



# Victorian Aboriginal Legal Service Co-operative Ltd.

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## **A Gendered Narrative which Embraces Mainstreaming and Ignores Other Stories: A Response to the Review of Indigenous Peoples' Access to Legal Assistance (2005) – sent 1 March 2006**

### Summary:

*... the resource and other practical limitations of the two Aboriginal Legal Services in Victoria means that mainstream service providers need to fill the breach. (Pg 70)*

One of the themes in the Review of Indigenous Peoples' Access to Legal Assistance (Review) is on mainstream providers 'filling the breach'. Some people may describe it as more like trying to fill a chasm. The conclusion drawn by the Reviewers raises many questions.

- How did the breach arise?
- Why should mainstream services be the ones to remedy the situation?
- What happened to the idea that Indigenous peoples usually prefer to use an Indigenous service?
- Isn't this mainstreaming emphasis very similar to 'practical reconciliation' in a legal service context?

Focusing on the legal access needs of women and children need not be done in almost complete isolation from other issue frameworks (eg men, families, communities, self-determination, government policies in relation to Indigenous Australian peoples, legal aid policies and funding) The Review could have given these issues a little air.

The most important story about access, which is hardly told at all in this gendered narrative, is the importance of an effective well resourced and sustainable Indigenous Legal Service sector. Unlike many other sectors Indigenous services are the primary providers of legal services to Indigenous Australian peoples. Increased emphasis on mainstream service provision ignores the fact that most indigenous Australian peoples prefer to use an Indigenous service where available.

The failure to recognise, resource and nurture the capacity of Aboriginal and Torres Strait Islander Legal Services (ATSILS) is a recipe for these organisations continuing to be slowly starved of funds and of opportunities to provide the services which people want. In the present policy environment any failure to acknowledge the importance of strong sustainable Indigenous controlled Legal Services will by default be an uncritical acceptance of Commonwealth Government funding cuts, mainstreaming and market oriented policies towards ATSILS. Such policies fail to accept what Indigenous Australian peoples prefer, hinder the

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development of greater self-determination and fail to provide a wholistic approach to solving problems. The Review's silence on these issues is deafening. The only thing we know about the tendering of ATSILS is the claim by the Reviewers that it made it more difficult for the Reviewers to gather information.

### **Funding Levels Affect Accessibility:**

The Reviewers make no attempt to provide any analysis of legal aid funding levels or policy in relation to either mainstream or Indigenous legal aid provision. The under-funding of ATSILS receives a couple of mentions in the body of the report but this problem is not significant enough, in the eyes of the Reviewers, to warrant any recommendations.

Why is there no reference to the estimated \$25 million that it would cost bring ATSILS funding nationally up to the level of legal aid? (Office of Evaluation and Audit, 2003; Australian National Office of Audit, 2004) In short, the emphasis is on building mainstream capacity without any significant proposals on strengthening the capacity of existing ATSILS. The only exceptions to mainstreaming are the proposal for additional Aboriginal Family Violence Prevention Legal Services (AFVPLS) staff to assist the Family Violence Courts to be Koorie accessible, the proposal for an Indigenous Women's Legal Service and a non-specific recommendation about the Victorian Aboriginal Legal Service Co-operative Limited (VALS) being resourced to work with AFVPLS.

The single largest recommendation for specific funding increase is in relation to support for the Family Violence Pilot Courts. It is not clear why initiatives in relation to family violence should be narrowly targeted to the Family Violence Court. There is strong interest in the development of a less criminal justice focused model for dealing with family violence and increased availability of drug rehabilitation and healing centres. The Indigenous Family Violence Strategy highlights the need for a wholistic approach to the problem. In addition, research by Nancarrow (2004) and Bluett-Boyd (2005) have also highlighted Indigenous Australian Women's interest in more wholistic approaches to family violence and less reliance on criminal justice strategies.

The Review not only fails to make recommendations to remedy the severe under-funding of ATSILS, it then makes a series of recommendations about what new activities ATSILS should undertake. For example, new education campaigns are recommended to increase the demand on services which are already widely acknowledged to be stretched very thinly. Existing education strategies are not mentioned.

The Review survey identified that Community Legal Education was very important yet this is not considered a core service by the Commonwealth Government in relation to the AFVPLS. This issue goes unmentioned by the Reviewers. While Community Legal Centres (CLCs) are recognised as having a role in providing Community Legal Education, VALS has to make separate 12 month funding submissions to obtain funds to do this work.

### **Greater Gender Split in Service Structure:**

The proposed Women's Legal Service is an interesting idea. First, because it 'deals with' the problem of already having two Indigenous Legal Services which are chronically under-funded by suggesting the establishment of a third Indigenous Legal Service. Interestingly, the Commonwealth Parliamentary Review of Indigenous Legal Services Report, 403 (2005) specifically rejected the idea of an Indigenous Women's Legal Service. One rationale for this was that it would push ATSILS into becoming a more male focused service.

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There is no reference made to this report in the Review. On the issue of greater mainstreaming versus greater strengthening of Indigenous services, the Review emphasises mainstreaming. The Review is also leaning towards greater gender based separation of Indigenous Legal Services with its recommendation that no longer provide assistance to women with family violence matters or do victims of crime work.

### **The Access Review Has Made Several Unhelpful Assumptions:**

#### **Strength Based versus Deficit Models:**

The Review has effectively written off the idea of strengthening the Indigenous Legal Service sector and is instead concentrating on improving the mainstream sector.

This approach undervalues the importance of a sustainable Indigenous Legal Service sector. The reliance on mainstream services filling the breach also fails to consider the capacity of Indigenous and mainstream service providers to implement significant mainstreaming.

A second assumption is that community members' comments that VALS is a criminal law service for men are accurate. It is not subject to analysis or put into context by the Reviewers. The Review fails to take account of the actual VALS' service structure and allocation of time by solicitors to matters involving female clients. Four out of twelve lawyers, eg a third of the lawyers do civil, children's court and family law. Approximately 37% of lawyers' time is on legal matters for female clients. 25% of criminal law matters are for women. The third assumption is the Reviewers have accepted the view that VALS pleads clients guilty inappropriately without question or analysis. This is totally incorrect.

#### **Conflict of Interest:**

A fourth assumption is that conflict of interest policies preclude VALS providing services to women and children. Unfortunately, there are a small percentage of women and some men who VALS has to refer out due to a conflict of interest. These women and men clearly need culturally accessible alternative services. The Review jumps to the conclusion that because of this VALS can't provide services for any women and children. The Reviewers don't investigate the extent of the conflict of interest problem. Conflict of interest is not the norm. It affects a minority of cases. One reason for this is that over 50 % of Indigenous women are in a relationship with a non-Indigenous person and over 40% of Indigenous men are in a relationship with a non-Indigenous person. Therefore no conflict of interest is present as VALS is only able to act for the Indigenous person.

The Review quotes one group participants as saying "VALS won't do Koori versus Koori cases". That has not been VALS' policy since 1997. VALS has publicised this fact for over eight years. Only 10 or less of the 40 survey participants had used a VALS' service in the last 12 months. Apart from these people who completed the survey, we don't know from the other data how many people in discussion groups were basing their comments on actual use of services versus stories from other people. We also don't know whether critical comments made are based on events of last week or six years ago. As a result, the veracity of the data is questionable.

VALS has heard these criticisms over many years and has attempted to address these issues. Service statistics indicate some success in this regard. The Review data indicates that some people have not heard

of the changes or don't believe that they have occurred. The Review privileges these critical views above any other source of data or evidence or analysis. Thus views which may be based on stereotypes, second hand information or events from many years ago are used to establish an unproblematic simplistic stereotype of VALS. This 'dumbing down' of contribution to Indigenous Australian women, men, children and communities in many respects contributes to the problem of improving access to justice for Indigenous Australian peoples rather than contributing to the solution.

### **The Problem of the 'Considerable Hurdles:**

*It should also be noted, that the findings of this Review confirm those of the NSW Needs Study which found that the creation of Indigenous specific legal services had not overcome the considerable hurdles confronting Indigenous people seeking legal assistance (Schetzer and Henderson 2003;16) Pg 68.*

The quote above from the Review is another example attempting to provide legitimacy for its emphasis on mainstreaming service provision. Substitute the words 'Legal Aid' or 'Community Legal Centres' for Indigenous Legal Services and you could make the same gloomy and negative assessment.

It is an assessment that focuses on what remains to be done, not what has been done or is being done now. To what extent have Legal Aid or CLCs dramatically altered the status of the disadvantaged? Access to legal assistance is bound up with economic, cultural and social factors as well as the adequacy of funding available. Creating Indigenous Legal Services is a necessary but not a sufficient condition for 'overcoming hurdles'. Before researchers conclude that Indigenous Legal Services haven't worked, a brief look at the environment in which they operate might be advisable.

Why would any one assume the creation of Indigenous specific Legal Services would overcome the considerable hurdles faced by Indigenous peoples? The Indigenous Australian population in Victoria has increased by almost 50% over the 1991-2001 decade and is projected to increase by a further 48% by 2006. Commonwealth Government broader policy agenda has not prioritised social justice in general or legal aid in particular for Indigenous Australian peoples. The Aboriginal Legal Service program has been receiving effective funding cuts since 1992. The number of Indigenous Australian peoples has grown dramatically since then AFVPLS Units are the only new money in the Indigenous Legal Service arena. The framework within which the issues of access need to be examined should include the adequacy of social justice policies across Government (Commonwealth and State), the overall health of the Legal Aid sector and the role of and extent to which Indigenous Legal Services are resourced to provide legal aid compared to mainstream services.

In an environment of real funding cuts, dramatic population increase and Commonwealth Government Indigenous Affairs policies which are widely contested and critiqued, simply stopping the hurdles from getting higher would be a worthy achievement in itself let alone overcoming hurdles. The 'they haven't worked' implication in relation to Indigenous Legal Services is simplistic, focuses only on deficits of a program not achievements, strengths or skills and largely ignores the environment in which legal services are working .

***"...the Government is trying to sabotage Aboriginal organisations"***

**Koorie woman at the Victorian Indigenous organisation's consultation on the Victorian Government's proposed human rights charter.**

### **Emphasis On Mainstreaming Is Problematic On A Political, Practical and Policy Basis:**

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The Review effectively says that mainstream legal aid providers should lift their game to meet the gap created by the Commonwealth's lack of funding to ATSILS. This is problematic on several counts. The Review occasionally acknowledges that most Indigenous Australian peoples would prefer to use an Indigenous Legal Service.

***Many community members raised the fact that ideally they would prefer to have access to Indigenous run and staffed legal services. (Pg 68).***

The Review then makes a counter point.

***However, there is also strong recognition within the community, that this type of service is not always available and at times, is exactly what is not needed. For example, for some Indigenous people, it was easier for them to speak of their experience of personal crime or family breakdown to a sympathetic person who was not necessarily part of their community. (Pg 68)***

There is no attempt by the Reviewers to analyse or weigh up the relative prevalence of these two characteristics, eg, preference for an ATSILS versus mainstream service. The fact that Reports by bodies as diverse as the Australian National Office of Audit and the Joint Parliamentary Committee on Public Accounts have recognised the primary role of Indigenous Legal Services suggests there is significant support for Indigenous Service Providers.

Another way to consider this issue is to consider the Family Law area, where there will be some Indigenous Australian peoples using Victoria Legal Aid (VLA) due to conflict of interest and some people using VLA due to ignorance about what VALS provides. Even in this worst case scenario VALS does at least as much family law as VLA. The attractiveness of mainstream providers even in an area of law where conflict of interest will be a factor should not be exaggerated. The Review's preoccupation with enhancing mainstream services is not matched by a similar enthusiasm to enhance Indigenous Legal Services.

Over emphasis on mainstreaming is also problematic because it sidesteps any critique of the adequacy of Commonwealth Government legal aid policies or funding levels. This will no doubt be music to the Commonwealth Government's ears.

Emphasis on greater mainstream provision assumes the availability of considerable mainstream capacity to provide legal services to Indigenous Australians when in fact the mainstream system is still trying to recover from and manage the effects of a decade of effective Commonwealth Government funding cuts. The impact on services and on staff retention is considerable. This together with a deluge of law reform, increased complexity of legal system and the influx of clients with multiple disabilities places mainstream legal aid services in an unenviable position. The Law Council of Australia Report "Erosion of Justice" (2003) highlights some of the effects of funding cut backs.

A strong sustainable ATSILS sector is a fundamental component in improving access. Recommendations for more accessible mainstream services without also ensuring ATSILS are strengthened and sustained is by default contributing to the weakening of the Indigenous Legal Service sector and in so doing undermines the capacity of a critical and primary provider of legal aid to Indigenous Australian peoples. This undermines accessibility for Indigenous Australian peoples.

