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**Submission by the  
Victorian Aboriginal Legal Service Co-operative Limited  
to the  
Inquiry into Legal Aid and Access to Justice  
by the Senate Legal and Constitutional Committee**

**24 September 2003**

## Summary

The Victorian Aboriginal Legal Service Co-operative Limited (VALS) believes that the single most important factor affecting Indigenous people in Victoria's lack of access to justice is the continued practice of funding the organisation at levels well below the need for the service.<sup>1</sup> Low funding means that staff work long hours in stressful conditions. As such, it is difficult for the organisation to employ and retain experienced staff, which directly impacts on the quality of service offered to Indigenous people.

- In the last five years, 90% of Indigenous people in Victoria chose VALS as their legal service provider.
- In the five years between 1996 and 2001, the Indigenous population of Victoria increased by 17%, compared to a 6% increase in the general population. 39% of the Indigenous population is under 15 compared to 20% of the general population. The client base for VALS' service has therefore already increased, and is expected to increase exponentially in the near future.
- In the last five years, VALS' case load has increased 18%.
- In the last five years, VALS funding has fallen 7% in real terms.
- In the last two years, the chances of an Indigenous person being imprisoned in Victoria has increased 8%.
- Indigenous people in Victoria are 13 times more likely to be imprisoned than the non-Indigenous population. This rate has increased over the last decade.
- Indigenous young people in Victoria are 16 times more likely to be involved in the juvenile justice system than non-Indigenous young people.

Given the myriad studies and research that undeniably demonstrate the abysmal levels of disadvantage suffered by Indigenous people in Australia, it is incredible that an Indigenous organisation continue to be funded well below the levels of mainstream services.

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<sup>1</sup> For the purposes of this document, the term Indigenous refers to a person of Aboriginal or Torres Strait Islander descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the community in which he or she lives.

## **Section 1 - Introduction**

The Victorian Aboriginal Legal Service Co-operative Limited (VALS) is an Aboriginal and Torres Strait Islander Legal Service (ATSILS), funded by the Aboriginal and Torres Strait Islander Services (ATSIS). One-off funding from other sources, such as the Victorian State government's Department of Justice, is occasionally acquired.

VALS was established as a community owned and controlled co-operative society in 1973. Prior to this, Indigenous people's access to pro bono services and other legal programs was minimal. Initially, the central objective of VALS was to help overcome the disadvantage that unrepresented Indigenous people faced when going to court. Although VALS now provides civil and family law services, as well as research and community legal education, criminal law matters still take up the majority of its funds.

### **1.1 Structure of the Victorian Aboriginal Legal Service**

All Indigenous persons resident in Victoria and aged 18 and over are eligible to be members of VALS. Members elect seven Indigenous persons to the Board of Directors at the Annual General Meeting. The Board is responsible for the operations of the organisation. VALS is therefore an organisation directed by the community for the community.

The Chief Executive Officer is responsible for the day to day management of the organisation, which employs 34 staff in one of four departments:

- *Legal Practice.* Consists of eight Criminal Law Solicitors, including the Executive Officer, one Civil Law Solicitor, two Family Law Solicitors, one Legal Secretary and two Word Processors.
- *Research, Planning and Development.* Consists of an Executive Officer, a Research Officer, and a Community Education Legal Project Worker.
- *Corporate and Financial Services.* Comprising of an Executive Officer, an Administration Officer, and three administration support staff.
- *Client Support.* There are six Indigenous Client Support Officers (CSO) operating in each of the regions, and four in metropolitan Melbourne.

### **1.2 VALS service provision**

VALS head office is in Melbourne. Indigenous CSOs are located in Bairnsdale, Heywood, Mildura, Morwell, Shepparton, and Swan Hill in order to service the regions. A solicitor is also based at Bairnsdale, which is predominantly a criminal practice. VALS operates a 24-hour service; outside of office hours, a CSO and a solicitor are on-call (including weekends and public holidays).

VALS provides civil, criminal and family law advice, referral, and representation, and is active in the areas of research, community legal education, and law reform.

