



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

Victorian Aboriginal Legal Service Co-operative Limited Indigenous Women's Justice Forum

Minutes: Wednesday 14 July 2004 at Victorian Aboriginal Community Services Association Ltd.

Present: Leanne Sargent (Victoria Police Community and Cultural Division), Vicki Heal (Northern Family Violence), Liana Buchanan (Victorian Law Reform Commission), Angela Langan (VLRC), Greta Jubb (Victorian Aboriginal Legal Service), Melissa Morgan (VALS), Poppy Fotiadis (Ombudsman Victoria), Sandra Laudani (Gippsland and East Gippsland Aboriginal Co-operative), Cherie Minniecon (Department of Human Services), Graham Brewster (DHS).

Apologies: Nerida Sutherland (Aboriginal Family Violence and Prevention Legal Service), Antoinette Braybrook (APVPLS), Marie Murfet, Sarah Vassali, Jan Muir, Whitney Solomon.

Chair: Melissa Morgan.

ROUND TABLE DISCUSSION

Victorian Law Reform Committee

Staff from the Victorian Law Reform Committee gave a presentation on the review of the Crimes (Family Violence Act) 1987.

- The Terms of Reference of the review are broad as it covers both legislation and process.
- The review is in the first round of broad consultation. A discussion paper will be published in the next month calling for submissions. There will be a second round of consultation (probably October/November/early 2005), which is targeted and brings interested parties together to discuss issues and suggest recommendations.
- A Final Report to the Attorney General, with Recommendations, will be released in June 2005.

- The review is intersecting with the Family Violence Court Inquiry. The Family Violence Court Inquiry is being taken into account in the timeline of the review, so that the Final Report is up to date.

The Intervention Order System

How many Indigenous Australians use the Intervention Order System?

- It is difficult to access information on how many Indigenous Australians use the Intervention Order System. This is because VALS does not deal with applications for Intervention Orders but offers criminal law assistance when an Intervention Order has been breached.
- Vicki Heal (Northern Family Violence) said that she had not come across many Indigenous Australians using the Intervention Order System.
- The Courts and the police do not collect data on Intervention Orders.

Why is the amount of Indigenous Australians who use the Intervention Order System limited?

- Intervention Orders do not work as they are only a bit of paper
- Women do not want their men to go to jail. Indigenous women will have less fear of Intervention Orders if men were taken to 'Time Out Houses'. The 'Time Out House' could be attached or unattached to the Intervention Order System.
- Police often do not turn up to instances of family violence and this is a training issue. Police Commissioner, Christine Nixon, has positive ideas, but she cannot force her troops to comply.
- Once you get an Intervention Order it is not effective as it is not enforced.

*If Indigenous Australians do not use the Intervention Order System what do they do?:
The Informal System of dealing with family violence*

- Indigenous Australians resort to their own devices to deal with family violence
- Indigenous Australians leave the violent environment and stay with family or friends as a form of respite/time out from a troubled home life.
- It is concerning that it is the victim who leaves the home, rather than the perpetrator, and often the safety of family or friends is jeopardised

What is Indigenous Australians understanding of the Intervention Order System

- Generally, it appears that Indigenous Australians do not have a clear understanding of the Intervention Order System and have a suspicion of the system.
- The lack of understanding about the seriousness of Intervention Orders is often why Indigenous Australians do not attend Court in relation to Intervention Orders.

Education of Indigenous Australians

- Attempts to educate Indigenous Australians about the Intervention Order System and family violence need to engage the Indigenous community (ie: meet them where they are at).
- Education could perhaps occur through an advocacy model.

Problems with the Intervention Order System

Inflexible

The Intervention Order System represents a blanket approach to family violence and lacks flexibility. The system is inflexible, rather than the way the law is enforced. The result of the inflexibility of the Intervention Order System is that it struggles to take into account Indigenous Australian's experience of family violence or the role of the Indigenous community in dealing with family violence.

Examples of inflexibility:

- Police take out an Intervention Order on behalf of a victim. In this case the victim becomes a witness even though they do not want to be.
- Assumption that legal representation is not required, people are articulate and understand jargon. There is a need for solicitors to fight prehistoric Magistrates. There is need for legal assistance for both parties as this puts them on equal footing. If legal representation is available the victim and offender are not required to communicate directly, and this gives the victim distance and makes them less vulnerable.

