INTERVENTION IN SEXUAL ASSAULT AND DOMESTIC VIOLENCE EXPERIENCED BY INDIGENOUS AUSTRALIANS.

Presented at Home Truths Conference: Stop Sexual Assault and Domestic Violence - A National Challenge (16 September 2004).

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In this presentation we will address the legal response of the justice system to sexual assault and domestic violence experienced by Indigenous Australians. We will also address alternative responses to sexual assault and domestic violence experienced by Indigenous Australians. Throughout the presentation we will take family violence to mean sexual assault and domestic violence.

VALS argues that:

- The legal justice system, meaning police and Court processes, is in many respects failing Indigenous Australians experiencing family violence.
- Indigenous Australian’s experience of family violence has distinct characteristics.
- A trend towards a pro-prosecution approach to family violence is concerning for Indigenous Australians. We want to make it clear that VALS is not advocating the de-criminalisation of family violence. VALS criticism of the pro-prosecution approach is that it means that the legal system is dominant over alternative responses to family violence that are appropriate because they involve the Indigenous community.
- Space should be created for intervention in family violence that:
  - Is based on an Indigenous community led approach or involves the Indigenous community.
  - Is holistic in approach which means dealing with underlying issues.
  - Provides alternatives to the legal justice system that operate either in a stand alone capacity to the legal justice system, work in conjunction with the legal justice system, or both.

CONTEXT OF FAMILY VIOLENCE WITHIN THE INDIGENOUS COMMUNITY

VALS acknowledges that there are Indigenous Australians who consider family violence to be no different to other forms of serious offences, and that treatment of family violence as something different is too lenient a stance. Other Indigenous Australians, and VALS
would argue the majority, consider family violence to be distinct offences. They 
acknowledge that family violence are serious offences, but in light of the context of 
family violence, a pure legal justice response approach is not the only answer. Indigenous 
Australians are calling for the creation of space for a non-legal response to family 
violence in the form of an Indigenous community led approach.

VALS supports an Indigenous community led approach to family violence in 
acknowledgment of the fact that family violence experienced by the Indigenous 
community is distinct to that experienced by the non-Indigenous community. 
Intervention in family violence experienced should consider the context and involve 
Indigenous Australians in the interests of cultural sensitivity.

In comparison to the non-Indigenous population Indigenous Australians are 8 times more 
likely to be a victim of family violence. The proportion of calls to Kids Help Line 
relating to child abuse, including neglect, emotional, physical and sexual abuse, is 54% 
greater for Indigenous callers than non Indigenous callers. In reciting these statistics I 
acknowledge that many instances of family violence go unreported.

Indigenous Australian family violence is broader than spousal violence as it encompasses 
behaviours that occur within families, extended families, intimate relationships, kinship 
networks and communities. The forms of abuse can be physical, emotional, sexual, 
social, spiritual, cultural, psychological and economic. Family violence can involve men, 
women, children, Elders, youth and same sex couples. Indigenous Australians consider 
family violence to be matters that impact the entire community, rather than an individual 
or single family.

**Underlying causes of family violence within the Indigenous Community**

The underlying causes of family violence within the Indigenous Australian community 
are broader than gender inequality and are unique to Indigenous Australians. 
Indigenous Australians stress that family violence within the Indigenous community is 
**not** part of Indigenous culture.

**Consequences of family violence within the Indigenous Community**

There is a causal nexus between family violence in the Indigenous community and 
colonization and institutionalisation of Indigenous Australians, such as loss of land, 
culture, family and social structures. For the Australian population in general factors 
such as low household income and unemployment contribute to family violence. This is 
particularly applicable to disadvantaged groups in society, such as Indigenous 
Australians.

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Family violence is not only a symptom of dysfunction within the Indigenous community, but a cause of greater dysfunction. The consequences of family violence within the Indigenous community are consist of the following things to name a few:

- Over-representation of Indigenous children within the Child Protection System. The number of substantiations of notifications within the Child Protection System, involving parental domestic violence within the Indigenous community, increased by 52.7% between 1998-9 and 2002-2003.3
- Over-representation of Indigenous Australians within the criminal justice system as offenders of family violence who have a background of victimisation. In Victoria Indigenous Australians are twelve times more likely to be incarcerated than non-Indigenous Australians.4

**Appropriate Response to Family violence in Light of the Context of Family violence within the Indigenous Community.**

In light of the unique characteristics of family violence within the Indigenous community, VALS agrees with researcher Anna Stewart that “[a] ‘one size fits all’ criminal justice response is an inappropriate response to domestic violence because of the variability in the expectations of victims and the different types of perpetrators”.5 An approach that responds to the calls of the Indigenous community for a response to family violence that does not break up families and meets safety and healing needs is appropriate.

