

Victorian Aboriginal Legal Service Co-operative Limited Quarterly Newsletter



October-December 2010

Message from VALS Acting CEO



Welcome to the final Victorian Aboriginal Legal Service Co-operative Limited Quarterly newsletter for the year. It has been a very busy time at head office and in the regions, with many new staff appointments, an influx of volunteers and interns, and as always, a hardworking and dedicated research, legal, community legal education, Client Service Officer and administration team.

From all of us here at VALS, we wish all clients and colleagues a happy festive season and wish everyone a safe new year.

Linda Bamblett

Visit us on our new
website!
www.vals.org.au

VALS CEO Retires

VALS wishes to thank Mr Frank Guivarra for his years of service to the organisation as Chairperson of the Board and Chief Executive Officer.

Mr Guivarra served as CEO for 6 years and in this role he worked tirelessly for the Aboriginal and Torres Strait Islander community.

His efforts and commitment are recognised with great appreciation.

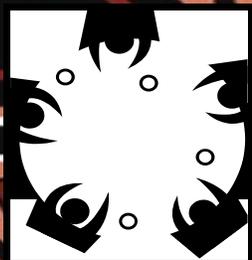


* VALS warns that the name of a deceased person appears in this newsletter

SPECIAL POINTS OF INTEREST:

- VALS & VEOHRC 2011 Human Rights Calendar
- Police Cautioning & Koori Youth Diversion Program Update
- Mental Health Bill 2010 Exposure Draft Submission
- Bail Reform
- Constitutional Reform
- VALS Prisoner Support Officer
- Victorian prisoner numbers increase

2009/10 AGM and Annual Report



VALS' 2009/10 Annual General Meeting was held at the Aborigines Advancement League, Thornbury, on 6 December 2010. VALS members were invited to nominate candidates for election as a Director. Terrie Stewart, Des Morgan, Alf Bamblett and Deirdre King were re-elected unopposed to VALS' Board of Directors. Discussions at the meeting were strongly focused on positive changes for the future.

The 2009/10 Annual Report was circulated, outlining legal practice, community legal education and law reform and policy reform research work as well as a welcome to two new members to the Board, Ms Pam Aplin and Mr Leigh Saunders

contained within the Chairperson's Report.

Mr Robert Pearce, who ceased being a Director, was also thanked for his hard work and dedication to VALS.

Client Satisfaction Surveys

New to VALS' Annual Reporting is the inclusion of some client satisfaction survey responses. For example, regarding civil law, one client responded: "Very Professional, considerate and supportive. I am very grateful for all his help and assistance/expertise."

"An attentive professional & efficient solicitor, he conducted

himself with full professionalism & feelings..."

Criminal law: "Very helpful friendly & supportive. My field officer actually picked me up & gave me a lift to court as I live far away. I thank you."

Family law: "Very good to understand with telling me where we are up 2. Just keep our people to always get a fair go and not look down on..."

For a copy of VALS' Annual Report, contact us or go to:

<http://vals.org.au/about-vals-and-contact-details/annual-reports>

Community Legal Education

Outreach VALS has been conducting outreach at Dandenong District Aboriginal Co-operative fortnightly on a Friday and in conjunction with a regular monthly BBQ. VALS has been represented by at least one lawyer from criminal, family and civil law practice at each event. This lawyer helps members of the community link in with the appropriate VALS lawyer. VALS has also begun a family law outreach service with family lawyer Leah Tolley at the Family Relationships Centre every second Friday starting 17 December 2010 at 68 Wyndham St, Shepparton, Victoria. This service is available for

all Aboriginal and Torres Strait Islander community members. For further information contact VALS or visit www.vals.org.au.

Human Rights Calendar VALS is producing 2011 calendar in partnership with the Victorian Equal Opportunity and Human Rights Commission. Photographs that have been taken of community members for the calendar have been met with a positive response from those who have been able to see them in the calendars draft stage. The stories of those photographed celebrate unsung heroes, resilience and culture through storytelling about human rights. The calendar will be available in the new year. Keep an eye on the VALS website for details.

Police Cautioning and Koori Youth Diversion Program Update

The Pilot phase of the Police Cautioning and Koori Youth Diversion Program was completed in July of 2008. The Pilot Sites (Mildura & La Trobe Valley) were evaluated and it was found that both had an increase in cautioning numbers for Koori Youth, and a drastic decrease in subsequent recidivism for those completing the Program.

The second phase Program sites are: Swan Hill, Shepparton, Warrnambool, Bairnsdale and Metropolitan Melbourne. Initial discussions and information dissemination began in each of these areas in March 2009 and the roll-out process is nearly complete in these sites. A community specific education campaign continues in these areas.