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*"In the first year a review will be taken to examine the provision and adequacy of legal representation to the Aboriginal community. Issues to be considered include funding sources, level and method of funding, service provision (including teleconferencing and areas of coverage including resources for minor advice for family and civil matters). The review will also consider the provision of resources for test cases." (Victorian Aboriginal Justice Agreement, 2000 p41)*

*(The Recommendation from which the Accessibility Review originated)*

The Victorian Aboriginal Justice Agreement recommendation quoted above from 2000 was the starting point for this Review. Consideration of funding sources, level of funding and method of funding has dropped off the agenda. At some point family and civil matters were replaced with a focus on women and children and the issue of test cases has faded from view. How these changes occurred and how they are linked to the Commonwealth Government becoming a co-funder of the Review is not clear.

What is clear is that the Review focus has changed and that change has resulted in a report which ignores almost completely the role and the responsibility of the Commonwealth government and the ongoing effects of its legal aid and indigenous affairs policies.

VALS describes the report as gendered because the only political dimension which is touched on in this Review is some aspect of gender politics and other political, organisational and policy issues are not addressed. Focusing on the legal access needs of women and children need not be done in almost complete isolation from other issue frameworks (eg men, families, communities, self-determination, government policies in relation to Indigenous Australian peoples, legal aid policies and funding formulae). The Report could have given these issues a little air. The issue of Indigenous Australian peoples' access to legal assistance should be connected with broader legal aid issues and broader Indigenous policy issues. This report generally fails to make those connections.

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This review makes no mention of the political, economic and policy context in which legal aid and Indigenous services and the notion of self-determination has developed over the last decade and in particular the last three years. The abolition of ATSIC, mainstreaming Indigenous services, tendering out ATSILS, practical reconciliation and radical deregulation of the workplace all affect Indigenous Australian peoples and their need for legal advice, education and advocacy.

The report makes no mention of the Senate Inquiry into Legal Aid 2004, Office of Evaluation and Audit Report-ATSIC (2003) The Australian Office of Audit Report 13 (2004) and the Joint Parliamentary Committee on Public Accounts Report on Indigenous Legal Services Report 403 (2005). All these reports have highlighted the short fall in expenditure on Indigenous Legal Services and the need for other reforms.

### **Indigenous Legal Sector Recognised as Having a Primary Role:**

In stark contrast to the assumption of a simple market model to describe the funding of ATSILS some recent reports have recognised ATSILS as having a primary role in service provision.

***“In many ATSI programs, the ATSI role is intended to be that of a supplementary funding body. In the case of legal aid to Indigenous Australians 89 per cent of legal aid cases were handled by ATSILS in 2000-2001 and 11 per cent were provided by LACs Accordingly, ATSI through its Law and Justice program is effectively the primary funding body for legal aid to Indigenous Australian.”(Pg. 46 ANAO 2003)***

The ***“Report 403: Access of Indigenous Australians to Law and Justice Services”*** (2005) is the result of the Joint Committee of Public Accounts and Audit which involved members of the Fortieth and Forty First Parliaments. It represents a serious attempt to make sense of an increasingly complicated policy and program area. The Report highlights the recognition of ATSILS as the primary providers of legal services for Indigenous Australians.

***However, some of the ATSILS and increasingly FVPLS are the primary providers of legal services to Indigenous Australians. In 2003 Indigenous Australians constituted 21% of the National Prison population and thus they constitute a significant proportion of criminal justice business. In the view of the Committee this context makes it difficult to sustain an argument that ATSILS and FVPLS are supplementary legal services (Para 5.37).***

Unlike many other service areas, in the legal sector, ATSILS are the primary provider of services to Indigenous Australian peoples. In other service sectors, Indigenous providers often play a supplementary role. There is clear policy choice here between valuing and protecting the Indigenous service provider sector or moving increasingly to a market model with a tendering framework. The latter would be an environment in which private firms and large welfare and religious organisations would be likely to become dominant.

At present, only ATSILS have been tendered. Would it enhance or detract from AFVPLS if they were tendered out? The answer to this depends on how important you believe a strong and effective Indigenous controlled legal sector is. It also depends on how difficult and wasteful you believe the tendering process is. The tendering process is a huge bureaucratic hurdle and depending on how the guidelines are interpreted could well lead to mainstreaming of services which were previously Indigenous controlled. There are a range of critiques of competitive tendering and its utility in the human services field. The report does not comment on or analyse the issue of tendering and the potential it has to undermine accessibility.

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This report does not discuss the issue of balancing expanded mainstream service provision with expanded Indigenous service capacity. The report makes Recommendations which focus on expanded mainstream provision without recognising the primacy of Indigenous services. This strategy implies that existing Indigenous services have adequate funding and risks undervaluing the importance of a strong Indigenous controlled service system.

### **Tendering ATSILS:**

The decision to tender ATSILS was made in spite of widespread opposition and a recommendation by the Senate Legal and Constitutional Committee report (2004) that the tendering not proceed. The Joint Committee into Public Accounts Report (2005) recommended that no further tenders which involved forced amalgamations should occur without evaluations of the Services which have already been contracted. This has been ignored by the Commonwealth Government.

The ATSILS policy framework 2003-2004 described core services as follows:

- a) Preventative, information and education services;
- b) Initial legal advice, minor assistance and referral;
- c) Duty lawyer assistance
- d) Legal casework assistance in criminal civil and family law matters
- e) Input on law reform and law related issues to promote social justice for Indigenous Australians and
- f) Outreach support and other legal aid related services.

The tender specifications have a private practice straight jacket defining core services as advice and casework. Compared with the pre-existing Policy Framework for targeting assistance provided to Aboriginal and Torres Strait Islanders issued in July 2003, the tender guidelines proposed a substantial narrowing of the purpose of legal services, Core services (a),(e) and (f) were not included as part of the tender. The tender of ATSILS narrows the core services to be provided and sets out policy prescriptions which are more inflexible than those in the pre-existing Policy Framework, eg, a more onerous proof of Aboriginality test. With a few minor exceptions, contestability policy has not been applied to Legal Aid Commissions or CLC funding or Family Violence Prevention Services. ATSILS have received “special treatment” in the form of being tendered out. Funding for functions other than core services has to be applied for separately and is only available for 12 months.

Compared to CLCs, VALS has the added disadvantage of having to mean test clients and to administer onerous proof of Aboriginality documentation. CLCs are free of these requirements. Victoria Legal Aid has a means testing but has no proof of Aboriginality requirements. CLC’s except Environment Defenders Offices can use core funding to provide the full range of legal services. VALS has to make multiple funding applications to enable it to provide a full range of services. Submissions for education and advocacy are for 12 months only, a further handicap. Commonwealth funding for test cases has been abolished.

Six months into the tender the Commonwealth want to alter the goal posts again with a proposal to revamp the Data Definitions. The Commonwealth Government deals with Legal Aid, Community Legal Centres and Family Violence Prevention Units in a less adversarial, onerous and bureaucratic way than Aboriginal

Legal Services. If the Commonwealth's anti-red tape project ever gets around to considering ATSILS' accountability and contractual arrangements they will have a wonderful test case to work on.

The Reviewers' interest in the ATSILS' tender process, policies, impacts on services and on Indigenous peoples began and ended with the discovery that it interfered with the review timeline and gathering information for the Review.

### **A Mainstreaming Strategy:**

*... the resource and other practical limitations of the two Aboriginal Legal Services in Victoria means that mainstream service providers need to fill the breach. (Pg 70)*

One of the themes in the Access Review is on mainstream providers 'filling the breach'. Some people may describe it as more like trying to fill a chasm. The conclusion drawn by the reviewers raises many questions.

- How did the breach arise?
- Why should mainstream services be the ones to remedy the situation?
- What happened to the idea that Indigenous peoples usually prefer to use an Indigenous service?
- Isn't this mainstreaming emphasis very similar to practical reconciliation in a legal service context

### **Legal Aid Policy:**

*It is important that we understand the policy development of legal aid and its benchmarks if we are to encourage wider participation in this policy development. .... Until this participation occurs, we will not achieve the contextualisation necessary to fully understand the role and significance of legal aid and its future development in the welfare state. (Fleming, 2000)*

Following its election in 1996, the Howard government threw overboard its election commitment to maintain legal aid spending levels and cut \$100 million from the budget. At the same time the Commonwealth also turned its back on the 55:45 funding agreement with the States. Instead the Commonwealth said that its funds could only be spent on Commonwealth matters, predominantly family law.

Fleming argues that the introduction of National Competition policy into legal aid policy and some of the market oriented policy assumptions was following from directions which the Keating Government had started. However, Fleming describes the Howard Government 1996 changes, the end of the cost sharing agreement with the States and the idea of paying only for matters which involved a Commonwealth law as taking the system's legal aid policy back to the fragmented state of the 1950's

What followed these changes were new funding caps on family law matters, restrictions on the availability of legal aid for criminal law and the further reduction of legal aid for civil law. Lawyer's payment for legal aid matters was in theory 80% of the nominal standard fee. Over more than a decade this level of payment dropped well below 80% as funding failed to keep pace with inflation and other costs. Over this period juniorisation, allocating legal aid to the most inexperienced lawyers, of legal aid was occurring and a further consequence was that increasing numbers of lawyers decided that they would no longer do legal aid work. During this period, the number of unrepresented litigants in the Family Court increased to 40%. These changes contributed to pressure on VALS. Over this period VALS increased its family law practice and maintained its civil law practice as well as developing Community Legal Education, policy and research work.

### **Limitations of Commonwealth Policy:**

The Review refers to the Commonwealth Legal Needs Study (Rush report). This study was essentially focused on how to recut the cake and not provide any guidance as to whether the shrinking cake was large enough. The formula used had some problematic features. It included the idea that if legal costs were higher in a particular State then demand would drop off and hence funding should be lower. It was described by one academic review of the formula as counter intuitive. VLA has fared particularly badly under this new funding model. A new funding model was developed in relation to ATSILS but this has not been made public. The Legal Aid and Access to Justice Senate Inquiry Report (2004) was critical of the Rush Legal Needs Study methodology (Recommendation 1) and also the inflexibility of the new funding arrangements (Recommendations 8 and 9).

The National Law Council Report "Erosion of Justice" (2003) highlighted the impact of the cutbacks to legal aid. In the 1999/2000 financial year, a further allocation of Commonwealth funds was made to legal aid with an increased contribution of \$46 million, increased by cost of living factors over the next four years to \$63 million. In 2003/2004, the Commonwealth's contribution to legal aid funding was \$130.4 million, compared to its contribution in 1996/1997 of \$159.2 million.

The small increase since then and funding for some rural CLCs has not redressed the impact of the funding cuts. In the last year, both the State and the Commonwealth have made small adjustments to funding levels provided to legal aid which are the first belated Commonwealth acknowledgement of the years of effective cuts which have occurred. (There is no corresponding new money for ATSILS. However, additional Family Violence Prevention Legal Services were funded).

### **Inclusion of Previous Reviews as a Point of Comparison or Source of Policy Advice:**

Most of the Senate Inquiry into Legal Aid (2004) recommendations have not been acted on. There is clearly scope for a Review of Access to critically consider the impact of significant funding cuts on the providers of Legal Aid and the community. Senate Committee Recommendations such as providing legal aid impact statements in relation to new legislation are also useful proposals to try to check State and Commonwealth enthusiasm for new legislation without thinking through the down stream costs. This is another level at which access can be protected. A Review such as this Victorian one provides an opportunity to revisit and consider including some of these recommendations. The opportunity has not been taken.

The Review report does not make any attempt to contextualise the changed and changing environment. This environment now includes chronic funding shortages across the mainstream and Indigenous Legal Aid sector, tendering out ATSILS, mainstreaming Indigenous affairs and abolishing a key source of Indigenous policy advice-ATSIC. In this context, a Review which does not consider the threats these changes present to Indigenous Legal Service sustainability is a curious omission.

The policy environment since the Liberals were re-elected and won control of the Senate has become more difficult for disadvantaged people. Reduced workplace protections, reduced level of payment for many families receiving Centrelink payments and more complex family law processes are all policy directions which will have impacts on Indigenous Australian peoples and their level of legal need.

At a State level, the Victorian Government's Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) projects continued growth of the number of Indigenous Australian peoples in custody. The continuing emphasis by media and politicians on more punitive sentencing policies puts higher numbers of Indigenous Australians at risk of longer prison terms. The most recent ABS Prison Report for 2004-2005 (4517.0) reveals prison numbers are up 5% and the proportion of the population in prison has increased by 3%. Indigenous Australian peoples in prison increased 12%, the single largest increase since 1999. These issues are virtually ignored by the Review.

### **Community Legal Centres:**

Community Legal Centres have been subject to reviews and effective funding cuts. The Commonwealth government has funded two new rural CLCs and the State has funded new or expanded Centres in outer suburban areas. Existing CLCs have received small increases from the State but like ATSILS' salary levels are very low and CLCs often struggle to fill staff vacancies, particular lawyer positions.

### **The Capacity of Mainstream Services To Do More:**

While there is clearly merit in continuing development of mainstream services, there is no policy framework outlined for how this should be balanced with strengthening and improving the capacity of Indigenous Legal Services.