It should not be assumed that non-Indigenous discourses, such as some streams of feminist thought that emphasise the criminalization and proactive prosecution of family violence above all else, reflect the concerns of Indigenous Australians. According to Ms Winsome Matthews, from the National Network of Indigenous Women’s Legal Services “...as Aboriginal women, we have not had our fulfilled right to be out talking about Aboriginal women’s business and how we want it to be operative in this country. We did not have that advantage, like the feminist movement did, in this country.”6

**What VALS is advocating**

In addressing the context of family violence within the Indigenous community and questioning the applicability of a pro-prosecution approach, VALS is not making excuses for family violence. Nor is VALS removing individual responsibility for offences or advocating the de-criminalisation of family violence.

VALS is advocating that there is a need to strike a balance between criminalising family violence, minimising the use of the criminal justice system, maximising the use of Indigenous community led approaches, diversion, prevention and community education. VALS argues that criminalising family violence should not become the default setting or

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6 Joint Committee of Public Accounts and Audit Public Hearing Transcript (13 June 2004).
dominant response due to a failure to develop and resource other types of intervention. In addressing the cultural factors that contribute to family violence VALS is attempting to enrich the understanding of family violence experienced within the Indigenous community.

Service Provision

I will explain the role of the VALS in dealing with family violence and list other service providers Indigenous Australians can access and Indigenous specific initiatives in Victoria. However, the list is by no means exhaustive. There are many gaps in service provision to Indigenous Australians.

Victorian Aboriginal Legal Service

- Is a Statewide organization with an Indigenous Board of Management (established 1972).
- 26% of VALS criminal law clients are female and 74% are male. Over 50% of VALS civil and family law clients are female. 37% of solicitor time is spent on matters involving female clients. Conflict of interest sometimes prevents VALS acting for women, who often approach VALS for assistance subsequent to a male. However, VALS always refers such clients to other service providers.
- In metropolitan areas provides advice in relation to applications for Intervention Orders, but does not attend Court with clients for this purpose. In regional areas Client Service Officers provide Court room support to clients applying for Intervention Orders.
- Completes case work, involving Court representation, in criminal law matters. It is important that legal representation is provided to those at risk of being detained in custody to ensure that further over-representation of Indigenous Australians within the prison system is avoided. It is important that Indigenous Australians have access to legal services, as if legal representation is denied there is the danger that justice is also denied.
- Offers civil law assistance with Victims of Crime applications.
- Undertakes research, law reform and Community Legal Education

Victorian Aboriginal Family Violence Prevention and Legal Service

- Provides advice, referral or assistance
- Provides case work assistance in family violence matters and related legal issues including family law and victims claims. Assists in Court with applications/extensions/variations and breaches of Intervention Orders.
- Law reform and training
- Counseling support service
Elizabeth Hoffman House

The only Indigenous specific emergency accommodation centre for Indigenous women.

Victorian Aboriginal Health Organisation

Serves the Indigenous community by providing medical assistance and counseling.

Service providers funded by the Indigenous Family Violence Strategy Community Initiatives Fund

Some Indigenous organisations receive funding via the Indigenous Family Violence Strategy Community Initiatives Fund to develop localized responses to family violence. One example is Enmaraleek Association which provides an activity-based diversionary, support and education program drawing on the positive influences of sport.


Expresses a commitment to tackling family violence and providing support for victims and this is done with the assistance of Regional Advisory Justice Action Committees.

Aboriginal Co-operatives

Aboriginal Co-operatives serve local Indigenous communities by providing Men’s and Women’s Groups that address healing issues. These groups provide a forum for discussing issues or visit families to offer support.

Victorian Centres Against Sexual Assault

There is no Indigenous specific Sexual Assault Centre. The offices of the Centre Against Sexual Assault work in conjunction with hospitals that employ Koorie workers. However, most CASA offices do not have a Koorie worker of their own and are crying out for them.

Threats to service delivery

The future of service provision for Indigenous Australians requiring family violence assistance is under threat. The Government plans to tender out legal services for Indigenous Australians in Victoria by July 2005. However, much uncertainty surrounds the tender process and VALS can only await the release of the Final Tender Document in November 2004.

VALS welcomes the possibility of providing perhaps greater legal assistance to Indigenous Australians experiencing family violence as a result of the tender process. However, VALS has the following concerns:
As the tender is open to non-Indigenous organisations there is the danger that the services they provide will be culturally insensitive.

Mainstreaming of services for Indigenous Australians has a history of failure.

The Government failed to consult with the Indigenous community on the tender and it is wrong to assume that all Indigenous Australians desire to use the police/Court system to address family violence for reasons that will be explained shortly.