Progress in Stage two sites are as follows: Swan Hill: implementation finalised July 2009. The program is available to non-Indigenous youth;

Bairnsdale: the Program launched in Bairnsdale, Orbst and Lake Tyers in March 2010. Although this area is currently without an Aboriginal Community Liaison Officer, it is currently operating well; Shepparton: the Program was launched in Shepparton and Mooroopna in June 2010. At present, the Program operates on an Informant based model as no Youth Resource Officer is employed in the region; Warrnambool and Metro: The Program's launch in the Warrnambool, Heywood, Hamilton and Metro areas are in their early stages. Further details will be made available as they come to hand.

Questions regarding the project should be directed to the Project Officer, Nicole Bluett-Boyd: nicole@vals.org.au.

Submissions

Mental Health Bill 2010 Exposure Draft

VALS recently made a submission to the Department of Health in response to the Mental Health Bill Exposure Draft. VALS had previously submitted to the review of the *Mental Health Act 1986* (Vic) in 2009. The resulting draft Bill revealed some positive changes, with a move towards supported decision making and a more human rights-centred approach.

In our submission, we reiterated the need for an inclusive definition that reflects a holistic view of the role of mental health and its interaction with the criminal justice system.

There were also some definitional issues within the Bill. For example, VALS was pleased to see the Bill provide that in making decisions and providing treatment under this legislation, 'Aboriginal persons hold distinct cultural rights which must be taken into account' (s8(2)). However the terms 'Aboriginal', 'Aboriginal person' (used throughout the Bill) and 'cultural right' are not articulated or defined within the Bill.

The Bill also fails to define 'family' or 'family member'. This omission has the potential for a negative impact as it will affect the interpretation and operation of many parts of the legislation potentially excluding family members as they exist in Aboriginal and Torres Strait Islander communities, such as kinship networks. This important distinction is recognised in other contemporary legislation such as the *Family Violence Protection Act 2008* (Vic).

The Bill provides that the mental health service provider must ensure a patient is given a statement of rights as soon as practicable after being made subject to assessment and treatment orders and before certain therapies. The Bill provides that the statement of rights must include, amongst other things, information about the right to make a complaint and how to elect a nominated person to make certain decisions on their behalf. The Bill does not, however, require the statement of rights include information about patients rights as articulated in the *Victorian Charter of Human Rights and Responsibilities Act*

2006 (Vic) or rights to legal assistance and advice.

VALS has previously argued that external and independent tribunal reviews of involuntary treatment orders and the like should include true community representatives to the panel presiding over the decision.

VALS advocates for a similar provision as that found in the Northern Territory's *Mental Health and Related Services Act 2010* which states that the tribunal is to include, as far as practicable, persons of both sexes from diverse backgrounds, including Aboriginal and Torres Strait Islander background.

This submission can be found at the submission page of our website at:

<http://vals.org.au/law-reform-and-policy-development/submissions>

A statement of rights should include information about a persons rights under the Charter and the right to legal advice and assistance.



Fighting for the Charter

VALS marked Human Rights Day 2010, 10 December, with a media release expressing concern over the fate of the *Victorian Charter of Human Rights and Responsibilities 2006*.

VALS has called on the newly elected Baillieu Government and Attorney-General, the Hon Robert Clark, to commit to the scheduled 2011 review of the Charter, and to be mindful when

electing a review panel to this task.

VALS calls for the review team to be independent, to engage collaboratively with marginalised and disadvantaged groups, and include a member of Aboriginal or Torres Strait Islander descent. This will help ensure that Aboriginal and Torres Strait Islander peoples have a voice and can uphold their right to participate in decisions that affect them.

Bail Reform

The *Bail Amendment Act 2010* recently amended the *Bail Act 1977* and the *Magistrates' Court Act 1989*. This follows from the 2007 Victorian Law Reform Commission's (VLRC) *Review of the Bail Act: Final Report* which made 157 recommendations for procedural, administrative and legislative changes to the bail system.

The new Act responds to 40 of the recommendations and represents the first phase of a two phase bail reform process.

The changes that come into effect in January 2011 include:

- a new provision for Aboriginal and Torres Strait Islander peoples where a decision-maker is required to take into account any cultural background or other relevant cultural issues that arise due to the 'Aboriginality' of person when making a determination under the Act;

- a new provision for imposing bail conditions;
- new procedures for administering surety conditions;
- new provisions for further bail applications, applications for variation of bail conditions, and applications for revocation of bail;
- clarification of the provision allowing appeals against grants of bail by the Director of Public Prosecutions; and
- reduction of the period for which bail justices may remand an adult accused person.

The key changes to the Magistrates' Court Act relate to the new bail justice system, including new eligibility criteria for appointment and re-appointment of bail justices.

In addition, new powers for the Secretary

of the Department of Justice include directing a bail justice to participate in professional development or a continuing education and training activity and suspending a bail justice from office.