There is no assessment of how long greater service provision by mainstream services may take or how difficult it would be to implement. It also should be noted that there are already in place projects, working groups and collaboration between Indigenous and mainstream providers around Indigenous issues, such as, State government changes to Child Protection Law, PERIN fines, Independent Persons at police stations for children, changes to suspended sentences, family violence issues and extension of family conferencing and referral of cases. There is good will and there is collaboration occurring but some element of realism about the capacity of mainstream services to breach the gap would be wise.

The Legal Aid sector has experienced extreme funding pressure, pressure by government to:

- do more for less (declining legal aid funding);
- do more for nothing (pro bono )
- overlook the chronic problems of the funding of existing services (fund new things)
- recruit and train more often as staff turnover increases

- work within restrictive Commonwealth Legal Aid policy that will now only fund Commonwealth matters.

When a report such as the Review recommends expanded mainstreaming of legal services for Indigenous Australian peoples, it is worth considering the existing level of funding and capacity, the issues around inflexible Commonwealth guidelines and the cost shifting agenda of the Commonwealth Government.

### **The Funding Crisis:**

This Review identifies strong support for ATSILS but then does nothing to address the serious under-funding of ATSILS. The Review repeatedly acknowledges the overstretched status of ATSILS but does not make recommendations which reflect an awareness of this pressing reality. Apart from some increases to the AFVPU most of the proposals for expenditure relate to increasing mainstream legal service and pro-bono services.

*There has been no substantial injection of new money into the ATSILS program since 1992. Under current funding levels ATSILS are experiencing increasing costs and difficulty in attracting and retaining professional staff. Internal ATSIC paper 21st January 2003 (pg. 40 ANAO 2003)*

The Indigenous Legal Service program has received effective funding cuts since 1992. During this time the Indigenous Australian population in Victoria increased 49% between 1991-2001 and it is projected to increase a further 48% by 2006. Victoria was the last state to receive funding for an Indigenous Family Violence Prevention Legal Service.

A variety of factors have made it difficult to maintain the existing level of criminal, family and civil services. These factors have increased the pressure on ATSILS:

- More punitive sentencing policies;
- Increased recognition of the prevalence of family violence;
- Commonwealth Government withdrawal from the agreement it had with the States in relation to funding legal aid ;
- Indigenous Australian population increase;
- Effective funding cuts; and
- Increased staff turnover.

Report 403 is the most recent Parliamentary Report to grapple with the issue of the adequacy of ATSILS. The Report has commonalities with some of the past Senate Inquiries into Legal Aid as it recognises severe funding shortages to ATSILS. In recognizing the valuable work performed by ATSILS, the Report echoes the findings of many Committee Reports extending back to the “Ruddock Committee” (1980). Nationally, funding to ATSILS has increased from \$36million in 1991 to \$42.6million in 2004-2005. This ‘increase’ represents an effective funding cut while populations and expectations have been increasing. Reports such as the (ANOA 2004; OEA, 2003) quote figures of \$12-25million necessary to bring funding levels up to parity with legal aid.

### **Indigenous Affairs Policy and Indigenous Legal Service Infrastructure**

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The abolition of ATSIC and the non-provision of funding to the National Aboriginal and Islander Legal Services Secretariat (NAILSS) means there is no national non-government policy making body or process to link ATSILS. There is no organisation to assist ATSILS in terms of enhanced governance skills, capacity building, cost savings and national policy development. The Commonwealth government emphasis has been on mainstreaming Indigenous services and policy development and tendering out ATSILS. Practical reconciliation has been put forward by the Government as a substitute for a rights approach to reconciliation. Rights issues and self-management have been cast aside in this new brave Government world.

Indigenous legal experts such as Behrendt (2003) have argued that the two sorts of reconciliation, practical and rights, should not be separated and that self-determination/ community management has been and will continue to be a strong concern of Indigenous peoples, together with health housing employment and education. The Harvard research on Canada's and the USA's Indigenous peoples (quoted in the Aboriginal and Torres Strait Islander Social Justice Commissioner's Report, 2003) highlights the better outcomes which occur when there is significant local control of programs by communities. In contrast to the Commonwealth government the State Government has demonstrated a commitment to consult with Indigenous Communities and fund initiatives which recognise the significance of self-determination such as Koori Courts and Regional Aboriginal Justice Advisory Committees (RAJACs).

### **Borrowing from the optimism:**

*Rather than emphasise the wide range of deficits in legal assistance identified by Indigenous people as part of this Review, the Review team determined to borrow from the optimism and successes generated by of the Koori Court. We have therefore decided to frame our approach in a way that is intended to increase trust between Aboriginal Legal Services ( and FVPLS), increases trust and cooperation between Aboriginal Legal Services and non-Indigenous legal service providers (eg CLCs and private solicitors), to build the capacity for non-Indigenous legal services to respond to legal needs and to promote the involvement of Indigenous people in solutions, and facilitating innovation among all service providers to improve legal assistance to Indigenous Victorians.. Pg 5, 11 and 64 .....*

The quote above about borrowing from the optimism is repeated three times so it must have some importance for the Reviewers. What does it mean? As an Access to Justice Reviewer, why would you not emphasise 'the wide range of deficits in legal assistance'? Surely this is a significant part of what the reviewers were paid to do?

The analysis of VALS shows little evidence of optimism. The Review takes claims that VALS only does criminal law matters for men, repeats it in various forms seven or eight times, omits to analyse the claim. When this is linked to the 'conflict of interest problem' which again is repeated regularly, it sounds very much like emphasising a deficit. Never mind that the Reviewers know it is not the whole story, or that it may in some cases be hyperbole and code for; "Give us more services".

In the context of 'borrowed optimism' consider the following statement:

***It should also be noted, that the findings of this Review confirm those of the NSW Needs Study which found that the creation of Indigenous specific legal services had not overcome the considerable hurdles confronting Indigenous people seeking legal assistance (Schetzer and Henderson 2003;16) Pg 69.***

The borrowed optimism must have missed this gloomy cliché. Apart from VALS all other providers are either not discussed in any detail or their problems are reframed or brushed over. Perhaps this is where the optimism comes in.

### **Compare the Analysis of What the Reviewers Say About Victoria Legal Aid:**

*“Trends in Indigenous people’s applications for legal assistance through VLA mirror that of the non-Indigenous population. The majority of applications are made in relation to criminal matters and Indigenous males comprise the majority of those applications. (see Table 7) above.” (Pg 36)*

This description of VLA indicates a similar pattern of service use to VALS. The Review does not then use this fact over and over again through out the report to create an impression that VLA is only a men’s criminal service. The report also makes no comment about a reduction in Indigenous matters dealt with by VLA in the most recent years.

In a climate of chronic under-funding and population increase, VALS has maintained its civil law practice, expanded its family law practice and increased the number of services to men and women in criminal matters. 33% of the legal staff does non-criminal work. 38% of total solicitor time is spent on legal matters for female clients. The borrowed optimism seems to extend to the review making almost no critical comment about any other service than VALS. VALS provides the most detailed statistics while many other services provide basic figures or no figures at all.

### **Police:**

Police Aboriginal Liaison Officers (PALOs) are given a tick by the Review, in spite of there being a very wide range of approaches by PALOs to their job. They are then ticked off for being mostly male and being involved with males and hence reducing the accessibility of females. Other than a gender analysis there is no recognition of systemic issues or solutions. For example, PALOs have to do PALO work in addition to their normal duties, there is no pay incentive to carry out PALO duties, some police officers volunteer for the role while some are encouraged to take this role. The level of commitment to the position varies considerably as does the skill and knowledge of PALOs. In most cases, the community have no role in the selection of the PALO. Although there is criticism of PALOs being male and being seen to be associating with male community members there is no suggestion that there may need to be a women’s contact person at police stations if male PALOs are considered by some women to be unapproachable.

Looking beyond a gender analysis, Recommendations to improve the input of local Indigenous Australian communities to the selection of PALOs and providing some time release to PALOs from normal duties would improve the effectiveness of these positions.

### **Police Role Regarding Family Violence:**

There is little criticism of the Police response to family violence. The discussion about the police role in relation to family violence and the suitability of the Police Code of Practice is remarkable for two reasons.

One is the frank admission that Police also expressed concern that they did not know what a ‘culturally appropriate response’ to family violence in Indigenous communities should be. Second, there is no acknowledgement of the range of problems with the pro-arrest policy. The Reviewers apparently believe that the main problem for Police with family violence is if a man is taken into custody the VALS’ Client

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Service Officer (CSO) will try to get him out. Yes! CSOs do attempt to get people out of police custody so do Aboriginal Community Justice Panel (ACJP) members.

Is the Review suggesting that this is inappropriate? The Police and Bail Justices are the ones who set the conditions which determine how and when release from custody occurs.

The issues around the Police Code of Practice directing police officers to take a pro-prosecution approach to family violence are much broader and VALS has made a number of attempts to urge the Police to reconsider their mandatory pro-arrest policy. While some women will want the perpetrator charged, prosecuted and punished others will have safety, prevention and/or treatment as their goal. It is unlikely that police officers will achieve improved credibility with Indigenous Australian women by taking a pro-arrest approach in family violence. It might be worth considering alternative policies which would better empower Indigenous Australian women. There is considerable evidence that a pro-prosecution approach is often counter-productive. The threat of jail is not an effective deterrent for many men and the pro-prosecution policy can make it less likely that a woman will report abuse and seek help.

### **Equal Opportunity Commission Victoria, Consumer Affairs Victoria and the FVPLS:**

There is no critical inference drawn about the relatively low numbers of Koories using the EOCV's service. AFVPLS has no figures quoted but the Review. There is no discussion or figures in relation to the Consumer Affairs Victoria's Indigenous Unit, the Ombudsman or the Dispute Settlement Centre. The 'borrowed optimism' seems to be applied liberally in relation to other service providers but VALS has instead been subject to some borrowed pessimism.

### **The Conflict of Interest Issue:**

The Review reports that VALS can not assist women due to conflicts of interest arising out of VALS being a crime/male service. The facts are, according to the Review, VALS' statistics indicate that it does more criminal matters than any other law type. There is no analysis of this other than conclusions based on the assumption that the facts speak for themselves.

There are four questions that we would raise about this assertion:

- What is VALS' present non-criminal resource allocation?
- What is VALS' present balance of work, re males and females in terms of cases and in terms of solicitor time spent?
- What is the present theoretical level of conflicts of interest?
- What is the likely level of actual conflict of interest in relation to particular problems eg family, civil and family violence?

### **Facts:**

VALS has 12 solicitor positions, 4 lawyers of whom do only civil and family work - 33%;

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Since July 05 65% of new civil and family matters were for women;

38% of total solicitor time, including criminal, civil and family work is for female clients;

VALS assists about 800 women (2500 men) a year with casework or duty work for criminal matters. About 200 women (110 men) receive casework in relation to civil and family matters;

VALS is described as having a conflict of interest when it comes to assisting women due to its provision of criminal law services to men. This point is made in slightly different terms seven times.

***Given the impact of VALS ' conflict of interest policy in relation to family violence matters, it is recommended that VALS cease offering services for Indigenous women in family violence situations.***

***... and in one instance where a woman had approached VALS she felt her complaint was not managed with sensitivity because she was referred to an unknown practitioner because of the 'conflict of interest' rule. Pg 85***

***The conflict of interest rule was seen by many Indigenous women who participated in this Review to be operating in a gendered way. pg 105***

We don't know how old many of these complaints are. Eight years ago, VALS changed its policy of not seeing Koorie v Koorie disputes. If the complaints are old or based on old stories, it may be because there were more referrals out under the old policy.

The sometimes stated rationale for the conflict of interest problem is the claim that VALS is primarily a men's service and only deals with crime. This is totally incorrect. The statements about conflict of interest should be subject to some form of analysis. The consultants could have analysed this community comment based on the advice they have received and statistics presented. Of course, there will be conflict of interest issues but what is the scope of the problem.

### **Size and Scope of Conflict of Interest Problem: The Potential for Conflict:**

The Review focuses on conflicts arising for women who are precluded from using the Service because their male partner has previously used the Service for assistance with a criminal matter. There are other circumstances in which conflicts can arise. For example, with two people accused of the one crime and the two people have significantly different versions of what happened. There is also the reality that one quarter of all criminal matters involves female offenders. In these cases, the women's involvement may result in her partner being unable to access VALS for family law assistance. The reverse situation to that which the Reviewers are concerned with will be less common as women commit less crime.

There are two sources of information which can provide us with an approximate indicator of the extent of conflict of interest matters affect women.

One is the ratio of women who have a relationship with an Indigenous Australian male partner versus a non-indigenous male partner. We have not found any data which directly indicates how many Indigenous Australian women and men are in relationships with non-Indigenous partners. However, there is ABS data on the percentage of children born to families where both partners are Indigenous and where the mother or father only is Indigenous. This data provides a useful indicator of the proportion of couples where both parties are Indigenous and hence a conflict is possible.