According to VALS and VLA statistics, VALS is the primary provider of legal services to Indigenous people in Victoria, representing 90% of all legal cases. This figure accords

with a report prepared by ATSIIC's Office of Evaluation and Audit (hereafter referred to as the OEA report), which found that across Australia, ATSIILS represented 89% of all Indigenous legal aid cases in 2000-01 compared to 11% by Legal Aid Commissions (LAC).

Indigenous men are the main users of the service, making up 77% of overall clients. In the areas of civil and family law, however, the percentage of women using the service is over 50%.

The employment of Indigenous CSOs is one way in which VALS distinguishes itself from Victoria Legal Aid (VLA). CSOs act as a bridge between the Indigenous client and the predominantly non-Indigenous legal practitioners. CSOs perform important functions such as providing general legal advice, liaising between solicitors and clients, visiting clients in police custody or prison, and helping to arrange transport for court appearances.

The importance of CSOs is borne out by an ATSIIC Office of Evaluation and Audit report (hereinafter referred to as the OEA report). The OEA report compared ATSIILS with Legal Aid Commission (LAC) services, and found that:

*There is a role for Indigenous field officers that adds value to the delivery of legal services to Indigenous clients in the ATSIILS. This is particularly in the areas of keeping the clients informed about what is happening on the case, and responding promptly to clients when they contact the ATSIILS for information or help (OEA: 2003, 65).*

In order to make its service more accessible to women, in 2002 VALS made a successful application to the Department of Justice for an Indigenous Women's Justice Forum Coordinator. The forums provide a space for Indigenous women to explore justice issues affecting them such as family violence and access to adequate legal representation. The aim of the forums is to link information about programs and services across communities and organisations. They also provide the opportunity to develop Indigenous community-controlled strategies to help resolve issues affecting women and their families.

### **1.3 Client base**

VALS' services are available to all Indigenous people in Victoria.

The Indigenous population of Victoria increased by 17% between 1996 and 2001, compared to a 6% increase of the general population of Victoria. It is important to emphasise the younger age structure of the Indigenous population, with 39% under the age of 15, compared to 20% of the non-Indigenous population. Given the current and future growth in the Indigenous population, it is expected that the client base of VALS will increase significantly in the next decade.

The 1994 National Aboriginal and Torres Strait Islander Survey (NATSIS) found that some 31% of the Indigenous population needed some kind of legal assistance over a five-year period. However, as domestic violence, and indeed violence in general, is generally under-reported, the actual levels of Indigenous need of legal services are presumably higher.

## **1.4 Client base characteristics**

The legal situation of Indigenous people in Victoria, as in the rest of Australia, is appalling. At the end of June 2002, Indigenous people in Victoria were 13 times more likely to be imprisoned than non-Indigenous people, which was an 8% increase since June 2001.

The imprisonment of Indigenous women has increased 250% in the last decade; Indigenous women now have the highest rate of any group in Australia. In Victoria, 80% of women who are imprisoned are mothers, mostly with young children. As such, the imprisonment of Indigenous women not only impacts on offenders, but also their children and their communities.

Indigenous people in Victoria are far less likely to benefit from diversionary programs such as cautioning, and therefore have greater contact with the justice system. For example, according to Victoria police statistics, Indigenous juveniles received fewer cautions in all crime categories (except rape) than non-Indigenous juveniles from July 2000 to June 2001.

- the offence of bicycle theft resulted in the cautioning of 6.7% of Indigenous juveniles compared to 22.6% of non-Indigenous juveniles;
- the offence of regulated public order resulted in the cautioning of 10.5% of Indigenous juveniles compared to 30.7% of non-Indigenous juveniles;
- The overall cautioning rate for Indigenous juveniles was 13.3% compared to 30.8% of non-Indigenous juveniles.

Figures from the Department of Human Services Victoria indicate that Indigenous children and young people are:

- 16 times more likely than other children to be involved in the juvenile justice system;
- 13 times more likely to be in substitute care; and
- 11 times more likely to be found in need of care and protection.