The Queensland Intervention Order System is an example of flexibility. It provides for two days respite, which takes away the definitiveness of taking out an Intervention Order.

It was suggested that:

- The Intervention Order System should be more flexible so it can address needs specific to a situation, rather than taking a blanket inflexible approach. Specific Orders that may be appropriate for violence experienced within the Indigenous community are:
 - The offender can visit the victim under the supervision of an Elder. However, there is the danger that different families within the community will become pitted against one another.
- The process of applying for an Intervention Order should be more informal, such as through the Koori Court.
- There needs to be a simple process of complaining about Magistrates. At the moment the process is too complicated.

- It needs to be acknowledged that different communities have different philosophies on how to deal with family violence.
- Allowance should be made for community mediation so long as the victim and his/her children are not placed at risk. The question arises about at what point in a family violence situation mediation should be considered appropriate. There is the need for an assessment process to address this issue. Mediation should not take place after an Intervention Order has been sought because the situation is at crisis point at such a stage. It is like this stage is the point of no return, so protection is a priority over mediation.
- ❖ The argument against mediation is that it cannot work in the context of family violence because of the power balance inherent in family violence situations. It is possible for the offender to use the mediation process as a mean to further physically or psychologically abuse the victim. The argument for mediation is that the Intervention Order System sometimes inflames problems unnecessarily. The mediation process will inquire into how the family became so dysfunctional and look at the underling issues of family violence.

Lack of support

There is a lack of practical support for victims of family violence. There should be more provision to assist the victim in changing the locks of the family home when the victim lacks the financial ability to do this. This is a very practical thing that could improve the Intervention Order System. Additionally, a panic/duress alarm could be introduced.

It appears that there is support offered for men (ie: Behaviour Change Counselling Program), but not for women. There needs to be more in the form of support mechanisms for women, especially those who take out Intervention Orders. Women need counselling, otherwise they will live in the shadows of their past. There needs to be a holistic approach to 'change'.

There needs to be referral at every point so people have support mechanisms to go to court and non-legal support.

Safety Issues

The Intervention Order System is staged and this results in people remaining in danger. It is a two day process for a granted Intervention Order to become legal. The delay of two days is a safety issue. The victim has to wait for an Intervention Order to be served before it is considered valid. Victims are not aware of the waiting period and consider themselves safe immediately after they leave the Court. It is unfortunate that responsibility is placed on the police again to serve the Intervention Order

If the offender cannot be found so that the Intervention Order can be served, this creates a delay in the process. The argument against the Order becoming immediately applicable is because the offender does not know of its existence and hence should not be bound by it.

However, it is arguable, that once an Intervention Order application gets to the point where it is nearly granted, the offender knows of the existence of the possibility of an Intervention Order. If the Defendant knows that an Order has been made in his absence, it should take effect immediately.

There is a problem when victims/applicants of Intervention Order calling police to find out if an Intervention Order has been served, but police are unavailable. This leaves victims in a difficult position as they do not know if the Intervention Order is effective. Police need to be taught that Intervention Orders are serious so that they do not leave them on their desk without being served and take leave without serving them.

Other Issues

- It needs to be recognised that Indigenous women who are victims of family violence are not a homogenous group. Younger women are more vulnerable as they have less financial stability than older women.
- The Intervention Order System is judgmental and this has to do with the system being male dominated. It is also an alien process.
- If an Intervention Order is taken out and a person reneges, then it is unlikely that they will receive help next time.
- Women are held responsible for breaches if they ask men back (ie: for the purpose of financial assistance).
- There needs to be a consistent approach to breaches of Intervention Orders.
- There should be safety planning procedures like that in Bairnsdale, Alaska and Canada. The benefits of a safety plan is that plans are put in place before violence occurs. When a Safety Plan is pre-organised the victim is relieved of the pressure at crisis point in figuring out what to do. The Safety Plan is developed by asking questions.
- There needs to be more enforcement of Intervention Orders. The consequences of breaching an Intervention Order for an offender are not seen as harsh enough, which does not give the victim incentive to apply for an Intervention Order. For instance, offenders are only sent to Behaviour Change Counselling Programs.
- There is need for a resettlement process

Aboriginal Family Violence and Prevention Legal Service

Nerida Sutherland (Education Worker) from the Aboriginal Family Violence and Prevention Legal Service did not attend. Her position ceased on 13 July 2004. There was discussion of doing something, such as writing a letter in support of her. However, it was noted that the AFVPLS is hesitant to challenge the Government's decision to emphasise casework over education.