ABS Indigenous registered births data for 2004 (3301.0; 2004) indicates that in 70.3% of births only one parent was Indigenous. The ratio of mothers with a non-Indigenous partner to mothers with an Indigenous Australian partner is 58:42. If this proportion of Indigenous women is representative of Indigenous Australian women in the population in relationships generally, it suggests that 58% of women will not face a conflict of interest as a result of their male partner using the ATSIILS for a criminal matter because their partner is non-Indigenous. That means that 42% of women may face a potential conflict of interest.

The next issue is to consider Indigenous women who have Indigenous partners. What percentage of Indigenous Australian men will not have used VALS?

ABS's NATSISS 2002 report provides data in relation to rates of arrest. 16% of Indigenous Australian peoples had been arrested in the previous five years. (24% male and 9% female). These figures suggest that of the 42% of Indigenous Australian women who have relationship with an Indigenous Australian male partner almost three quarters of these women are unlikely to face a conflict of interest problem as their partner will not have been arrested in the past five years.

### **Actual Levels of Conflicts of Interest:**

Actual conflict of interest will arise if the woman seeks family law advice or family violence. The rate of relationship dissolution is about 50% and the rate of family violence is about a third so this means that the actual conflict of interest is likely to be lower than the potential conflict of interest figures.

### **Summary:**

There are three steps in this process of identifying Conflict of Interest caused by VALS providing criminal law assistance to men.

1. Identify the proportion of Indigenous Australian women in a relationship with an Indigenous Australian man (42% using Births data on how many families have two Indigenous Australian parents)
2. Identify the proportion of Indigenous Australian men who have used VALS for a criminal law matter. (Estimate 24% of males –using NATSISS 2002 Australian data on arrest on the past five years)
3. Likely actual percentage of women affected by conflict of interest will depend on problem arising and seeking VALS' help, eg, separation occurs in approximately 50 % of relationships

This analysis is not meant to dismiss the problem that some people feel offended or short changed by being referred to another service but it does highlight the scope of the conflict of interest problem is one affecting a minority of women and a smaller minority of men.

It does not preclude VALS providing a service in a significant majority of cases. In discussions with VLA, VALS has discovered that it may be possible to obtain some greater flexibility in the legislative rules governing conflict of interest. If this occurred the level of actual conflict would decline further.

### **'Referred To an Unknown Practitioner'**

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Where VALS has a conflict of interest and cannot refer the other party to a legally aided service, VALS will fund the other party. VALS also refers people to other services particularly in the area of civil law because:

- demand is high and it is impossible for one person to be expert on the very wide range of civil law that exists and is being regularly amended.
- there are a wide range of agencies and bodies who provide specialist assistance such as Consumer Affairs Victoria (CAV) and the Ombudsman.
- there is also a variety of CLCs and private firms who have specialised knowledge.

VALS provides representation and advice in many cases and has a good knowledge of referral options. Our “Be Strong” kit and education associated with this was aimed at improving community knowledge and attitudes about dealing with problems and encouraging people to talk to someone about what to do.

### **Complaint that VALS Pleads People Guilty:**

The report provides a number of quotes which state or imply that VALS is inappropriately pleading people guilty. The Review makes no attempt to analyse this claim or put it into any sort of context.

*Others commented that the VALS’ solicitors frequently have so little time, they found themselves ‘cajoled’ into a guilty plea because contesting the view of the police would take up too much of a busy solicitor’s time. Pg 80.*

*A number of the Magistrates also commented upon the high rate of guilty pleas among VALS’ clients. There was also a good understanding of the paucity of resources available to VALS. Pg 80*

The Review quotes comments from people about VALS’ solicitors being rushed and sometimes having limited experience. This is sometimes the case and it is an increasingly common feature of legal Aid, private firms doing legal aid work and ATSILS.

It is the completely predictable result of starving legal aid providers of funding. This does not mean that in the case of VALS it will lead to an increased proportion of not guilty pleas. The proportion of guilty pleas is to a very great degree set by the quality of the police work and the extent to which clients have made admissions to police. VALS in the vast majority of cases will advise clients to plead guilty. This is not caused by laziness or lack of time. The high percentage of guilty pleas is largely to do with the how the criminal justice system is structured and in particular the high proportion of clients who co-operate with police at the interview stage.

The report fails to point out that in the majority of cases the client will have been observed offending or will have admitted offending in the course of a police interview or in the pre-interview ‘chat’.

Prior to taking the matter to court there will be some assessment by a senior police officer or prosecutor of the likelihood of the prosecution succeeding. The court structure is biased towards encouraging people to plead guilty through its ‘get it over at once if you plead guilty’ process. The sentencing system encourages

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people to plead guilty through offering a sentencing discount to people pleading guilty. Even the Koori Court system is premised on people pleading guilty to be eligible to have their matter heard before the court.

There are also Government policy requirements on similar to Legal Aid which precludes a grant of aid being made to a person for a not guilty plea unless there is a reasonable prospect of success. The majority of people, approximately 95%, are found guilty in the Magistrates' Court. This highlights the systemic factors contributing to high guilty pleas.

In a National comparison of ATSI's rates of pleading guilty, the average was 7%, the highest was 20 % and the lowest was 2%. Victoria's rate was 10%, 3% higher than the average. (Office of Evaluation and Audit, ATSI, 2003). In these circumstances, it is hardly surprising for people to state that VALS encourages people to plead guilty. The more important and relevant questions might be:-

- how well do lawyers manage to explain why a guilty plea is in many cases the only option
- does the folk lore about VALS pleading guilty dissuade some clients from exploring this possibility with their lawyer
- are there cases where a client had a reasonable chance of a defence but the lawyer overlooked it or failed to advise the client of this option or failed to advise the client they could object or be referred to another lawyer?
- Are Indigenous Australian clients more likely to make admissions to police than mainstream due to historically poor treatment by police?
- Are Indigenous Australian clients more likely than mainstream clients to state that they made admissions to police in order to get out of the police station?
- Are Indigenous Australian clients more likely than mainstream clients to state that their record of interview was not accurate?

Lack of analysis of this issue by the Reviewers allows the inference to be drawn from the community criticism that VALS' service is of poor quality and that guilty pleas are simply a time saving measure. VALS totally rejects this claim or implication.

### **The Claim That VALS Only Does Criminal Law:**

This Review draws to some extraordinary conclusions. The methodology puts some of the facts in one section, put the community comment in another and then draws conclusions. In drawing conclusions, the Reviewers give primacy to the community comments and ignore service data or analysis of any other facts.

In a section headed Discussion and Recommendations: Quality and Accessibility of Legal Assistance for Indigenous peoples in Victoria, the Report draws conclusions as follows:

***Most Indigenous people in Victoria were aware that there is an overwhelming emphasis by VALS on Criminal Law Pg 63***

***VALS' operations are heavily focused on providing legal assistance on Criminal Law matters. Pg 63***

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*Knowledge of either VALS or FVPLS by Victorian Indigenous people has therefore only been through needing to access lawyers in the context of criminal charges for either themselves or someone else in the family Pg 65.*

*VALS claims to offer a service to women and children involved in family violence and Family Law, but many meetings with community groups challenged that claim Pg65*

*The combined effect of an already overstretched resource, the focus on the provision of legal assistance for Criminal Law matters and the introduction of the Koori Court means that if an Indigenous person in Victoria requires legal assistance in an area other than Criminal Law, they often have had to go it alone This view was expressed in both group community meetings and within the individual surveys. Most Indigenous people and organisations consulted, expressed some knowledge of VALS, but only of the service's Criminal Law operations. (Page 66)*

*It is identified by most Indigenous people as the service they go to when they or someone in their family is apprehended by police or charged with an offence (Pg 69)*

*'You actually have to be a criminal for VALS to assist, as they are so busy with these cases they cannot assist good people... it is up to VALS to get people out of jail and to give them a fair trial. 'Pg 77*

*The low rate of applications from VALS to VOCAT was seen as consistent with VALS' focus on defendants and it is recommended that that focus continue and be consolidated...pg 83*

*and the overwhelming demand of criminal work on the only general Aboriginal Legal Service, which leaves few resources for a general discrimination practice that picks up the day-to-day experiences of systemic discrimination .pg 84*

The quotes above highlight the progression of the “only does crime” story from the status of community members’ comment or belief to the last quote where it is used as an explanation for why VALS does not undertake anti-discrimination cases.

The claim that VALS doesn't prioritise doing discrimination issues is an assumption by the Reviewers not linked to any articulated facts. By the end of the Access Review, the highly exaggerated claim that VALS “only does criminal law” has become a ‘fact’. That ‘fact’ is then used to explain or support another demonstrably false assumption by the Reviewers that VALS does not prioritise discrimination matters because all it does is criminal law. Simply adding two or more inaccurate statements together doesn't address the problem that putting a conjunction between two wrong statements doesn't make a right one.

VALS has four solicitors who are busy doing non-criminal law. Wouldn't it be reasonable to assume that at least some community members know that VALS also does non-criminal work? If the community members surveyed only know that VALS does criminal matters, does that mean that VALS only does criminal matters? Why would you assume that all the community members surveyed would have accurate information about what VALS does?

**Fact:** 33% of VALS' legal staff does civil and family law work (Eg 4 out of twelve solicitors).

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- Fact:** Over the last seven years while Victoria Legal Aid has been reducing its civil law grants to a trickle, VALS has maintained its civil law solicitor position.
- Fact:** Over the last four years, VALS has increased its family law section from two to three via a secondment arrangement with VLA
- Fact:** Over the last year VALS has produced 23 law reform or policy submissions.
- Fact:** VALS has been providing community legal education services and worked with other government departments to improve access to civil law services and provide integrated education programs to rural communities.

In 21 pages, there are at least nine references to VALS being dominated by crime. This misrepresentation of the facts is used to recommend that VALS not do victims matters or assist women with family violence matters. It is also used as a basis to conclude that VALS is unable to do discrimination matters.

The Report provides two different versions of reality in relation to VALS' work:

- service statistics saying non-criminal work is done in significant numbers
- community feedback saying that all VALS does is criminal work

The Reviewers faced with two conflicting versions of reality: simply deleted the service delivery facts and pasted in the community comments. In the quote from page 65, the Report says "VALS claims that it offers family law services".

VALS is not "claiming". It is a fact that VALS offers civil and family law services. The myth of VALS "only doing crime" is retold in this Review. This Review quotes this belief repeatedly but does nothing to contextualise, clarify or correct the view. The Reviewers apparently accept this view.

### **VALS Has Attempted to Make the Facts of Service Provision More Widely Known:**

Over the last six years, VALS has made a number of attempts to increase community knowledge about what the Service provides and its policies.

This has included:

- developing a number of different pamphlets and community education programs.
- convening an Indigenous Women's Justice Forum which links Indigenous and mainstream services.
- providing a monthly newsletter to Indigenous organisations and mainstream service providers
- Since 2003, there has been a new pamphlet about conflict of interest, guilty pleas and female clients. There has also been one encouraging clients to bring along any paper work when attending solicitor appointments. These have been distributed widely.

VALS believes that demand for services suggests that these strategies have had some success. The criticisms made to the Reviewers suggest some people are either still dissatisfied and/or are unaware of the today's service practices. It is unfortunate that for the most part we don't know how old the complaints in the Review are.

### **Memorandums of Understanding or Statement of Co-operation:**

*This Review identified considerable and widespread concern that there was no formal arrangement in place between VLA and Aboriginal organisations (FVPLS and VALS), and between VALS and FVPLS (pg 73)*

#### **Victoria Legal Aid**

There is a Statement of Co-operation between VALS and VLA. This was signed in 1999 and revised in 2004. VALS has a good working relationship with VLA and has worked closely on education projects and receives on-going benefit from the seconded family law position.

#### **Aboriginal Family Violence Prevention and Legal Service**

VALS has held preliminary discussions with the AFVPLS and more recently with Mildura Aboriginal Family Violence Prevention and Legal Service seeking the negotiation of an MOU.

VALS wrote a letter of support to AFVPLS when its Education Worker was deemed by the Commonwealth not to be a core part of the service. Similarly, we wrote supporting their bid to tender for the new money for a Mildura Family Violence Service. AFVPLS supported the VALS' submission to the Commonwealth Government opposing the proposal to introduce a presumption of joint custody in 2003. The AFVPLS Executive Officer spoke at the VALS' Indigenous Women's Justice Forum about Family violence program and policy changes in 2005. VALS has also kept in regular contact about issues such as the Family Violence Courts. VALS invited AFVPLS to participate in the Charter of Rights consultation sponsored by five Indigenous Statewide Services and to make a verbal submission, with VALS and Elizabeth Hoffman House staff, to the House of Representatives Legal and Constitutional Committee hearing into further proposed changes to Family Law.