The Act also provides for a number of matters to be prescribed in Regulations, including a new code of conduct for bail justices. These matters are prescribed in the Magistrates' Court General Amendment Regulations 2010.

Further information on changes to the Bail Act, including fact sheets, can be found at the Department of Justice website:

[http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/the+justice+system/justice+-+explaining+the+bail+amendment+act+2010+changes+-+\(pdf\)](http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/the+justice+system/justice+-+explaining+the+bail+amendment+act+2010+changes+-+(pdf))

Constitutional Reform

The Gillard Government announced in November this year the intention to make steps to formally recognise of Aboriginal and Torres Strait Islander peoples in the Australian Constitution by way of referendum.

The Government intends to establish an expert panel with Aboriginal and Torres Strait Islander and community leaders, constitutional experts and parliamentary members.

This panel will lead a national discussion and consultation in 2011 with the aim to build consensus on the recognition of Aboriginal and Torres Strait Islander peoples in the Constitution.

Only eight of 44 referendums since Federation have been successful. Community must therefore endeavor to make a strong and persuasive case for change. VALS welcomes this challenge and looks forward to discussions on the issue in the new year.

In the lead up to the Government initiated

consultation, the Law Council of Australia (LCA) has released a draft paper on the constitutional recognition of Aboriginal and Torres Strait Islander peoples.

Some Aboriginal and Torres Strait Islander Legal Services (ATSILS) have individually responded to LCA.

VALS is currently assessing capacity to provide comment to the LCA draft paper by the end of January which will inform a Position Paper the LCA will produce in the months following.

To view the transcript of the joint press conference with Prime Minister Gillard, Attorney-General Robert McClelland and Minister for Families, Housing, Community Services and Indigenous Affairs Jenny Macklin regarding the referendum on constitutional reform, visit:

<http://www.jennymacklin.fahcsia.gov.au/transcripts/2010/Pages/IndigenousAustraliansreferendum.aspx>

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Consolidation Project

The Commonwealth Attorney General's Department has proposed the consolidation of all federal anti-discrimination legislation into a National Equality Act. Federal anti-discrimination legislation includes the Racial, Disability, Sex and Age Discrimination Acts.

This proposed consolidation of Commonwealth anti-discrimination laws is one of the key initiatives arising out of Australia's Human Rights Framework response to the recommendations of the 2009 National Human Rights Consultation.

VALS' Research, Planning and Development staff attended an 'Equality Law Reform Roundtable' in October to discuss the consolidation project with other members of the community and legal sector, with representatives of the Attorney General's Department present to take note of discussion and provide

information where possible. Discussion over the almost four hour roundtable included, amongst other things:

- inclusion of special recognition of Aboriginal and Torres Strait Islander peoples in the Act;
- if there will be a provision allowing the Act to be suspended;
- the importance of the Act to not simply consolidate legislation as it currently exists, but potentially go further to improving anti-discrimination legislation in the process;
- Address protections absent from current anti-discrimination laws, such as discrimination on the basis of and irrelevant criminal record;

- How the Australian Human Rights Commission handle complaints;
- ability of the Act to deal with compound/intersectional discrimination; and
- A built in reporting mechanism to allow parliamentary review.

The Attorney General's Department has said there will be public consultation in relation to the project. An exposure draft of the consolidated anti-discrimination legislation will be released for comment by stakeholders and the public, scheduled for some time in 2011.

For further information on the consolidation project, visit:

<http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf>

LawHelp

22 November 2010 saw the launch of a new legal support initiative for non-profit Aboriginal and Torres Strait Islander corporations.

Launched by Attorney-General, Robert McClelland and the Minister for Families, Housing, Community Services and Indigenous Affairs, Jenny Macklin, 'LawHelp' will give corporations registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* access to pro-bono legal advice from established law firms across Australia.

LawHelp was developed by the Office of the Registrar of Indigenous Corporations (ORIC) and the Australian Government Solicitor and reportedly represents another step in meeting the Council Of Australian Governments (COAG) 'Indigenous

reform targets'.

Legal help through LawHelp is available to not-for-profit Aboriginal and Torres Strait Islander corporations and is not available to individuals.

Corporations can get help with requests such as: interpreting the law; contract drafting; employment issues; intellectual property arrangements; and property matters.

Advice cannot be given for some matters, such as native title claims or legal action in a court or tribunal. In exceptional circumstances, however, LawHelp's assessment panel can still approve an application for legal help if it does not fall within the guidelines.

Legal advice will be provided by a number of law practitioners including the Australian Government Solicitor, Clayton Utz, Minter Ellison, Blake



Dawson, Williams Love & Nicol Lawyers and Peter Tree SC from Tasmanian-based Derwent and Tamar Chambers.