## **1.5 Need for Aboriginal and Torres Strait Island Legal Services**

The 1980 Inquiry into Aboriginal Legal Aid, which was chaired by the current Minister for Indigenous Affairs Phillip Ruddock, listed numerous reasons why ATSILS were a useful policy initiative and program, and strongly recommended that they should continue to operate separately from their mainstream legal aid counterparts.

The Standing Committee outlined a number of key arguments to support this recommendation:

- **Accessibility** – ATSILS create a unique relationship of trust and cultural understanding with their clients that simply could not be emulated by a larger mainstream legal aid service. This relationship means that Indigenous people are more confident with the legal system, and therefore more likely to access legal representation when they need it.

- Community based services – because they are specific to the Indigenous community, ATSILS form close bonds with the community they represent and are more likely to represent the needs of these communities.
- Community development – as well as the central role of legal representation for indigenous people, ATSILS play an important part in other key related areas of community development. These areas, among other things, include housing, Indigenous-police relations, law reform and welfare.
- Need for specialisation – separate ATSILS mean that legal practitioners are better skilled and more culturally aware in dealing with the particular legal issues that confront Indigenous people.
- Competing interests – by retaining separate ATSILS, conflict is avoided between the competing needs of the Indigenous community and the rest of the community.

These points still have striking resonance today.

### **1.5.1 Importance of Indigenous self-determination**

The importance of Indigenous control of services has been emphasised in a variety of studies and reports. For example, in the overview of the Royal Commission into Aboriginal Deaths in Custody, Commissioner Elliot Johnson states:

*Running through all the proposals that are made for the elimination of these disadvantages is the proposition that Aboriginal people have for two hundred years been dominated to an extraordinary degree by the non-aboriginal society and that disadvantage is the product of that domination. The thrust of this report is that the elimination of disadvantage requires an end of domination and an empowerment of Aboriginal people; that control of their lives, of their communities must be returned to Aboriginal hands (1991, para 1.7.6).*

Furthermore, the report recommends that:

*Governments negotiate with appropriate Aboriginal organisations and communities to determine guidelines as to the procedures and processes which should be followed to ensure that the self-determination principle is applied in the design and implementation of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal people. (REC 189)*

*That in the implementation of any policy or program which will particularly affect Aboriginal people the delivery of the program should, as a matter of preference be made by such Aboriginal organisations as are appropriate to deliver services pursuant to the policy or program on a contractual basis. (REC 192)*

The *Social Justice Report 2002* by the Human Rights and Equal Opportunity Commissioner points to Commonwealth Government rejection of self-determination at a national and international level as a worrying trend. It questions why after thirty years it has been concluded that self determination is now no longer relevant, and concludes

that Government commitments to self determination have been largely symbolic but that should not mean giving up on the concept. Rather, it suggests learning from the deficiencies of previous attempts at implementation.

*The conclusion I have drawn by examining available materials is that the government is reluctant to enter into any relationships or agreement making that will in any way transform the power relationship with Indigenous people, reduce the level of government control or result in significant institutional control (HREOC, 2002: 40).*

## **1.6 Is competitive tendering appropriate?**

*To counter the impacts and legacies of colonisation there needs to be a holistic approach to the protection of Indigenous rights. This means that the either/ or tension between practical reconciliation and the rights framework needs to be rejected and replaced by strategies, initiatives and policies that seek to develop a better understanding about the relationship between economics and rights. (Behrendt, 2003: 177)*

It seems to be a commonly held belief that competition helps promote efficient and effective services. However, according to the OEA report, contestability is no panacea. In their recent review of ATSILS, the OEA recommended that, “in implementing its present contestability policy, ATSIC should be cognizant of the demonstrated and unwarranted costs of using services of other than non-profit legal providers (OEA: 2003, recommendation 9).”

LAC currently outsources nearly three quarters of its work to for-profit private practitioners. The OEA report recommendation therefore rules out LAC as potential tenderers. This effectively means that competition or contestability to provide legal services to Indigenous people is going to mean competition between Indigenous organisations and/or large church or welfare organisations.