### **VALS Provision of Services to Victims:**

*The low rate of applications from VALS to VOCAT was seen as consistent with VALS' focus on defendants and it is recommended that that focus continue and be consolidated. It is also recommended that VALS refer Indigenous victims of crime to FVPLS or to other specialist non-Indigenous agencies in order for Indigenous people to receive a specialist service for victims of crime. Pg 83*

The Review claims that VALS provides little by way of support to victims. It further recommends that VALS should not provide support to victims. No figures are provided to reinforce this statement nor is there any comparative data about what other providers do. In our submission to the Victims Review, we drew attention to the dramatic drop in requests for assistance from victims in 1997 when the Kennet Government

cut financial assistance. VALS' experience of reduced demand for service was paralleled by figures provided in Annual Reports from VOCAT.

Currently, VALS has 20 active matters involving victims. VALS has also provided advice to another 6 people who are yet to decide whether they are pursuing the matter. The male/female balance of applicants is approximately 50:50. The data provided by the consultants from the 2002 Indigenous ABS survey indicates that there are as many male victims as female. Given all these facts, why would the Review report recommend VALS cease providing services to victims?

VALS made a submission to a review of services for Indigenous victims. Many of the recommendations are still worth consideration as they are about increasing access:

*The Victims of Crime Assistance Act and its administration could be improved by:*

- *Making provision for Stolen Generation claims to be heard, as NSW have done, even though they will be more than two years old.*
- *Removing the requirement to consider the person's prior criminal history*
- *Simplifying forms and language and making it clear who will help people fill in forms.(Courts are usually too busy to assist with this)*
- *Increasing the amounts paid for special financial assistance particularly for the more serious matters.*

*Assistance to victims could be improved if there was a greater provision of free culturally appropriate counselling. Free counselling means that persons are not required to access it via forms or VOCAT approval.*

*There are broader community development and community strengthening initiatives which could be achieved via a two stage process:*

- *Involving the existing agencies in a round table and then a joint referral protocol.*
- *Funding a community education project which also did training with mainstream services.*

*(Extract from VALS Submission to the Victim Services Review 2003)*

### **Test Cases:**

The Review's attempt to consider test cases and systemic change is brief. The last recommendation of the Report is one of the few which is not focused simply on individual service provision.

***That the VALS , FVPLS and VLA seek to increase the number of referrals of public interest race discrimination test cases which reflect the day-to-day discrimination faced by Aboriginal people.( Recommendation 28)***

The Review ignores the priority that VALS gives to these matters already. Part of the rationale for this recommendation is based on VALS not doing this work due to having too much criminal work to do. This is an incorrect assertion. The Recommendation:

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- Provides no indication as to how, other than exhorting ourselves to do better, that we might achieve this increased number of race discrimination cases.
- Ignores the problem that many clients who have a strong case often have other **social and economic pressures** which undermine their capacity and interest to pursue a matter.

The Review recommendation also fails to consider some of the difficulties associated with getting test cases through the EOCV. The EOCV emphasis is on conciliation, not test cases. This often precludes or discourages test cases. The EOCV process means that clients need to be prepared for a lengthy process; first trying and failing to conciliate the matter if they want their case to go to VCAT. Once they get to VCAT they will usually face another round of conciliation. Conciliation agreements at EOCV may result in a secrecy clause which limits their effectiveness as test cases.

When facing a well funded party at the EOCV conciliation, an Indigenous client will often find that there is no intention by the other side to negotiate. The well funded party will often use the conciliation as a fishing expedition to ascertain the strength of the other side's case. Negotiation proper often commences once the matter has gone to the VCAT. This has been the pattern that VALS has seen when dealing with organisations such as the Education Department and a Hospital for example. EOCV policy rarely allows people to avoid the conciliation stage and proceed directly to VCAT.

EOCV has also introduced a fast tracking outreach conciliation approach which appears to be a good strategy in terms of speeding up the process however it also appears to omit any legal advice to the client or opportunity to consider any options eg a test case or suing the other side. These and other issues have been put to the EOCV and are under consideration by them. In addition, VALS has been part of a group including the Federation of Community Legal Centres, Victorian Council of Social Services and who are seeking a systemic review by EOCV of the rights of women in prison. So far this has been rejected by EOCV.

There is no acknowledgement of the abolition of test case funding from the Commonwealth Government for ATSILS, the limited capacity of VLA to fund test cases and the strategic significance of test cases. A related test case matter but one that is unmentioned in the Review is that the odds are stacked against people who want to make police complaints. Aside from the endemic problem of police investigating police, which often deters people from making a complaint, there is the reality that for serious assault victims the cost of fighting the police, socially and economically, is very considerable. The police policy in defending these matters is not to negotiate. This means that even if a person has a very strong case it can cost \$250,000 in legal and court costs before they can prove it. This means there is a huge disincentive to clients and lawyers to pursue the matter.

### **Research Design and Data Collection Problems:**

The report acknowledges some of its methodological challenges and shortcomings. The report acknowledges that the tendering of ATSILS and other consultations which were occurring made it difficult to obtain responses from people. The report indicates that it deferred most of the consultation to February to avoid clashes with other reviews. In spite of this, the report then suggests that Christmas, the ALS tender and other reviews precluded a higher rate of responses.

At one point in the report, there is mention made that there were three responses to the key informant survey. This is described as not statistically significant. There is no further mention of statistical significance but clearly none of the figures in the report are statistically significant and perhaps this should be mentioned.

### **Response Rates to The Review Are Low In Virtually Every Category:**

CLC's, young people, key informants and the community survey all had very limited response rates:

*Three respondents completed the Key Informant's Survey.... Some methodological problems were identified as part of this survey.... however, the Review Team did not think that three responses could be held to be statistically significant in any way. (pg 62)*

*Given the low rate of response to the survey of CLCs, it is difficult to draw any conclusions in relation to the services provided to Indigenous people by CLCs across Victoria. (pg 84)*

*The methodology adopted in this Review could not make particular allowances for the involvement of children and young people due to ethical, resource and time limitations.*

*An organised and systematic response to the legal needs of Indigenous people by the private profession was not evident through this Review... pg 84*

This disappointing list of quotes from the review highlights the low level of response to the review. This low level response together with a survey response of only 40 people, 60 short of the target number, might be a basis for some caution when drawing conclusions or relying on the findings.

### **Community Consultations:**

Of the proposed 14 geographical areas for consultation, three of these did not occur and two others were cancelled. There was considerable over-representation of people from non-metropolitan areas but there is no comparison of whether there is any difference between metropolitan and non-metropolitan Melbourne.

### **Designed in the UK:**

The survey is based on a mainstream United Kingdom survey that was adapted for use in NSW and has now been 'adapted' for use with Koories in Victoria. Although it has the benefit of being used before, it has no special relevance for Indigenous Australian peoples or cultural appropriateness. Although it has been used elsewhere there is no attempt to make any comparisons between the results here and elsewhere. For instance, there was a similar level of seeking help in the New South Wales pilot to the level in Victoria with Indigenous peoples. 40% of people sought legal help for their major problem.

Is this good in the sense that Indigenous Australian peoples are seeking assistance at the same rate as mainstream people or is it too low because we would expect Indigenous Australian peoples to have a higher number of problems?

The Bega (NSW) pilot study tells us that the decision to seek help is not statistically related to either the type of event that was experienced or any particular demographic factor. Does that mean that we instead should be trying to examine individual characteristics or social network characteristics or other factors

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which might predispose people to seek help? How does the list of 'legal problems' that people identify correspond to legal realities. Presumably some people under report problems which could have a legal component or solution and some people over estimate the reach and capacity of the law to help.

If people say they didn't seek help because the matter was not serious enough, how do we know what level of knowledge they had about the matter or what they based their 'seriousness' assessment on? The Review survey could not have been overly popular with people as there were only 40 surveys completed but over 130 people attending the group meetings where people were encouraged to complete the surveys. The review acknowledges that many people were happier to tell their story than fill out a survey. We also don't know how many people who attended the group discussion also filled out a survey.

It is not clear why the 40 women: 40 children: 20 men sampling structure was adopted in the beginning or why 100 people was thought to be significant. The fact that there were only 40 surveys completed, 62% by women and there were no young people raises some questions about the appropriateness of the information gathering instrument in this context.

All of these problems suggest that an alternative data collection approach may have been more useful. A narrative approach to gathering information with some sort of content or thematic approach to collating the results might have been more appropriate.

### **Application of the Research:**

Apart from the lack of statistical significance and small sample there were a few other problems with the survey. The question asking if a person had legal funding in the last twelve months (Q23) may have confused people because people may not think of getting legal advice or representation as being funded for a lawyer. The clients never see any money only paper work.

Question 33, includes ATSILS in the same category as CLCs. It is not clear to us why you would combine these two Services and be unable to distinguish how many people had used each Service is curious. This appears to have been an oversight. Question 41, which asks people which service provider they would prefer to deliver a service. The list does not include CLCs as an option. When it comes to surveying people seeking legal assistance the survey numbers get even smaller. Of the 60 % of the survey group seeking legal help eg 24 people out of 40 only 11 or less than half had used a CLC or VALS. We don't know how many of these people used CLCs versus VALS but even if the majority used this seems like a low percentage of people using VALS compared to the annual totals of VLA, VALS and CLCs.

We don't know how many people who didn't seek help could have benefited from seeking help. We don't know how many people who could not obtain help were unsuccessful due to there not being a legal remedy or protection or action to assist in that situation or whether there was no proof available for a court or whether it was a matter which is not funded by Legal Aid, eg, is it a matter which has no legal remedy, something too speculative to risk funding on, or is it outside Legal Aid guidelines?

### **Interpretation of the Survey:**

Given the preference expressed by the people surveyed for legal education in question 40, it is ironic that this is no longer a core service funded in the ATSILS' tender. AFVPLS were also told by the Commonwealth Government that education was not a core function. This does not rate a mention in the Review Analysis or Recommendations and is surely an important aspect of improving access. The fact that **A Gendered Narrative which Embraces Mainstreaming and Ignores Other Stories: A Response to the Review of Indigenous Peoples' Access to Legal Assistance (2005) – sent 1 March 2006**

preference for a service was also evenly divided highlights that notwithstanding criticism of VALS there are a range of views in the community.

### **The Group Questionnaire:**

We don't know anything very much about the characteristics of the 130 people who attended meetings other than an over-representation of people from the rural and regional areas. Question 4 about whether a specialist Indigenous Women's or Child and Youth service was required is ambiguous because it could mean should the existing specialist services, eg, VALS, AFVPLS, Youth Law and Women's legal, VLA children's unit continue or should new specialist services be established. If the intention was the latter then it is something of a leading question. The question seeks comment about a specialist service prior to seeking information about the sorts of needs these groups might have.

### **Collection of and Use of Printed Data:**

#### **Services Providing Legal Assistance:**

This section of the Review on Services providing Legal Assistance contains almost 30 pages but there is no attempt at any sort of consistency in the collection or presentation of the data. It is an ad hoc presentation of a wide range of services. The presentation of statistics, for example, highlights the lack of consistency. VALS has provided detailed statistics. VLA and CLC's have provided more summary statistics. AFVPLS and Consumer Affairs and most other providers have no figures provided, not even estimates of numbers of people seen. The Reviewers commentary about the VLA stats is focused on trends of total grants of aid not Indigenous grants of aid. At the end of the section there is nothing by way of a descriptive summary, key trends or analysis.

#### **NATSISSR:**

The Report quotes NATSISSR 2004 figures which indicate a 5% increase in the proportion of people using a legal service in the past 12 months and a decrease in the proportion of people using an ATSILS or Legal Aid from 87% to 75%. (Page 30).

A five percent increase in the proportion of Indigenous Australians using a service when the population has increased by about 50 % works out to be a large increase in the number of services being provided.

The increased level of victimisation is a major concern.

#### **Inaccurate Description of Tables:**

The Table 1 (pg 32) uses the title – “VALS’ Workload by Age and Sex”. This may be a carry over from the ATSI terminology used on VALS’ performance reports. It is not an accurate description of the data. Table 1 is an indication of case numbers by age and sex. Table 2 (Page 33) is described as VALS’ workload by area of law. It is in fact, case numbers by area of law.

There is a significant difference between case numbers and time spent on matters or workload. **Generally criminal matters take much less time than civil or family or child welfare cases.** Men commit more crime than women. Any analysis of statistics that only looks at number of cases and fails to consider the different pattern of female/male service use and different length of time that cases take will take, provides at best a one dimensional picture. The proportion of female clients using the service is approximately 25%. However the percentage of lawyer time spent on female client matters is 37% due to the higher proportion of women using civil and family services which on average take more time than criminal matters. By only quoting case numbers the extent of solicitor time spent on civil and family law is not communicated accurately nor is the balance of time spent on female clients versus male clients communicated accurately.

Table five does not represent workload by case disposition, eg, guilty/not guilty and as there has been no attempt to determine how much longer it takes to do a guilty plea compared to a not guilty plea. It is simply a comparison of the number of guilty and not guilty pleas which again bears no resemblance to the time spent. The pie chart of court appearances appears to have Broadmeadows Court as being busier than Melbourne. This is likely to be wrong.