The Government has ignored alternative models of dealing with family violence as the tender does not include Community Legal Education, research, law reform and policy within the list of core services.

The trend to downplay the importance of education has also impacted the Aboriginal Family Violence Prevention and Legal Service as the position of Education Officer ceased on 13 July 2004.

VALS is concerned by threats of closure to Elizabeth Hoffman House due to lack of State Government funding. Funding is a huge issue for services specific to Indigenous Australians.

Negative effect of the Justice System on Indigenous Australians experiencing family violence

Police statistical data for the period 1 July 2002 to 30 June 2004 indicates that only 14.2% of Indigenous victims who reported family violence sought an Intervention Order. The figures can be explained by the fact that most Indigenous Australians feel uncomfortable dealing with police and Courts. Historically, police have failed to attend calls for assistance in instances of family violence. Culturally, the non-Indigenous legal system is alienating to Indigenous Australians.

VALS argues there are negative and positive aspects of the Police Codes of Practice for Responding to Family Violence. Positively, the Codes cater for 'special considerations' when dealing with people from diverse backgrounds including Indigenous communities. Also, the Code means that the police must investigate every call they receive in regards to family violence and at least make a referral to a relevant service.

However, VALS is aware that the Codes could have a detrimental effect on the Indigenous community in so far as they reflect a pro-prosecution approach. The pro-prosecution approach:

- Takes power out of the hands of victims and forces them into the criminal justice system. VALS will argue in response to the Victorian Law Reform Commission Inquiry into the Crimes (Family Violence) Act 1989 that the Intervention Order system is inappropriate for Indigenous Australians because it:

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• Does not take the time to inquire into what the most appropriate Order is in the context of family violence in the Indigenous community.
• Is inaccessible to those with low literacy skills as there is an assumption that legal representation is not a necessity in applying for an Intervention Order.
• Is complex and some Indigenous Australians do not understand it.
• Emphasises punishment of offences over addressing underlying issues.

- It is inappropriate to force Indigenous Australians to utilize the Intervention Order System when there is little Indigenous specific support in the system.
- Is it inappropriate to force Indigenous Australians to utilize the Intervention Order System when many choose not to become involved in it when given the choice for fear of:
  - Imprisonment of the offender which includes a fear of deaths in custody and fear of police violence towards Indigenous Australians.
  - Child Protection becoming involved.
  - Retribution from the perpetrator and the Indigenous community.
  - Ineffectiveness of the Intervention Order System

• Ignores arguments:
  - That Indigenous Australians prefer a ‘healing’ model which does not break up the family, but simply stops violence.\(^{10}\)
  - By Hoyle in 1998 that in a third of cases women wanted immediate protection, in a third of cases women wanted the situation defused and the offender calmed down without recourse to criminal law, and in less than a third the woman wanted the man arrested.
  - By Arie Frieberg that pro-prosecution is not effective as sentencing offenders does not deter them from offending.
  - There is a place for informal responses to family violence, particularly Indigenous community led approaches

• Will perpetuate the over-representation of Indigenous Australians in the justice system.
• Will deter Indigenous Australians from calling police which means that more people will be placed in danger without assistance.

SOME SUGGESTED MODELS OF INTERVENTION IN FAMILY VIOLENCE IN THE INDIGENOUS COMMUNITY

VALS acknowledges that there will be people who struggle with the notion of questioning the applicability of the criminal justice system to addressing family violence. However, we want to make clear that VALS is not advocating the de-criminalisation of family violence. In fact, VALS conducted a survey in 1999, involving thirteen Indigenous women, who supported the treatment of family violence as a criminal matter. They said that in spite of the difficulties encountered using the Intervention Order System, they would recommend that people known to them use it. However, the women

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\(^{10}\) Ibid, Executive Summary.
were aware of a need for protocols for appropriate intervention in family violence by external agencies that are outside the justice system. VALS acknowledges the survey is limited because of difficulties in getting women to talk about personal issues.

VALS argues for the creation of space for approaches to intervention in family violence experienced by the Indigenous community that:
- Are Indigenous community led, rather than led by the legal non-Indigenous justice system.
- Involves the Indigenous community to back up the legal justice system and in turn improve Indigenous Australian’s experience of the legal justice system.

**Indigenous Community Led Approaches**

Indigenous community led approaches are appropriate because Indigenous Australians have first hand knowledge of issues within their community. Indigenous Australians know best how to deal with family violence as they have always provided an informal response to it. Indigenous Australians consider holistic approaches, that address the entirety of an individual’s problems, most effective. Community led approaches have the potential to work in a stand alone capacity to the non-Indigenous justice system. Community led approaches will equip Indigenous Australians with multiple options to deal with family violence and mean they can access help without the necessity of going through the Courts.