Competition policy does not claim that all groups will be better off. It claims that there will be long-term gains to the whole economy which will mean the disadvantage of some groups will be outweighed by the gains of the majority. The estimate of the benefit of competition policy to the Australian economy over ten years was 23 billion dollars or a 5.46% gain according to proponents of the policy. Ranald and Thorowgood (2001) quote economist John Quiglan who criticises the National Competition Policy figures, claiming that they have failed to consider the costs and exaggerated the scale of the benefits. Quiglan estimates that the benefits are more likely to be approximately \$2 billion or 0.48% of Gross Domestic Product.

Consequently, if there is benefit to the wider community, then it is likely to be far lower than first estimated, and these benefits do not necessarily flow evenly to all groups, and potentially miss some groups completely.

The Competition Principles Agreement contains a list of matters which governments may take into account “where relevant when assessing costs and benefits in relation to all aspects of National Competition policy”. These include:

- Social welfare and equity considerations, including community service obligations;

- The interests of consumers or classes of consumers.

The Senate Inquiry into Competition policy raised questions about the appropriateness of extending competition policy to areas of social welfare provision. The Public interest test should be applied when considering whether to tender ATSILS. There is ample evidence that the services are poorly funded and working with disadvantaged communities. There is also evidence from the OEA report to support this.

## **Section 2 – Performance of current arrangements in achieving national equity and uniform access to justice including outer-metropolitan, regional, rural and remote areas**

*There is a need for us all to appreciate that inadequacies in legal aid produce a cost not just to the individuals directly concerned but to all who aspire to a peaceful and a fair society (Julian Gardiner, Former Director of Legal Aid Commission of Victoria and present Public Advocate).*

### **2.1 Performance of current arrangements**

VALS believes that its ability to provide legal services to the Indigenous population of Victoria is grossly compromised because of low levels of funding compared to Legal Aid (given its high level of casework, VALS service should be compared with Legal Aid, rather than with Community Legal Centres).

In the last five years, VALS' funding has fallen in real terms by 7%. In the same period, the number of cases opened per year at VALS has increased by 18%, from 5182 in 1998/99 to 6112 in 2002/03. **This means that funding per case opened has fallen 21% in the last five years.**

VALS receives its funding annually, as is the case for other ATSILS. Besides some of the obvious drawbacks to annual funding, such as the inability to make long terms plans or make invest in infrastructure, the time and effort that goes into the preparation of annual budget submissions could be better utilised.

The OEA report covers a wide range of issues including comparison of costs of ATSILS to LACs. The report found that ATSILS were funded at a level far below that which LAC fund private practitioners. In rebuttal, the Federal Attorney General's department argued that funding comparison should have been made with the LAC in-house lawyer costs versus ATSILS cost. However, almost 75% of Legal Aid work is contracted out to private legal firms, and there is no reason to believe that this practice would change if LAC assumed the provision of legal services to Indigenous clients.

Triennial funding has recently been introduced for LAC's. As the same time, ATSILS have been given only 6 months funding for 2003/2004, pending the implementation of a yet to be devised new Funding Allocation Method.

ATSILS such as VALS provide the same level of service to Indigenous people as LAC does for the broader community. As such, it is only fair that ATSILS receive the same level of funding. Given that Indigenous people have a higher level of need for legal

services and representation, the inequalities in funding levels and funding periods between ATSILS and Legal Aid is grossly unjust and serves to perpetuate the inequality of Indigenous people. VALS has continually sought to draw attention to the low level of funding, and the detrimental effects this has on VALS performance; however, without success.

ATSILS are currently facing the challenge of a government policy approach which is predominantly focused on cost reduction and only peripherally concerned with responding to client and community needs and organisational capacity building. Assuming that there is no possibility of increasing total pool of money for legal services (including ATSILS and LACS), VALS believes that there are urgent and compelling reasons for arguing that ATSILS deserve a higher share of the available funding.