### **Conclusion:**

ATSILS face similar challenges to mainstream legal aid in dealing with effective funding reductions. Unlike mainstream legal aid, ATSILS also face a rapidly increasing population, greater uncertainty about funding and more onerous and restrictive Government policy frameworks. This Review almost completely fails to mention the policy and funding context that services are operating in and tells us little that is new in terms of problems, perceived problems and possible solutions.

The response rate to the review by CLC’s, young people, key informants, private solicitors and people completing the survey are all very low or in the case of children and young people absent. The report is novel in the use it makes of a very small sample of information.

The report does not mention the legal aid policy context and makes little attempt to analyse or contextualise the comments it receives. The need for sustainable and strong Indigenous Legal Services sector is not put forward as a fundamental policy objective or as a policy framework. The Review places a disproportionate reliance on increased mainstream service provision while failing to tackle the need for improved funding of Indigenous service providers.

The section introducing the community survey is titled “Kooris Tell it like it is-A survey of individuals”. The “tell it like it is” heading is less an editorial flourish than an elegant summary of the Review’s interpretation and use of the survey data. The survey data is given precedence over any other source of data. There is minimal analysis of the survey data, contradictory statistical or service data is ignored.

The possible influence of misinformation, stereotyping or exaggeration influencing community perceptions is not acknowledged.

The Reviewers have accepted some community criticisms of VALS without making any attempt to contextualise or interrogate the meaning of these criticisms. The Survey indicates 11 respondents had used VALS or a CLC in the last 12 months. We don't know how many people of the people surveyed used VALS in the last 12 months because the category includes VALS or a CLC. Assuming that all the people used VALS and none used a CLC, which is very unlikely the maximum number of people who used a VALS's service is 11. It may well be only 5 or 6. We are not told whether the people making criticisms about VALS were the ones who had used the service.

Outside of these eleven (or less) people from the survey, eg the group discussion participants we don't know how many people who made critical comments in the discussion group were the same people quoted from the survey. We also don't know how many people who made criticisms based these on first hand experience. We also don't know whether they are based on recent experience or experience from several years ago. In short we know very little about the extent of the problem, whether the experience of the problem is first, second or third hand and whether the problem is increasing or decreasing in seriousness over time.

The Reviewers privilege information from the community survey that VALS only does crime over service statistics from VALS which prove this is a considerable exaggeration. The Reviewers privilege the assessment by some people that VALS can't help women because it assists men with criminal matters rather than provide any analysis of the matter. The Review repeatedly quotes the problem of conflict of interest but makes no attempt to consider the extent of the conflict of interest problem. If the Review is going to treat community comment as the litmus test of reality then some greater rigour in the research process might have been used.

The Review compounds the problem of having elevated a gross exaggeration into a fact ("VALS only does criminal matters for men") by subsequently using this 'fact' to explain why VALS does not prioritise discrimination matters; A statement which is also inaccurate.

Policy and capacity building changes recommended are largely about mainstream providers thus missing an opportunity to advocate for a stronger Indigenous Legal Service sector. The issues of test case funding, the impact of tendering, the adequacy of legal aid funding levels and the need for a broader range of legal responses to family violence are all issues which are either not dealt with or dealt with in a cursory way.

In spite of its significant problems, the Review makes some useful recommendations. These include reviewing the police code of practice, reviewing victims' access to services and improving cultural awareness training for lawyers. Unfortunately, failure by the Review to advocate for a strong, sustainable ATSILS sector is equivalent to defacto support for the Commonwealth Government's practical reconciliation and mainstreaming policies. The Review also advocates for client choice of service, however it largely pursues this through advocating greater mainstream provision, a curious strategy when ATSILS are so clearly chronically under resourced.

## **RECOMMENDATIONS:**

### **Primary Role of Indigenous Service Providers:**

- 1. The primary role of ATSILS should be recognised in policy and nurtured through sustainable, consultative, inclusive and timely sector policy development.**

2. **Quality and accountability objectives can be achieved more effectively using non-tender based arrangements as has been proven in relation to Legal Aid Commissions and CLCs.**
3. **ATSILS' accountability requirements are more onerous than those applying to all other legal aid providers. Both tendering and excessive red tape for ATSILS should be brought into line with the simpler accountability requirements used for mainstream providers.**
4. **ATSILS should, on the basis of enhanced effectiveness and parity with mainstream providers, be given a capacity to provide a flexible range of services including education, policy and law reform and outreach services as part of its core services.**
5. **ATSILS should have discretion as to how proof of Aboriginality is managed and means testing should be simplified**
6. **Funds should be allocated to ATSILS to enable increased capacity building to occur. These funds would enable improvement to be made in training and skills development, policy development, collaboration with other stakeholders and improved organisational effectiveness**
7. **State and Commonwealth governments should consult Indigenous organisations prior to making major policy changes and/or legal changes which will affect Indigenous Australians.**

**Adequate Funding Required:**

8. **Funding for VALS and AFVPLS should be based on remedying historic funding declines, population increases and increased demand and legal need. Adequate funds to sustain and enhance Indigenous Service Providers are required.**
9. **That the Commonwealth Attorney-General review the adequacy of its funding for legal aid in general and particularly in relation to Indigenous Legal Service provision.**
10. **That the Commonwealth Government introduce some increased flexibility as to how Commonwealth Legal Aid funds can be spent. This would be a step towards more flexibly meeting the needs of people who have problems which are multi-jurisdictional, eg, family law and family violence or child protection.**
11. **That the Commonwealth Government make additional funds available to legal aid providers to enable more assistance in civil law matters.**
12. **State and Commonwealth Governments should introduce a legal aid impact statement prior to new Bills being presented to Parliament.**

**Analysis of Access Review Data:**

13. **The Review report should provide some analysis of what proportion of women are likely to be precluded from VALS by conflict of interest issues.**
14. **The Review should subject the comments regarding VALS advising people to plead guilty to some analysis rather than make the assumption that they are self-explanatory or evidence of a poor quality service**
15. **The Review report should reconsider its comments and recommendations about VALS no longer providing advice to victims or to women seeking family violence services.**

**A critique of the draft Access Review recommendations is provided at the end of the report.**

## **Appendix One:**

### **Comments about the Review Recommendations:**

#### **Theme 1 – Achieving equity of access to publicly funded legal services by Aboriginal people across Victoria**

##### **Recommendation**

1. That the Family Violence Prevention and Legal Service (FVPLS), VALS, and Victoria Legal Aid (VLA) collaborate to develop an Integrated *Aboriginal Legal Service Information Strategy* to provide clear information to Indigenous people about ATSILS and non-Indigenous services available to them; what these services provide and how they can be accessed. The strategy should include information targeted to Indigenous people in custody and in prison and children and young people in schools.

##### **VALS' Comment:**

*The entry points to the publicly funded legal system – VALS, FVPLS and VLA – are not easily identified due to solicitors and CSOs being ‘on circuit’, running workshops or otherwise unavailable. (pg 63)*

The statement above from the Access Review makes little sense. VALS has CSO's phone information available seven days a week, twenty four hours a day. VALS, FVPLS and VLA all have staff to answer inquiries during office hours regardless of whether lawyers are at court. If the entry points are not 'easily identified due to lawyers and CSO's being on circuit, running workshops or otherwise unavailable' then the solution would appear to be more staff for services rather than an integrated information strategy as recommendation one suggests.

An Integrated Aboriginal Legal Service Information strategy is largely a problem of obtaining more resources both for the education program and for the service staff to meet increased demand.

This recommendation ignores successful models which already exist and could be persevered with. One of these is the “Keys to the Community” multi-agency regional Community Legal Education outreach program which targets improved access to civil law services. Another successful model for Information co-ordination was the VALS Indigenous Women's Justice Forum which brought together Indigenous and mainstream providers. Another is the VALS' “Be Strong Kit”.

The Integrated Information strategy recommendation does not include the involvement of CLCs nor the Mildura Aboriginal Family Violence Service. The strategy appears to be unintegrated with recommendation 11 which involves RAJACs developing agreements about information provision. There is a tension between establishing an integrated information strategy on one hand and at the same time recommending specific campaigns around family violence services and victims services (Recs 12 and 14) and a campaign around discrimination (Recommendations 26-28).

2. That the Department of Justice and the Commonwealth Attorney-General's Department work with VALS to review their service model to identify and agree upon service scope, location, target populations and jurisdictions (eg women, young people and men), so that Indigenous people can recognize where legal assistance is provided and how other service providers can collaborate with them to fill the breach.

##### **VALS' Comment:**

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This recommendation appears to be aimed at yet again reviewing VALS. It appears to duplicate the debates and the issues which were raised with the draft tender in April 2004 and then the finalised tender specifications in November 2004. Any review process should start by considering the issue of adequate funding, the appropriateness of continued tendering, the importance of being able to provide a wholistic range of services and the importance of three year funding agreements for all services.

**Women, Young People and Men Are Not Jurisdictions:**

3. That the Office of Indigenous Policy in the Department of Justice gives consideration to the future development of an Indigenous legal assistance coordinating mechanism which has oversight of quality assurance, policy development and coordination to increase access to high quality legal assistance across Victoria.

**VALS' Comment:**

This recommendation does not acknowledge the importance of Indigenous self-determinations in policy development and the inappropriateness of additional Government regulation. VALS is already subject to more onerous conditions in terms of securing funding than mainstream legal aid providers.

Does this recommendation mean that the Commonwealth and the State governments are involved or does it mean just the State government? There is already a range of quality assurance, policy development and coordination mechanisms in place. The State doesn't fund ATSILS so why would they be the appropriate co-ordination body.

If this recommendation was aimed at establishing an NGO Indigenous service capacity building position it would be supported. If it means yet another layer of government regulation it would be unwelcome.

4. That the Department of Justice provide funding to Magistrates courts in areas with large Indigenous populations to expand the Aboriginal Liaison Officer Program and to employ more Indigenous Court Support Officers (male and female) to support Indigenous clients and their families when attending court.

**VALS' Comment:**

The expansion of Court based Aboriginal liaison positions should be balanced against the need to have additional VALS CSOs whose role overlaps Court liaison staff but is also broader.

5. That VALS and FVPLS develop a strategy for the development of services to Indigenous prisoners.

**VALS' Comment:**

VALS already provides services to prisoners and would require additional funds to increase the level of outreach to prisons or other forms of service extensions.

6. That the FCLCs establish a working group on Indigenous legal rights and advocacy to encourage community legal sector involvement in the provision of legal assistance to Indigenous people.

**VALS'Comment:**

There are already a number of centres who provide services to Indigenous Australian peoples. It is not clear that a working group is the best way to progress this work. If there were to be a working group the role might usefully be broader than providing legal assistance and include systemic discrimination and law reform and funding issues.

7. That the Department of Justice explore whether a dedicated Indigenous liaison lawyer position should be established at the Federation of Community Legal Centres (FCLC) to play a coordinating role in relation to sensitive service provision to Indigenous persons.

**Recommendations: Theme 2 Promoting Choice by Building Capacity In The Wider Legal Services System to Serve Indigenous Victorians**

8. That the Department of Justice, VLA and develop standards of practice for the delivery of legal services to Indigenous people *based on the best practice approach to legal assistance identified in this report* and convene a Continuing Education Legal Forum to discuss and disseminate the standards to both Aboriginal and mainstream legal services and practitioners.

**VALS'Comment:**

This recommendation appears to overlap with Recommendation three. VALS would like to see a more practical best practice approach developed. Initially this should be developed via and the two Indigenous family Violence prevention services. Further development of standards of practice should involve LIV and the FCLCs.

Recommendations three, eight and nine involve collaboration between different legal aid providers. Nationally, there is an Australian Legal Assistance Forum (ALAF) which brings together legal aid providers. NSW has established a State version of ALAF. There has been informal discussion about establishing a state ALAF in Victoria. VALS has written to LIV, VLA, FVPLS x 2 and the FCLCs recommending the establishment of a State ALAF. There other possible stakeholders who might be part of ALAF. The initial meeting would provide an opportunity to assess these matters.

9. That the Law Institute of Victoria (LIV) work collaboratively with VALS, FVPLS, PILCH, VLA and FCLC to develop an *Indigenous Communication Strategy* targeted to Victorian solicitors and
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members of the Victorian Bar designed to build their capacity to provide appropriate assistance to Indigenous people that includes:

- Strategies to raise awareness of legal and related issues affecting Indigenous communities
- Dissemination of information about Aboriginal legal services and justice initiatives on an ongoing basis
- Cultural awareness training *and training reflecting the best practice approach to legal assistance identified in this report* , provided as part of an accredited community legal education program under the auspices of the LIV and the Victorian bar *and with the assistance of the Leo Cussens Institute*
- Strategies to build the capacity of local solicitors to extend their services in the range of areas of law affecting Indigenous communities
- The development of a network of culturally aware solicitors and barristers across a range of legal specialties to whom referrals can be made and who may be prepared to provide scheduled services at ATSILS.

