this problem.

The State Parliamentary Committee Rural Review of Legal Services identified a need for more resources in the country as well as the need for increased use of video conferencing. The addition of an additional lawyer to cover rural Koorie courts and provide additional face to face advice and pre court contact would improve the quality of service available. In addition the introduction of video conferencing facilities would increase the capacity of

VALS staff in the Melbourne office to be more accessible to regional clients for civil, criminal or family matters.

It is important that the additional funds which have been made available to the court to ensure that implementation of Koorie Courts is effective needs to be supplemented by funds to ensure that the additional time required to provide legal advice and representation is also provided.

Investment of funds sought: \$82,220

One off capital re teleconferencing facilities \$45,000

Civil law access project

Civil law has become virtually unavailable through Legal Aid Offices or grants of Legal Aid. Community legal centres provide a range of civil law advice and education and policy but have limited scope to provide representation. The Civil Justice Strategy and Senate Inquiries into Legal Aid have highlighted a shortage of legal aid resources in the area of civil law. For low income people civil law is often a critical means to defend their rights, protect their entitlements and preserve their level of family income. The economic impact on a low income family of a Centrelink mistake, a warranty dispute on a second hand car or an unfair dismissal matter can cause enormous economic stress. This can compound other stresses and affect the capacity to pay rent or fines which again create family stress and disruption. The failure by Governments to provide adequate funding and to develop effective policies for mainstream providers in the areas of civil law undermines the capacity of all Australians to seek civil remedies. The lack of an accessible service civil law service for low income people and Indigenous people in particular is even more reprehensible as the economic impact of civil law problems on these groups will be disproportionately greater.

The civil law access project would enable better community access in relation to civil law matters via support and participation in the collaborative regional community legal education project. The project would also facilitate documentation of access issues and advocate for policy and procedure changes as appropriate and improve use of pro bono resources.

We have sought funds to improve our capacity to provide service at the Koorie Court and in the regional areas generally. Part of this proposal is the purchase of Video conferencing equipment to improve contact in regional areas prior to court hearings.

The third proposal is to enable us to do civil law advice representation, support and community legal education.

Coming Events and Issues

With the remaining Indigenous Women's Justice Forum money we are talking to other services about having a forum about family violence issues and directions. Hopefully this will occur in February 2005.

We are liaising with other Koorie organisations about the problem of Indigenous people being pressured to get an Intervention order to avoid Child protection taking action. We are hoping to engage DHS child protection to consider other more constructive options.

We are seeking changes to the selection criteria for key police management positions.

We are seeking a commitment of funds for Koorie specific services connected to the new Family Violence Courts.

We have supported the Indigenous Family Violence Prevention unit receiving new funds rather than establishing a new stand alone service.

From Victorian Aboriginal Legal Service Cooperative Limited
September 2004

Victorian Aboriginal Legal Service - Policy, Law Reform and Networking

- In the last six 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.