**Examples of community led approaches**

**Prevention and Education**

Indigenous community led measures that aim to prevent family violence and educate Indigenous Australians about appropriate responses to family violence.

**Indigenous Community Centre**

VALS calls for the establishment of localized community controlled centres that deal specifically with justice and healing issues. The centre will aim to balance the needs of people affected by family violence, including victim, offender and Indigenous community.

**Indigenous Community Mediation Centre**

VALS argues that mediation may be appropriate in certain circumstances. VALS acknowledges the argument against mediation in the context of family violence that

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11 Ibid p35.
power imbalances exist. However, VALS argues that there should not be a presumption against mediation when family violence exists as to do so unnecessarily narrows options. Mediation is arguably less foreign to Aboriginal culture than the Court system.\textsuperscript{13}

Family Decision Making

VALS argues that a Family Decision Making model, could be applied to family violence. It can involve members of a family and community such as Elders, a convener and Indigenous worker.

Improvement of Services

VALS argues the provision of services addressing family violence at pre-crisis, crisis and post crisis point needs to be improved.

Indigenous Community Involvement in Backing up the Justice System.

Community involvement in initiatives that work to back up and support the non-Indigenous justice system are appropriate. If Indigenous Australians receive support during the legal process then it is likely that their experience of the justice system will improve.

Examples of Indigenous Community Involvement in Backing up the Justice System.

Advocacy Program

VALS supports the establishment of an Advocacy Program, that will fill the gap in support and assistance to Indigenous Australians inside and outside of the Court room. The Advocacy Program could compliment the work of the AFVPLS and be volunteer based perhaps.\textsuperscript{14}

Indigenous Crisis Unit

VALS supports the establishment of Indigenous Australian Support Personnel who attend calls for assistance, by a victim, on behalf of a victim, Victoria Police or Child Protection Services. Three Indigenous Support Personnel could attend calls for assistance with police and other agencies and provide an immediate outreach crisis management response to the victim, perpetrator and children.

\textsuperscript{13} Alternative Dispute Resolution Branch ‘Nadrac Discussion Paper on Issues Of Fairness And Justice in Alternative Dispute Resolution’ \url{http://www.clrc.gov.au/adr/qllddeptjustice.html}.

\textsuperscript{14} Government of Victoria, ‘Key Directions in Women’s Safety’ December 2001, p36.
Increase Flexibility of Conditions on Intervention Orders

VALS argues that the Court system should be more flexible to meet the specific needs of the Indigenous community. For instance, the Court could impose a condition on an Intervention Order that the offender not approach victim in a drunken state.

Koori Court (Family Violence and Sexual Assault)

VALS raises the issue of expanding the jurisdiction of the Koori Court to include family violence as it was envisaged by the founders of the Koori Court that as part of the evaluation of the Pilot, which is due, that consideration would be given to the jurisdiction of the Koori Court.

Family Violence Court

- VALS welcomes the establishment of the Family Violence Court Division of the Magistrates’ Court in 2005. VALS is concerned that the absence of Indigenous specific counseling services to support the Behaviour Change Counseling Program, which the Family Violence Court can mandate people attend, will mean Indigenous offenders are compelled to access culturally inappropriate mainstream counseling services.

Service Provision

VALS argues for the creation of more Indigenous specific family violence services and integration of them into the justice system. In the VALS 1999 study, it was found that offenders and victims felt that the experience of the justice system would have been different if they had more access to services and support. The improvement of services has the potential to work both in a stand alone capacity to the legal justice system, and in conjunction with the legal justice system.

Time Out House

A ‘Time Out House’ is an example of a service that can work in a stand alone capacity to the justice system or in conjunction with it. VALS supports the establishment of ‘Time Out’ residential houses for violent and sexual offenders. Offenders can access the house voluntarily or be taken there by police without recourse to time in police custody or prosecution. The house would provide added support to Indigenous Australians subject to an Intervention Order, as it will meet their needs in terms of housing and access to support services.

CONCLUSION

The legal response of the justice system to family violence and sexual assault experienced by the Indigenous community is in many respects failing the Indigenous community. VALS does not advocate the decriminalization of family violence.
However, VALS does support the creation of space for alternative approaches to intervention in family violence. This will ensure that the legal justice system is not the only or dominant option for dealing with family violence. These alternative approaches should:

- Be led by the Indigenous community or at least involve it.
- Take a holistic approach
- Recognize the distinct experience of family violence within the Indigenous community
- Operate either alongside the legal justice system, or in a ‘stand alone’ capacity to the justice system, or perhaps both.
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