**VALS' Comment:**

VALS would require funding to effectively participate in this initiative.

10. That VALS and FVPLS be resourced to provide a greater focus on capacity building and specialist back up to legal practitioners in regional centres.

**VALS' Comment:**

It is not clear who would pay for this but additional funds for capacity building would be useful. However why capacity building would only be focused narrowly on back up to legal practitioners in regional centres is not clear and not supported.

**Theme 3 – Improving coordination across the service system**

11. That each RAJAC facilitate the development of a system and a series of service agreements to ensure that Indigenous people receive appropriate legal assistance and information about how they can access the legal service assistance system.

**VALS'Comment:**

It is unclear how this proposal fits with recommendations 1, 3 and 8.

12. That funding is made available to VALS to work in partnership with other relevant agencies, in particular the FVPLS, to:

- Review the availability of identifiable referral points for Indigenous people seeking legal assistance in areas where there are large numbers of Indigenous people living.
- review its current services to regional and rural communities in order to rationalize services and increase cooperation with, and referral to, non-Indigenous service providers

**VALS' Comment:**

VALS already works closely with a range of organisations. Funds to enhance this work would be useful but also requires funding for service delivery.

**Recommendations: Theme 4 – A Fair Go for Women, Children and Young People:**

13. That the Department of Justice and the Commonwealth AG's Department allocate funds to the Victorian Indigenous Family Violence Partnership Forum and the Victorian Aboriginal Justice Forum to undertake a study to explore the feasibility of establishing an Aboriginal Women's Legal Service; the resources required; possible funding sources and governance arrangements.

**VALS' Comment:**

It would be important to start by funding VALS and AFVPLS adequately before establishing another service.

14. That a protocol be developed between VALS and FVPLS, through the Victorian Indigenous Family Violence Partnership Forum and in consultation with the Regional Indigenous Family Violence Action Groups and the RAJACs to ensure the efficient referral of women experiencing family violence to the FVPLS and make explicit the entry points to the family violence system for both victims and offenders.

**VALS' Comment:**

VALS has had preliminary discussion with the FVPLS seeking the negotiation of a Memorandum of Understanding. VALS supports increased clarity about entry points to the family violence system. VALS also supports a wider range of models for dealing with family violence eg not wholly relying on the mainstream criminal justice system. VALS is already a member of all RAJACs and many of the Family Violence Action Groups and supports discussion of these issues with all parties. A protocol is only one of many outcomes that such discussions might lead to. VALS does not accept that it should cease doing family violence work for women.

15. That this protocol be published in a form suitable for community members and be distributed widely.

**VALS' Comment:**

A protocol may be too prescriptive

16. That the Department of Justice and the Commonwealth AG's Department provide funding to the FVPLS for three Koori Family Violence Justice workers and a dedicated family law solicitor for a pilot project to coincide with the pilot of the new family violence courts (to be based at Heidelberg, Ballarat and the Melbourne Magistrate's court).

**VALS' Comment:**

Question why additional funding for VALS is not included. Question why the focus is only on the Family Violence Court. A more appropriate model could be a regional pilot which attempts to have applicant and respondent workers who would not necessarily have to be lawyers who could assist re intervention orders or a restorative justice approach using dispute counselling and agreements.

17. That the Family Court extend its Family Consultants program to Victoria and the outreach model currently operating in Bairnsdale and Mildura to other parts of Victoria with significant Indigenous populations.

**VALS' Comment:**

Agree

18. That the Federal Magistrates Court examine the Koori Court model with a view to piloting an Indigenous Family Division in Victoria and that Federal Magistrates be trained to provide this service.

**VALS' Comment:**

Agree. Important to include appropriate Koorie community representation and input to this examination.

19. That the FVPLS be resourced to provide outreach services to women, children and young people in areas with significant Indigenous populations.

**VALS' Comment:**

Agree. VALS also requires additional funds to increase the capacity to provide outreach services

20. That the Family Violence Court, Victoria Police Liaison Officers, the Police Family Violence Officers, VALS and FVPLS review the impact of the range of the new DV initiatives (Police Code of Practice, FV Courts and Koori Family Justice Workers) and their impact on Indigenous people.

**VALS' Comment:**

Agree

21. That a children and young person specialist legal practitioner be appointed and located at the Victorian Aboriginal Child Care Agency (VACCA).

**VALS' Comment:**

Department of Human Services (DHS) and VACCA already have access to legal advice and have a child protection role. Changes to the Children and Young Persons legislation will fast track the process of achieving permanency. This will increase the likelihood of child removal and reduce the time available for a parent to seek assistance and make changes which would enable them to resume care for the child. Appropriate contact arrangements during the time the child is in out of home care will also be critical to the parent's ability to make a successful case for the child being returned home. To improve the quality of child protection advice and case work for parents in this environment will require additional positions to be funded at VALS.

**Recommendations: Theme 5 – Promoting Access to Justice for Accused Persons and Victims of Crime:**

22. That VALS seeks the assistance of the PILCH pro-bono services to obtain a legal opinion in relation to the relevance of the 'no-comment record of interview' policy.

**VALS' Comment:**

Disagree with this Recommendation. The basis for this recommendation was someone from the Ombudsman's Office and a senior barrister told the Reviewers this. We note that the Reviewers spoke to no children or young people. We note that the Reviewers did not quote another set of experts on this topic, the police. Ask the police how often a police officer who is about to be charged will say anything, other than 'no comment', until they have spoken to their lawyer.

This Recommendation, unlike the allegation that VALS is too placatory and pleads people guilty inappropriately, alleges that VALS is being too adversarial. It suggests a naïve view of the police interview situation and under-estimates the potential for people in that setting to agree to statements which are incorrect.

VALS does advocate a "no comment" record of interview until a person obtains legal advice. If the Reviewers are concerned that young people are selling themselves short by saying "no comment" then there is a simple solution. Introduce a Police Standing Order which says where a child is making a "no comment" record of interview (a fairly rare event in our experience) and the officer believes the "no comment" record of interview will lead to a worse outcome for the young person than making a statement the officer must suspend the interview. This is to allow the young person the opportunity to get legal advice about whether they should make a statement.

This is easy to do. It is not taking power away from the police. It is using police power in a measured way. It is effectively saying; "We accept your right to say "no comment" but we think you should think about it some more, get some legal advice".

The police hold all the cards in the interview process and they can afford to take their time. Officers who are more interested in getting the right outcome for the young person rather than getting a conviction already work in this direction. The Police Cautioning and Youth Diversion pilot program that is managed by VALS, in partnership with Victoria Police, Department of Justice's Indigenous Issues Unit and DHS Juvenile Justice is trying to make more space for positive outcomes for young people in the criminal justice system. Police are not social workers but sometimes they can slow things down enough so that the social fabric can start to reknit.

23. That the VSA convene an ad hoc advisory committee comprising VOCAT, FVPLS, VALS, Victims of Crime Services and Victoria Police to develop a comprehensive strategy to ensure equitable access to support for Indigenous victims of crime, including the development of a culturally sensitive reporting to police protocol and protocols for government and non government agencies to assist victims to report crime.

**VALS' Comment:**

Agree in principle. How does this integrate with the meetings already being convened by Magistrates' Court?

24. That VOCAT develop practices and procedures for considering applications from Indigenous persons that reflects the sensitive nature of Indigenous people's experience of crime and relationships within Indigenous communities.

**VALS' Comment:**

As Above

25. That the FVPLS be resourced to develop victims of crime legal service for Indigenous people.

**VALS' Comment:**

Disagrees that it should stop doing victims of crime work. VALS is unclear why FVPLS requires additional funds but VALS does not. Further comments re victim's services are included in the body of our submission.

- 26 That the VEOC in conjunction with LIV, VALS and the FVPLS develop and implement a program of community education and awareness raising aimed at promoting racial harmony, enhancing understanding of race discrimination and reducing violent crime against Indigenous people which:
- Includes the development of appropriate educational resources for teachers and schools, focusing particularly on discrimination and bullying (developed with the assistance of the Department of Education and the Victorian Aboriginal Education Association Inc.);
  - Reaches the wider Victorian community, while also including strategies appropriate for local level delivery in towns with significant Indigenous populations.
- 27 That the LIV, VALS, the FVPLS and PILCH develop a legal assistance strategy to promote the availability of legal assistance to Indigenous people who experience discrimination; and

- 28 That the VALS, FVPLS and VLA seek to increase the number of referrals of public interest race discrimination test cases which reflect the day-to-day discrimination faced by Aboriginal people.

**VALS' Comment:**

These recommendations (26-28) are premature pending the EOCV review of its operations and the conflicting role of EOCV as independent conciliator and EOCV as advocate for disadvantaged groups. In our submission above we discuss these recommendations in more detail.

**Appendix Two:**

**Role of VALS:**

VALS is the primary provider of legal services to Indigenous Australian peoples in Victoria. The report systematically fails to acknowledge the importance and scope of VALS' role in delivering services and advocating for improved justice policies at a commonwealth and state level. The Recommendations fail to recognise the need for increased resources to VALS. Instead there is an emphasis on mainstream services expanding what they do and FVPLS expanding and taking over some aspects of VALS' work. If you just read the community comments and the Reviewers' conclusions you could be forgiven for thinking that VALS needs no additional money, only does criminal cases, only works for men and is only interested in getting people to plead guilty.

**Reality Check:**

In 2004-2005, VALS:-

- \* made 99 not guilty pleas;
- \* provided duty work or case work to over 1000 women and
- \* allocated 33% of its solicitors to civil and family law (eg not criminal matters)
- \* allocated 37% of solicitor time to matters for female clients

VALS has been receiving effective real funding cuts for ten years plus while attempting to increase output to meet the needs of a rapidly growing population.

***A quick snapshot of the VALS***

- Almost 90% of legal aid services to Indigenous Australians in Victoria are provided by VALS.
- We have 35 staff who operate from 7 locations in Victoria.
- We provide assistance at over 70 Courts across Victoria.

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### *Metropolitan/Regional Work*

- 55% of Indigenous Australians in Victoria are outside the metropolitan region.
- 70% of our Client Service Officer resources are devoted to the non metropolitan area.
- Over 60% of our criminal law work is for clients outside the metropolitan area.
- Over 45% of our family law and civil law work is for clients outside the metropolitan area.

### *Female/Male Clients*

- 26% of our criminal law clients are female.
- Over 50% of our civil and family law clients are female.
- Family law includes Child Protection matters.
- Over 37% of solicitor hours are directed to matters for female clients<sup>1</sup>.

## **WHAT VALS HAS DONE IN RELATION TO FAMILY VIOLENCE:**

### **Indigenous Women's Justice Forum – 2001+**

The VALS established an Indigenous Women's Justice Forum in April, 2001. The Forum assisted in the development of a conference on the use of Restorative Justice in addressing Family Violence Issues. The conference was held in August 2001 and was attended by over 60 Indigenous women. One recommendation from the conference was to seek out funding to enable the continuation of the work of the Forum in addressing some of the issues highlighted in discussions around Restorative Justice.

The VALS sought \$ 54,340 of Community Initiative Program funds in 2002 to further work already undertaken. Difficulties associated with recruitment resulted in a delayed start in the project.

The Aims of the IWJF Project are to:

- Provide executive support to Indigenous Women's Justice Forum (IWJF) and promote its aims and visions.
- Map existing programs and services across the state, both Koorie and non-Koorie provide for Indigenous women, their families and communities.
- Maintain database of participants in the IWJF, as well as links with men's, Elders and children's groups, Koori organisations, service providers, government departments and agencies in relation to Indigenous women's and family/community needs.
- Research and analyse needs, identify gaps in provision of programs and services for Indigenous women, families and communities.

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<sup>1</sup> The figure of 37% is based on having eight solicitors who do criminal law work with a 25% female client base and having four civil and family solicitors who do slightly more than 50% of their work for female clients.

- Research, write and distribute discussion and information papers as required by the IWJF.
- Write submissions for funding to ensure on-going sustainability of IWJF.

The IWJF was reviewed by EMS Consultants as a part of the Review of the Community Initiatives Program (Review) in February 2004. The Review was positive and contained findings such as the following:

- “What has been achieved has been positive. The continued discussions and attendance of participants, networking, development and dissemination of discussion papers, etc are really positive activities that should continue to be supported”.
- “All participants associated with the project stated they would have no hesitation in recommending the IWJF to others and in fact have brought others along themselves.”

From 2003-2005, VALS has held IWJF that discussed issues relating to family violence and some examples are below:

- 3 December 2005: Susan Geraghty & Julianne James from Office of Women’s Policy - Women’s Safety Strategy/ Police Codes of Practice regarding Family Violence
- 26 March 2004: National Framework for Sexual Assault Prevention – Indigenous Focus Group - Clair Grealy – Urbis JHD
- 4 June 2004 (Morwell): - Intervention Orders (DHS notification and then IVO)
- 4 July 2004 - Liana Buchanan & Judith Pearce – Victorian Law Reform Commission’s review of Crimes Act (Family Violence) 1987
- 22 March 2005 – Family Violence Forum. Over 100 people attended and 10 people made presentations. An Indigenous Women’s Justice Forum Steering Committee made up of .... Indigenous Australians was formed to guide the Forum.

