



# Victorian Aboriginal Legal Service Co-operative Ltd.

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**VALS' submission to the Victorian Government in response to the 'Review of the Family Violence Laws Report' – An Overview (summary of submission sent on 14 June 2006)**

## ***Overview***

The pro-arrest and pro-prosecution strategies recommended by the Victorian Law Reform Commission (VLRC) in their recent 'Review of Family Violence Laws Report' (Report) fall neatly in-line with the punitive wave that has been gradually gaining momentum in recent years. However, VALS argues that the narrow assumptions that inform the recommendations of the VLRC Report result in systematic disadvantage to the, and often outright, exclusion of many victims of family violence and serves to further remove agency and control from an already disempowered group. As such, VALS proposes that there is room for improvement within the current recommendations. In particular, there exists a need to recognise that an overly simplistic 'tough criminal justice' reaction constitutes only a small component of an effective response to the deeply complex issue that is family violence.

## ***Conflicting Trajectories? – Over-Reliance on Criminal Justice Responses***

While VALS endorses and supports the majority of the VLRC recommendations pertaining to legislative and policy changes geared toward 'taking family violence seriously', caution must be advocated in regards to the heavy reliance on criminal justice responses. Indeed, the pro-arrest/pro-prosecution enterprise is an issue far more complicated than the symbolic condemnation it achieves. In particular, a myriad of recent research suggests that the potential effectiveness of these policies will vary greatly according to factors such as socio-economic class, employment status and ethnicity. Absent from the VLRC analysis are a number of important considerations including but not limited to:

- ❖ Evidence that it is possible to have a strong criminal justice approach which does not rely on pro-arrest and pro prosecution policies;
- ❖ the risks associated with over reliance on a criminal justice solution;
- ❖ the primacy of empowering complainants;
- ❖ the need to prioritise the criminal justice response on *physical* violence.
- ❖ Exploration of alternative and varied mechanisms of response as an acknowledgment of the diverse experiences of family violence.

## ***The Problematic Rationale for Pro and Mandatory Arrest/Prosecution***

Throughout the Report the VLRC myopically pursues pro-arrest policies as a method of 'removing responsibility and blame from the person who has experienced violence' and addressing 'criticisms of police inaction' (Para 5.21). Upon analysis, this line of argument, built upon the characterisation of 'victims' as powerless (rather than an individual displaying help-seeking behaviour), appears to assert that police, or indeed policy makers, are capable of a) defining what is in the 'best-interest' of a victim, and

b) acting accordingly to this definition. Not only does this illogical line of reasoning appear patronizing, it also ignores the wealth of national and international research which summarily suggests:

- A large percentage of victims do not initially seek help from the police.
- The effectiveness of arrest in the first instance is subject to great variability, based on factors such as employment status, socio-economic group and ethnicity. As such, arrest has the potential to increase violence in the long-term.
- Arrest and prosecution are more effective when pursued by the victim themselves.
- Victim free prosecution can lead to a high chance of long-term violence.

### ***The Primacy of Victim Empowerment***

Additionally, and perhaps most injuriously, these claims surreptitiously remove agency and power from the person experiencing family violence. Indeed, within the Report there exists a contradictory acknowledgement of the importance of victim empowerment followed by a very definite move to ignore it. Many of the recommendations can be seen to negate victim empowerment, including advocacy of victim free Intervention Orders and prosecutions. These recommendations stand in contrast to research which suggests that a woman's experience of the police has a great impact on re-victimisation rates, and that over 60% of women seeking to put an end to family violence do not proceed with a prosecution option when given the choice.

### ***Policy Recommendations – Diversity and Services***

As these figures appear to indicate, the experience of family violence is as individual as the people involved. VALS argues that, in a rush to emphasize the seriousness of family violence through increased criminalization, the Report has overlooked the following options, that would allow a more flexible, individual and therefore effective response to Family Violence including:

- Restorative justice;
- Criminal justice response that deals with Family Violence as a safety issue, as opposed to a punitive issue.
- Enhanced existing Civil Law options;
- Meeting the needs not only of victims of Family Violence, but also perpetrators.

### ***Conclusion***

Contemporary research and social commentary expresses skepticism and indeed criticism about the capacity of the criminal justice system to deter violent behaviour of any form. Given the intricate and complex factors that contribute to incidents of family violence, such heavy reliance on a criminal justice response is akin to placing a band-aid over a gaping wound. In light of the above analysis, it is the view of VALS that the recommendations of the Report alone cannot be seen to afford the systematic change necessary to combat family violence.