Department of Human Services

Staff from the Department of Human Services gave a presentation on the review of the Children and Young Person's Act 1989 (CYPA).

A Discussion Paper in response to the 'Protecting Children' Report (September 2003) is before Parliament today and if approved will be released in three weeks time. There will then be a consultation process on the Discussion Paper between August-October 2004 and DHS have advertised for a person to facilitate the consultation process with Indigenous Australians. There will be new legislation by this time next year. It will not all be proclaimed at the same time, but will be proclaimed in stages.

Permanency Planning

The mainstream discussion of permanency planning is unresolved. It is based on the idea that multiple placements cause traumatisation. Permanency planning aims to make the Child Protection process shorter, as currently the Children's Court cannot consider permanency issues until after two years. The Child Protection Report contains a service guarantee that people will receive services that promote reunification within a certain time.

The issue of permanency raises the following issue for Indigenous Australians: cultural appropriateness. This is specifically the reason for suggesting that an Indigenous organisation becoming Guardian of Indigenous Australian children as they can deal with permanency in the light of cultural sensitivity.

Intake at service provision stage

There is concern about families in certain circumstances not meeting the threshold for DHS to intervene in Child Protection matters, but still require services. The CYPA makes provision for emergency situations, yet there is a need to serve families before they reach crisis point. Additional money is required for secondary services. Police will be able to link in with these services. Information gathered by the services is planned to be shared with the Department of Human Services.

Issues related to changing the intake point to service provision stage:

- Some services are not culturally sensitive and funding is needed to bring them up to scratch.
- Community organisations will be required to make a decision about child protection matters (ie: should the case be referred to a service or notified to DHS). There is the need for a safety mechanism to ensure the right decision is made.
- A lot of responsibility will be placed on Indigenous Australian organisations making such a decision.
- Community services will be asked to have a child centred approach, rather than a community centred approach which is arguably a philosophical shift.
- There is the issue of at what point are they enough referrals? It was noted that a repetitive pattern of referrals is not necessarily bad as some families need periodic

- support. On the other hand, if this occurs then the family may become entrenched in the system.
- It is possible that the Indigenous community will not access services if they are associated with DHS (ie: tainted).

Other issues discussed:

- The need to strike a balance between moving away from a less formal/adversarial approach on child protection matters in the Children's Court, and ensuring that people's rights are still protected.
- The Child Protection system is too focused on parents and not enough on the child. A decision about the best interests of a child comes down to an assessment of the parents, rather than an assessment of the development of the child.
- There is the possibility of vesting Guardianship powers over Indigenous Australian children in an Indigenous Australian organisation and discussions have taken place with the Victorian Aboriginal Child Care Agency. The idea of assigning guardianship to a CEO of an Indigenous organisation comes from New Zealand. In NSW there is a children's guardian that is independent of DHS.
- Innovation Programs reduce notifications and are concerned with the process of referral. The programs enable details relating to a child protection matter to be worked out on a local basis.
- Family Violence Conferencing involves Elders in meetings and aims to reduce the reoccurrence of problems and includes a referral process. There are plans to expand the Family Decision Making model. Family Group Conferencing may be useful for family both pre and post notification. Family conferencing comes from New Zealand and applies across the board, but has been adapted for the Maori community (consultation in the 1980s). There is the issue of how 'family' is defined. Family Conference has also been an option in South Australia since the early 90s (legislation).
- Family Violence Court. There is a version of the Family Violence Court in Shepparton.
- Community organisations do not have enough time for education
- The *Towards Collaboration Resource Guide* is difficult to access. It should be distributed more widely as it will facilitate an integrated approach to child protection issues. The Guide contains information about services, prevention and intervention and every child protection worker should have one.

Thank You to Melissa Morgan

Thanks were extended to Melissa Morgan for her contribution to the IWJF. This forum was Melissa's last forum as she is ceasing work at VALS.