During this time, a Quarterly Newsletter for the IWJF was also produced.

The IWJF is funded by the State Government through the Department of Justice. The Forum on the 22 March was the last forum possible due to funding ceasing. VALS is in the process of seeking further funding so that the IWJF continues.

### **Conference Papers:**

VALS produced a paper titled ‘Intervention in Sexual Assault and Domestic Violence Experienced by Indigenous Australians’. The paper was presented at Home Truths Conference: Stop Sexual Assault and Domestic Violence - A National Challenge on 16 September 2004. The paper was presented by Terrie Stewart (Member of the Board of Directors) and Greta Jubb (Research Officer).

### **Committee Membership:**

In 2003/2004, the IWJF worker was a member of the Women’s Safety Strategy Statewide Steering Committee to Reduce Family Violence.

**A Gendered Narrative which Embraces Mainstreaming and Ignores Other Stories: A Response to the Review of Indigenous Peoples’ Access to Legal Assistance (2005) – sent 1 March 2006**

## **SUBMISSIONS:**

VALS has produced numerous submissions in relation to family violence and these are listed below:

### **Family Violence Court:**

- 6 July 2004 – VALS submission to the Department of Justice in response to Family Violence Court and Behaviour Change Counselling Program – Draft Legislation
- 20 May 2005 - VALS' response to Training Needs Analysis Report to the Department of Justice.
- 6 June 2005 – VALS letter re Publications on Family Violence Court
- 14 July 2005 – VALS' Response to the Family Violence Court Division Magistrates' Court Professional Development Strategy 2005-2007.

### **Meetings:**

VALS has engaged with the Ballarat Indigenous Australian community regarding the Family Violence Court and attended two meetings in the Grampians region to discuss the Family Violence Court (September and November 2005)

VALS had input at meetings of the mainstream Family Violence Court Local Advisory Groups and Indigenous Family Violence Court Users Group. VALS has also attended forums about the Family Violence Court organised by the Department of Justice (June and November 2005)

### **Victorian Law Reform Commission Review of the Crimes (Family Violence) Act:**

- VALS Submission to the Victorian Law Reform Commission in response to Review of Family Violence Laws Consultation Paper (2004) - sent March 2005
- VALS Submission to the Victorian Law Reform Commission in response to the Police Holding Powers Interim Report - sent 24 November 2005

### **Meetings:**

VALS had input at meetings organised by the Victorian Law Reform Commission about this review (June and July 2005)

### **Victoria Police Response to Family Violence in the Indigenous Community – Working Together Towards a Culturally Sensitive Response**

VALS had input at the consultation of Victoria Police about the a culturally sensitive response to family violence within the Indigenous Australian community (April 2005)

**A Gendered Narrative which Embraces Mainstreaming and Ignores Other Stories: A Response to the Review<sup>42</sup> of Indigenous Peoples' Access to Legal Assistance (2005) – sent 1 March 2006**

## **‘In Search of Justice in Family Violence’: Exploring Alternative Justice Responses in the Victorian Indigenous Australian Community – A Research Report**

VALS engaged Ms Nicole Bluett-Boyd to complete research on family violence. Nicole completed a Research Report titled ‘In Search of Justice in Family Violence’: Exploring Alternative Justice Responses in the Victorian Indigenous Australian Community’ as part of her Honours year at the Criminology Department at Melbourne University. Nicole completed a placement at VALS, whilst writing the Report. The report recognises many of the tensions that exist between non-Indigenous Australian approaches to understanding and responding to violence, and those of Indigenous Australian women and communities. The research combines a detailed literature review with both quantitative and qualitative data derived from surveys and interviews conducted with 18 female Indigenous Australian professionals working in the area of family violence.

The results of Nicole’s research suggest that the Criminal Justice System, in its present form, does not have the capacity to adequately respond to incidents of family violence within the Indigenous Australian community. Aside from the historically strained relationship between the Criminal Justice System and the Indigenous Australian community, there exists a very real fear that involvement with the existing justice system will result in the separation of families and have repercussions within the community. Conversely, alternative justice practices, and Restorative Justice in particular, is viewed as having very real potential, being seen as an avenue for community involvement, and capable of providing a ‘healing’ approach to family violence. It is acknowledged within the Report that Restorative Justice would form part of a wider holistic response to family violence involving the use of rehabilitative programs, greater resources for victims and community education. Ultimately, the Report advocates a coordinated approach that is holistic and responsive to the unique nature of family violence in the Indigenous Australian community.

### **Related Submissions:**

VALS has produced the following submissions which are related to the issue of family violence

- \* Submission to the Department of Justice: response to Victim Related Amendments to the Sentencing Act 1991 - sent 4 February 2005).
- \* Submission to the Department of Justice: response to Working with Children Bill 2005 Discussion Paper (December 2005) - sent 1 March 2005.
- \* Submission to the Standing Committee on Legal and Constitutional Affairs in response to the Family Law Amendment (Shared Parental Responsibility) bill 2005 Exposure Draft (Sent 25 July 2005)
- \* Submission to the Office of the Advocate for Children in Care in response to the Development of a Charter of Rights for children and Young People in Care Discussion Paper (May 2005) sent 22 August 2005
- \* Preliminary Submission sent to the Human Rights Consultation Committee in response to Have Your Say about Human Rights in Victoria - Human Rights Consultation Community Discussion Paper - sent 30 August 2005

**A Gendered Narrative which Embraces Mainstreaming and Ignores Other Stories: A Response to the Review of Indigenous Peoples’ Access to Legal Assistance (2005) – sent 1 March 2006**

- \* Submission sent to Office for Children (Department of Human Services) in response to Children Bill - sent 9 September 2005
- \* Submission sent to the Victoria Police Delivery Model Review Team: re - Review of Police Services - sent 14 September 2005
- \* Submission to the Honourable Phillip Ruddock (Attorney-General) in response to Recommendations contained within the report on the Exposure Draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005 - sent 19 September 2005
- \* Submission to the Victim Support Agency in response to the Victims' Charter Community Consultation Paper - sent 7 December 2005

**Related meetings:**

VALS had input at a consultation by Allens Consulting on behalf of the Department of Human Services on the issue of sexual assault (November 2005)

**PARTNERSHIP FORUM APPLICATION:**

VALS has applied to Aboriginal Affairs Victoria to take part in the Indigenous Family Violence Partnership Forum (October 2005).

**WORKING RELATIONSHIP WITH OTHER SERVICES:**

VALS has a good working relationship with other services that deal with the issue of family violence. Elizabeth Hoffman House wrote a reference in support of VALS when it was applying for future funding (ie: request for tender for the purchase of legal services).

VALS has engaged in dialogue with the Aboriginal Family Violence Prevention and Legal Service in Melbourne and recently established Aboriginal Family Violence and Prevention Legal Service operating out of Mildura Aboriginal Corporation about Memorandums of Understanding.

VALS appeared at the Standing Committee on Legal and Constitutional Affairs in response to the Family Law Amendment (Shared Parental Responsibility) Bill 2005 Exposure Draft on 20 July 2005. VALS invited Elizabeth Hoffman House to co-present. In 2003, VALS produced a submission in response to Joint Residence Proposals that was supported by:

- Victorian Aboriginal Community Services Association
- Elizabeth Hoffman House
- Aboriginal Family Violence Prevention and Legal Service

VALS was one of the many organisations that put its name to the 'Stop the Family Violence' campaign (November 2005).

**A Gendered Narrative which Embraces Mainstreaming and Ignores Other Stories: A Response to the Review of Indigenous Peoples' Access to Legal Assistance (2005) – sent 1 March 2006**

## **TRAINING:**

Frank Guivarra (Chief Executive Officer) presented a paper at the Family Violence Court Professional Development Training Session on 23 November 2005.

## **Submissions Produced in 2005:**

- \* **Submission to the Department of Justice: response to Victim Related Amendments to the Sentencing Act 1991 - sent 4 February 2005).**
- \* **Submission to the Department of Justice: response to the Amendment of the Equal Opportunity Act 1995 (Vic) to Prohibit Discrimination on the Basis of 'Homelessness' or 'Employment Status' - sent 10 February 2005).**
- \* **Submission to the Department of Justice: response to Working with Children Bill 2005 Discussion Paper (December 2005) - sent 1 March 2005.**
- \* **Submission to the Human Rights and Equal Opportunity Commission: response to Discrimination in Employment on the Basis of Criminal Record Discussion Paper (December 2005) - sent 3 March 2005**
- \* **Submission to the Coordinator of the National Indigenous Consumer Strategy: response to Taking Action, Gaining Trust - National Indigenous Consumer Strategy 2005-2010 - sent 8 March 2005.**
- \* **Submission to the Victorian Law Reform Commission: response to Review of Family Violence Laws Consultation Paper (2004) - sent March 2005.**
- \* **Submission to the Department of Employment and Workplace Relations: response to Building on Success - CDEP Discussion Paper (2005) - sent 8 April 2005**

**Federation of Community Legal Centres and Victorian Council of Social Service Submission to the Equal Opportunity Commission of Victoria titled 'Systemic Discrimination against Women in Prison'**

**VALS was involved in producing this submission along with other agencies and individuals. The submission was produced under the heading of the Federation of Community Legal Centres and the Victorian Council of Social Service. For further information ring the following media contacts: Jiselle Hanna (Federation of Community Legal Centres) on 0411 054 859 or Kate Colvin (Victoria Council of Social Service) on 0418 103 292.**

- \* **Executive Summary of Systemic Discrimination against Women in Prison (2005)**
- \* **Law Week Presentation on the Complaint to the Equal Opportunity Commission of Victoria alleging Discrimination against Women in Prison - presented 16 May 2005**
- \* **Submission to Crime Prevention Victoria: response to 'A Good Night For All'- Options for Improving Safety and Amenity in Inner City Entertainment Precincts Discussion Paper (2005) - sent 3 May 2005**

**A Gendered Narrative which Embraces Mainstreaming and Ignores Other Stories: A Response to the Review of Indigenous Peoples' Access to Legal Assistance (2005) – sent 1 March 2006**

- \* **Submission to the Department of Justice: response to Training Needs Analysis of the Family Violence Court Report (May 2005) - sent May 2005**
- \* **Submission to the Sentencing Advisory Council: response to Suspended Sentences Discussion Paper (April 2005) sent 20 June 2005**
- \* **Submission to the Department of Justice in response to the Family Violence Court Division Magistrates' Court Professional Development Strategy 2005-2007 (sent 14 July 2005)**
- \* **Submission to the Victorian Parliament Law Reform Committee in response to the Coroners Act 1985 Discussion Paper (April 2005) sent 25 July 2005**
- \* **Submission to the Standing Committee on Legal and Constitutional Affairs in response to the Family Law Amendment (Shared Parental Responsibility) bill 2005 Exposure Draft (Sent 25 July 2005)**
- \* **Submission to the Office of the Advocate for Children in Care in response to the Development of a Charter of Rights for children and Young People in Care Discussion Paper (May 2005) sent 22 August 2005**
- \* **VALS Preliminary Submission sent to the Human Rights Consultation Committee in response to Have Your Say about Human Rights in Victoria - Human Rights Consultation Community Discussion Paper - sent 30 August 2005**
- \* **Submission sent to Office for Children (Department of Human Services) in response to Children Bill - sent 9 September 2005**
- \* **Submission sent to the Victoria Police Delivery Model Review Team: re - Review of Police Services - sent 14 September 2005**
- \* **Submission to the Honourable Phillip Ruddock ( Attorney-General) in response to Recommendations contained within the report on the Exposure Draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005 - sent 19 September 2005**
- \* **Full Report - In Search of Justice in Family Violence - Exploring Alternative Justice Responses in the Victorian Indigenous Australian Community - produced September 2005 by Nicole Bluett-Boyd**
- **Summary - In Search of Justice in Family Violence - Exploring Alternative Justices Responses in the Victorian Indigenous Australian Community - produced September 2005 by Nicole Bluett-Boyd**
- \* **Submission to the Equal Opportunity Commission of Victoria in response to 'Systemic Racism as a Factor in the Over- representation of Aboriginal People in the Victorian Criminal Justice System' Report - sent 17 October 2005**
- \* **Submission to the Department of Justice in response to the Indictable Offences Triable Summarily Discussion Paper - sent 24 October 2005**
- \* **Submission to the Victorian Law Reform Commission in response to the Police Holding Powers Interim Report - sent 24 November 2005**

- \* **Submission to the Sentencing Advisory Council in response to the Suspended Sentences Interim Report - sent 29 November 2005**
- \* **Submission to the Victim Support Agency in response to the Victims' Charter Community Consultation Paper - sent 7 December 2005**

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