

# Victorian Aboriginal Legal Service Co-operative Ltd

## Newsletter July-August 2006



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### **Tender Update: Indigenous Legal Aid Service Provider Announced for Tasmania**

The Tasmanian Aboriginal Centre Incorporated has been awarded the contract to provide legal aid services for Indigenous Australians in Tasmania. The contract commenced on 1<sup>st</sup> July 2006.

### **Inquiry into Stolen Wages – Tell your Story about Stolen Wages**

Did you or your parents do work but never receive payment? Did a relative defend Australia at war but not receive anything in return? Tell the Government about your experience so that justice might become a reality!

Submissions for the Senate Inquiry into Stolen Wages are due on 30 September 2006. The Legal and Constitutional References Committee will Report its findings on 7<sup>th</sup> December 2006. VALS encourages you to tell your story by writing a submission or contacting VALS' Research Officer, Greta Jubb (9419 3888 or [gjubb@vals.org.au](mailto:gjubb@vals.org.au)) who can help you write your story. You can also record your story on an audio or video tape.

The following documents are available:

- Terms of Reference of the Inquiry  
[http://www.aph.gov.au/senate/committee/legcon\\_ctte/stolen\\_wages/index.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/stolen_wages/index.htm).
- Australians for Native Title and Reconciliation Plain English guide to making a submission: [http://www.antar.org.au/index.php?option=com\\_content&task=view&id=265&Itemid=108](http://www.antar.org.au/index.php?option=com_content&task=view&id=265&Itemid=108).

### **Staff Update**

VALS welcomes Fiona Roberts to the position of Project Worker – Access to Justice. VALS welcomes Vicki Burke to the position of Personal Assistant to the Chief Executive Officer. Vicki previously held the position of Legal Secretary. VALS farewells John Sutton from the position of Executive Officer- Legal Practice and welcomes Jill Prior to this role. Jill previously held the position of Criminal Law Solicitor.

### **First Indigenous Australian Barrister in Victoria**

VALS extends congratulations to Linda Lovett who became the first Indigenous Australian barrister in Victoria in May 2006. VALS is aware of the need for Indigenous Australians to enter the legal profession.

### **Indigenous Law Students and Lawyers Association**

On 24<sup>th</sup> July 2006 VALS' staff attended the launch of the Indigenous Law Students and Lawyers Association of Victoria (ILSLAV). Also, VALS' solicitor Scott Ashley and Re-

search Officer Greta Jubb spoke to Indigenous Australian law students about careers in the legal profession. ILSLAV is seeking entries for a competition to come up with an Indigenous name for the organisation by 18<sup>th</sup> September 2006. To be in running for a \$150.00 prize ring 9607 9474 to get an entry form. Further information on ILSLAV is at [www.ilslav.org.au](http://www.ilslav.org.au).

### **Abuse and Family Violence in the Indigenous Australian community**

VALS welcomes the spotlight on the issue of abuse experienced in the Indigenous Australian community. VALS agrees with the following comment of Tom Calma (Aboriginal and Torres Strait Islander Social Justice Commissioner) “...*There is a need to adopt a holistic approach to address the causes and consequences of family violence. If we treat these issues simply as a law and order issue we will not achieve the necessary lasting improvements in the lives of Indigenous peoples.*”

VALS argues that Government too easily takes a ‘tough on crime’ approach, such as employing more police and putting more people in jail. What is in fact needed, and indeed harder to achieve, is a ‘smart on crime’ approach. A ‘smart on crime’ involves acknowledging that the underlying issues that contribute to abuse also need to be addressed, and the Government has a responsibility to address these issues in an innovative manner. A ‘smart on crime’ approach does not mean de-criminalising family violence but creating a space for alternative approaches to deal with family violence other than a ‘tough on crime’ approach.

Restorative Justice is an example of a ‘smart on crime’ approach because it is capable of considering the context of abuse and can be akin to Indigenous Australian modes of dispute resolution. Also, Restorative Justice not only achieves justice but has the potential to restore lives and, if appropriate in the circumstances, relationships. Certainly there are potential disadvantages to restorative justice (ie: re-victimisation of the victim), however arguably the criminal justice system is also a culprit of such re-victimisation. Fear about restorative justice just because it is a relatively new concept should not prevent further exploration and refinement in order to iron out possible flaws. The criminal justice system is unquestionably accepted as the only option, but it is not perfect, and victims and perpetrators of violence deserve better. VALS urges the Government to stretch itself and create space for a ‘smart on crime’ approach rather than simply rely on a ‘tough on crime’ approach.

VALS also endorses the ten key challenges reflected in the Human Rights and Equal Opportunity Commission paper titled to ‘Ending family violence and abuse in Aboriginal and Torres Strait Islander communities - key issues’ (Available at [http://www.humanrights.gov.au/social\\_justice/familyviolence/](http://www.humanrights.gov.au/social_justice/familyviolence/)):

- (1) Turn government commitments into action;
- (2) Indigenous participation;
- (3) Support Indigenous community initiatives and networks;
- (4) Human Rights education in Indigenous communities;
- (5) Don't stereotype all Indigenous men as abusers;
- (6) Look for positives and celebrate the victories;
- (7) Re-assert Indigenous cultural norms and regain respect in Indigenous communities;
- (8) Ensure robust accountability and monitoring mechanisms;
- (9) Changing the mindset of the government;
- (10) Targeting of need.