According to the OEA report, ATSILS would require \$25 million more to achieve the same level of pay that private practitioners currently receive from Legal Aid (OEA: 2003, 106). The proposal to improve ATSIL funding by \$25 million is an extremely urgent and highly needed strategy to support a unique service.

There is of course the issue of how any increases to funding should be targeted or tied. It is important to consider this issue because no matter how modest the funding increase sought, there is always the reality that funding will be less than that required and priorities will have to be set. VALS suggest three priorities for new funding:

- Redressing any state inequities;
- Increasing funding across the board in the first year; and
- In the second and third years increasing funding with half of the money untied and the other half tied to prevention/organisation capacity building expenditure.

### **2.1.1 Staff pay and conditions**

Low levels of funding means that VALS pays its staff at a considerably lower level than VLA. Although first year solicitors at VALS earn only 7% less than their VLA counterparts, the Executive Officer – Legal Practice at VALS earns a staggering 38% less than the same position at VLA.

The OEA report found that ATSILS staff worked on average nine more hours per week than LAC staff (EOA: 2003, 71).

Most people at VALS work for the organisation because they are committed to addressing the inequalities and injustices faced by Indigenous people in Victoria. However, working long hours in a stressful work environment for very low rates of pay is not sustainable in the long term. Consequently, staff turnover is high. In the last decade for example, the average period of employment for VALS' legal staff was 18 months.

This point is also emphasised in the OEA report.

*The demonstrated cost effectiveness of ATSILS service delivery is achieved at a high cost of low morale and high turnover among ATSILS practitioners who work in a very demanding environment without adequate financial and logistic support and remuneration. There is a strong case therefore for ATSIC or the Commonwealth Government to*

*increase funding to ATSILS to improve staffing levels and service delivery to clients.*

Given the history of colonialism in this country, many Indigenous people are distrustful of non-Indigenous people. This means it takes time to establish trust with clients, particularly when dealing with issues such as family violence and child protection. The high turnover of staff at VALS means that considerable time is spent on re-establishing relationships between staff and clients, rather than solving client problems.

The inadequate level of funding means that it is extremely difficult for VALS to recruit and retain suitable experienced staff, not only legal practitioners, but in other areas as well. Access to justice means representation by experienced solicitors who have had adequate time to prepare a case, not just the façade of representation by an appointed, but inexperienced or overworked lawyer.

### **Section 3 – Implications of current matters, including criminal law matters, family law matters and civil law matters**

The OEA report found that ATSILS practitioners “overwhelmingly (97 percent) nominated lack of funding, lack of resources, and staff shortages, and work overload to be the main difficulties they face in providing quality service to clients” (80). This contrasts with the low number of LAC practitioners (5 per cent of LAC-in-house and 10 percent of LAC referred practitioners) who nominated funding and staff shortages as a major difficulty.

Staff at VALS also believe that the lack of appropriate levels of funding is the single most important factor affecting their ability to provide legal services to Indigenous people in Victoria.

Lack of appropriate levels of funding to Indigenous organisations that deal with allied problems such as alcohol and substance abuse, family violence, lack of employment opportunities, education and health are also contributing factors to the continued over-representation of Indigenous people in the justice system.

#### **3.1 Criminal law matters**

The number of criminal cases opened per year increased from 4896 in 1998/99, to 57. This means there was an 18% increase in the criminal law caseload in the same period that funding fell 7% in real terms.

Because of factors such as illiteracy, lack of telephone, and high degrees of mobility, it also tend to be more difficult to contact Indigenous clients to get instructions. Staff also have to travel extensively around the state in order to represent people at regional courts.

#### **3.2 Family law matters**

Given the higher rates of family violence and child protection orders affecting Indigenous families and communities, there is an ever-increasing need for family law services. VALS opened 284 new family law and child protection matters in the 2002/03 financial

year, which is a 216% increase on the previous financial year. In comparison, the projected load for VLA in 2001/02 was 105 cases.