### **Recent changes to the law or procedures**

**Police Holding Powers:** The Crimes (Family Violence) Act 1987 contains a new Division 2 titled 'Holding Powers', which came into effect on 1<sup>st</sup> July 2006. Police have a holding power where a person has allegedly used violence towards a family member and police. Police can direct a person to remain at, or go to and remain at, a place stated by the police officer. If the person refuses or fails to comply with this direction, the police officer may apprehend and detain the person using as much force as is reasonably necessary. VALS is concerned by any increase in police powers because of the disproportionate impact that the powers may have on Indigenous Australians, who come into contact with police more often than non-Indigenous Australians (ie; over-representation in the criminal justice system).

**Compensation to members of the Stolen Generation in Tasmania:** The Tasmanian Government announced in June 2006 that it intends to become the first State to financially compensate Aborigines forcibly removed from their families. Premier Paul Lennon said he was putting aside a pool of money and hoped to finalise payouts by the end of the year. VALS congratulates the Tasmanian Government and urges the Victorian Government to follow the example of Tasmania. In Victoria there is an absence of options for Indigenous Australians who are members of the Stolen Generation to seek justice.

**Right to Vote:** The Commonwealth Electoral Act 1918 [section 93(8AA)] removes prisoner's, serving a sentence for a Commonwealth, State or Territory offence, right to vote. In the past, prisoners serving sentences of less than three years were allowed to vote. VALS opposes the amendment and agrees with Professor Larissa Behrendt that it is a 'blow for democracy' as it will disproportionately affect Indigenous Australians because they are over-represented in prison population, especially as Indigenous Australians have only relatively recently received the right to vote.

**Victims of Crime Assistance Tribunal (VOCAT) Koori List:** The VOCAT now has a Koori List which means all applications to the VOCAT by Koori people will be placed in a specific Koori list. VALS welcomes the VOCAT Koori List as a step towards making the VOCAT more accessible to Indigenous Australians.

**Native Title:** Amendments to the *Aboriginal Land Rights Act* (Northern Territory) 1976 were passed in Senate on 16 August 2006. VALS endorses Tom Calma's comments made prior to 16 August 2006: "*I implore the government to provide my people with the basic courtesy of explaining this legislation and listening to their views about its impacts - no other Australian would accept radical changes to their land tenure arrangements without extensive negotiation. I would also like to remind the government that land rights were not set up with the sole purpose of facilitating economic development. Land rights were set up in acknowledgment of dispossession, for social, communal, residential, cultural and spiritual purposes.*"

### **Potential changes to the law**

**Customary Law:** The Commonwealth Government has responded to the spotlight on abuse in Indigenous Australian communities by calling for customary law not to be considered in a Court case. It is proposed that section 16A of the *Commonwealth Crimes Act* be amended to delete mandatory consideration of cultural background of offenders and exclude it from sentencing discretion.

VALS agrees with arguments that were devised at an Aboriginal and Torres Strait Islander Legal Services (ATSILS) conference and publicised in a joint media release titled 'Aborigi-

nal and Torres Strait Islander Legal Services Support Customary Law', dated 29<sup>th</sup> June 2006. It was outlined in the media release that ill-informed and simplistic approaches should not be applied, nor should the Commonwealth rush into ill-considered legislation and:

- The proposal is contrary to fundamental principles of equality as enunciated by the High Court and the *Racial Discrimination Act*.
- In accordance with case law principles, in particular *Neal v R* 1982, equality before the law implies and requires recognition by Courts of cultural difference in relation to sentencing matters.
- ATSILS endorse the Law Council submission to the WA Law Reform Commission on Aboriginal Customary Law that removal of the court's power to consider all factors relevant to the state of mind of an accused is against the principles of Australian law.
- The removal of cultural background from the codified list of sentencing factors in Section 16A would be inappropriate for all ethnic and racial minorities.
- A significant issue within Customary law is double jeopardy – where, whilst Australian law applies, so may a perpetrator be dealt with under Customary Law.
- Application of Customary Law restores harmonious relations within communities. ATSILS support the Law Council's recognition that Customary Law is highly complex and cannot be simply categorised.
- Recognition of Customary Law is consistent with the approach of the Australian Law Reform Commission in Report 31 and with the approach adopted by Superior Courts of Record for the last half century.
- Judges have been to date highly circumspect and careful in their considered determinations in cases in which Customary law has risen with proper evidence from anthropologists and other experts.

### **Potential changes to International Law**

**UN Declaration of the Rights of Indigenous Peoples:** On 29<sup>th</sup> June 2006 the United Nations Human Rights Council adopted the Declaration on the Rights of Indigenous Peoples. The Declaration will be forwarded to the United Nations General Assembly for consideration at its next session and the Declaration could be in force by the end of 2006. VALS' Chief Executive Officer has had a long involvement in this matter and participated in many sessions of the Working Group on the Draft Declaration on the Rights of Indigenous Peoples. The Declaration is significant for Indigenous peoples worldwide who are struggling to have their rights recognised. The Declaration is available at:

[http://www.humanrights.gov.au/social\\_justice/drip/index.html](http://www.humanrights.gov.au/social_justice/drip/index.html).

### **Community Legal Education Update: Koori Job Fairs**

VALS' Community Legal Education Worker, Loretta O'Neill, has been attending Koori Job Fairs (Indigenous Issues Unit, Department of Justice) across the State. The Koori Job Fairs presented an opportunity for VALS to provide information about VALS to young Indigenous Australians.



### **Contact Details**

If you require information about the contents of this newsletter or wish to subscribe to the mailing list, please contact VALS. Previous newsletters are available on the VALS website (<http://www.vals.org.au/news/news.htm>).