As of October 2002, VLA has provided a family solicitor to VALS. However, given that VALS can barely cope with its current caseload, if this agreement terminates, the family law solicitors will be even more overworked.

## **Section 4 – Impact of current arrangements on the wider community, including community legal services, pro bono legal services, court and tribunal services and levels of self-representation**

### **4.1 Private practitioner fees**

VALS briefs out cases according to the fee schedule established by Victoria Legal Aid. Any increases in the fee schedule (as happened earlier this year) impact quite severely on VALS ability to provide a service, given that the budget continues to decrease in real terms, and the case load continues to increase.

### **4.2 Victoria Legal Aid**

Although the majority of Indigenous people in Victoria use VALS legal services (90%), some Indigenous people choose to use mainstream services, such as VLA or community legal centres. Indeed, in some instances, mainstream services are the only option where conflict of interest occurs. Consequently, changes to mainstream funding or policy also affects Indigenous people's access to justice.

In Victoria, VLA is the main alternative to VALS. During the 2000/01 financial year, VLA provided casework grants of aid to 526 Indigenous people. This figure is up from the 1998/99 figure of 464 but still lower than the 1995/1996 figure of 566 people. The fall in the number of Indigenous people assisted coincided with Commonwealth Government cuts of \$120 million in LAC funding. The drop in VLA numbers also coincides with a period of high levels of Indigenous population increase compared to the non-Indigenous community.

As well as cutting funds, in 1996 the newly elected Liberal government changed LAC policy so that it could only spend Commonwealth money on Commonwealth law (predominantly family law). In Victoria, this led to changes in VLA guidelines, thereby restricting the criminal matters which could be assisted and led to caps on family law expenditure. In addition, most civil law cases became ineligible for assistance. In the last year, however, there has been some limited relaxation of these guidelines.

The third Senate Legal and Constitutional Committee Inquiry into the Australian Legal Aid System, which reported on the impact of these changes, concluded that:

*... The changes made by the Commonwealth to the legal aid system were based on insufficient information. The way they came about displayed more*

*concern to achieve savings than with their impact on the legal aid system and access to justice (1998, xv).*

In his review of LAC's under the Howard Government, Don Fleming (2001) found that:

*...when the Howard government assumed office an accumulated scarcity of funding and delivery resources already seriously threatened the operational capacity of the national scheme... The critical difference in the policies of the Howard government was the attack on the institutional mutuality central to the third phase of the National scheme. This mutuality had been expressed in concrete, cultural and organisational dimension... The new agreement allowed the Commonwealth to shed responsibility for civil and criminal law matters. In 1990, The National Legal Aid Advisory Committee alerted the Hawke government to the "goodwill factor" as a tangible and major asset in national legal aid program management (Fleming: 366-7).*

Giddings (1998: 11) also highlights the cooperative arrangements which have prevailed in Legal Aid. He argues that Australia's "mixed model" of providing legal aid is "regarded very favourably, arguably the best model in the world... (and) ...prevents one type of service provider exercising monopoly power."

Many of the problems faced by ATSILS over the last decade are very similar to those faced by mainstream LAC providers.

### **4.3 Policy snakes and ladders**

In 1991, the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) made wide-ranging recommendations, yet it was not until 1996 that the Standing Committee of Attorneys General made a commitment to implement these recommendations. Since then, there have been some constructive initiatives. However, there has also been an Australia-wide move to increase the severity of sentences and reduce discretion of magistrates and judges. In many ways, the resulting rapid and sustained increase in the number of people in jail has undermines much of the progress made through implementation of the RCIADIC recommendations.

Similarly, in 1996, program-wide policies targeted at improving the function of ATSILS were introduced. These included: a national ATSILS policy framework for prioritising and targeting assistance; minimum standards and the introduction of a quality improvement cycle; a rolling program of effectiveness reviews and quality assurance checks; and a nationally consistent contestability policy. At the same time these measures were being introduced several changes were made which impeded the ability of ATSILS to function effectively.

These included:

- Increasing difficulty in recruiting and retaining staff as the private profession and other legal aid providers increased salaries more than ATISLS;
- There was a 33% increase in the Indigenous population in the 1996 census and a further increase of 16.8% in Victoria by the time of the 2001 census;

- There was a major cut to Legal Aid funding nationally which had some flow on effects e.g. harder to refer clients and more referrals from Legal Aid to ATSILS;
- Increases in prison populations;
- Increased demand from clients and new demands from ATSIC for more family violence work and more preventative work.

In 2001, after several years of this accountability focused regime the default policy setting established was periodic tendering out to avoid criticism of poor management and pressure to mainstream services through Legal Aid. ATSIC administrative staff has never said where this pressure for mainstreaming was coming from. It appears not to have been coming from LAC.

#### ***4.4 Non-provision of funding to National Aboriginal and Torres Strait Islander Legal Service Secretariat (NAILSS)***

In 2003, the Australian Legal Assistance Forum advised Minister Ruddock that ATSILS were under-funded. Since then, the half-yearly funding announcement has been made and the National Aboriginal and Islander Legal Service Secretariat, the peak body representing ATSILS, has had its funding curtailed. At the very moment when services are facing major change and threats to their survival, the organisation who could most expertly advise Government have had to curtail their operations due to funding withdrawal.

NAILSS had the capacity to analyse policy and law reform issues affecting Indigenous people across the country, which is far more effective than the duplication of work in each state. NAILSS also has consultative status with the United Nations Economic and Social Council (EcoSoc), and as such, in the past has advocated the interests of Indigenous Australian and various United Nations forums and working groups throughout the world.

The curtailment of operations due to the non-provision of government funding has silenced another Indigenous voice. It therefore greatly limits the ability of Indigenous peoples of Australia to continue their fight for Human Rights in the international arena.

Funding a peak body like this is not only an aid to ATSILS; it is a win-win situation. The government wins because they can get advice from a peak body which would, if produced by consultants, cost far more. The Government also demonstrates a commitment to pluralism and a fair go by providing funds to an organisation which is attempting to create a more level playing field.

## **Section 5 - Recommendations**

1. VALS calls on the Commonwealth Government to acknowledge that a cooperative and collaborative approach to meeting the needs of Indigenous communities is likely to most effectively provide access to a range of legal services and more just outcomes.
2. VALS calls on the Commonwealth Government to acknowledge the importance of Indigenous control of services and to respect and support the continued need for this and acknowledge the benefit that this participation and responsibility can provide.
3. VALS urges the Commonwealth Government to recognize that prior to tendering out there should be consideration as to whether the public interest test would apply in relation to funding of ATSILS. VALS believes that ATSILS should not be subject to competitive tendering and that tendering should be utilized only as a last resort.
4. VALS strongly urges the Commonwealth Government to redress the uncertainty that the present six months funding allocation occasions and guarantee funding for the financial year 2003/2004.
5. VALS calls on the Commonwealth Government to ensure that there is consultation with ATSILS when the new funding formula report from the Australian Institute of Criminology is received.
6. VALS calls on the Commonwealth Government to act on the recommendations of the 2002 ATSIC Office of Evaluation and Audit Review which concluded that a significant increase to funding for ATSILS was required.
7. VALS requests that the Commonwealth Government reduce the persistent uncertainty about funding to ATSILS and shift ATSILS on to a three year funding agreement as has been done in relation to other community based legal service providers.
8. VALS urges a shift from ATSIIS predominantly accountability focused program expenditure on consultants to expenditure targeted at organizational capacity building and projects focused on prevention and community strengthening. Such targeted spending should be predominantly in line with regional and state policy priorities not determined solely by Departmental objectives.
9. VALS strongly advocates for the importance of ATSILS being adequately funded and resourced to do criminal, civil and family law casework, prevention, education and policy capacity, building the capacity of all staff and particularly para-legal staff, and improving access to mainstream services
10. VALS strongly recommends that NAILSS be refunded to reestablish a vital national voice for Indigenous people.