For further information on LawHelp, including how to apply for LawHelp, information about the assessment panel and other organisations that may be able to provide pro-bono assistance, visit the ORIC website:

<http://www.oric.gov.au/Content.aspx?content=training/lawhelp.htm>

Victorian prisoner numbers increase

The Australian Bureau of Statistics (ABS) recently released data regarding changes to Australia's prison populations. Between 2009 and 2010, the prisoner population increased in all states and territories except New South Wales, Tasmania and Queensland.

The highest proportional increases in prisoner numbers included Victoria (4%), as well as the Australian Capital Territory, Western Australia and Northern Territory (38%, 8% & 4% respectively).

At 30 June 2010, Victorian prisoners also had the oldest median age at 35.4 years. Victoria was also one of four states and territories that recorded a decrease in the proportion of their prisoner population on remand (unsentenced) since June 2009. This proportion was slightly higher for Aboriginal and Torres Strait Islander prisoners (22%) than non-Aboriginal and Torres Strait Islander prisoners

(21%). The time Victorian prisoners spent on remand, however, was the 3rd highest in the country.

The ABS has also released data revealing that nationally, the number of women held in adult corrective services custody increased by 5% (100 prisoners) within a year (period ending 30 June 2010).

Figures continue to show that men dominate the adult prisoner population in Australia (92% of all prisoners held in corrective adult services), however this data shows that female incarceration is increasing at a faster rate than males.

The number of Aboriginal and Torres Strait Islander female prisoners increased by 9% (52) from 30 June 2009, compared with a 3% (50) increase in the non-Aboriginal and Torres Strait Islander female prisoner population.

The most serious offence with the highest proportion of sentences women prisoners was illicit drugs (17%).

Nationally, the Aboriginal and Torres



Strait Islander imprisonment rate is 14 times higher for Aboriginal and Torres Strait Islander peoples than non-Aboriginal and Torres Strait peoples. The largest proportion of Aboriginal and Torres Strait Islander prisoners (21%) were in the 20-24 year age group.

Almost 3/4 (74%) of Aboriginal and Torres Strait Islander prisoners had prior adult imprisonment.

For ABS data prisoner numbers and characteristics, visit:

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/ProductsbyReleaseDate/8D5807D8074A7A5BCA256A6800811054?OpenDocument>

VALS Prisoner Support Officer

VALS recently welcomed George Briggs to the team in the new role of Prisoner Support Officer.

George describes himself as a very proud Bangerang Man. He was born and bred in Shepparton, but has been living in Melbourne since 2003.

During his time in Melbourne, George has worked at the Koorie Heritage Trust in the position of Tour Guide and at the Victorian Aboriginal Child Care Agency (VACCA) for 3 ½ Years.

George started work at VALS in October 2010 as the Prisoner Support Officer. George's new appointment is a big change from his previous

employment, but he is enjoy working with the VALS clients in prison, trying to encourage effective change in their lives for the better.

The VALS Prisoner Support Officer is aimed to provide support to Aboriginal and Torres Strait Islander prisoners in a number of ways. Some objectives of the position are, but not limited to:

- smooth transition from prison to the community;
- culturally appropriate referrals;
- promotion of human rights; and



- assisting family.

VALS hopes that as the Prisoner Support Officer role develops, we will be able to, amongst other things:

- increase access to justice for Aboriginal and Torres Strait Islander whilst in prison and supports when out of prison; and
- increase early resolution of prisoner's legal problems.

Inquiry reconvened

The new federal parliament's Committee on Aboriginal and Torres Strait Islander Affairs is set to resume its inquiry into the high level of involvement of Aboriginal and Torres Strait Islander juveniles and young adults in the criminal justice system. The inquiry has so far received 106 submissions and has conducted 17 public hearings and forums around Australia.

The Committee plans to table its report and recommendations in the first half of 2011. There is no official cut-off date for submissions, but the Committee has indicated that it is desired that submissions be sent by mid-January 2011. VALS made a submission to this inquiry earlier in the year.

For more information on how to make a submission, visit: <http://www.aph.gov.au/house/committee/atsia/sentencing/index.htm>

LIV to develop Reconciliation Action Plan

The Law Institute of Victoria has committed to working with Victoria's Aboriginal and Torres Strait Islander peoples and Reconciliation Australia to develop an Reconciliation Action Plan aimed at building meaningful relationships with Victorian Aboriginal and Torres Strait Islander communities and "closing the gap" in Aboriginal and Torres Strait Islander representation in the legal profession.

LIV President Steven Stevens said the profession was greatly concerned at the underrepresentation of Indigenous people in the legal profession.

Young Koori Parents Report

The Victorian Indigenous Youth Advisory Council (VIYAC) hosted a forum for Koori Young Parents as part of National Youth Week in April 2010. The forum was an opportunity for young parents to voice their ideas, passions and concerns on issues that are important to them.

A number of participants, service providers and VIYAC members participated in discussions that fed into the development of a report. The report was prepared and written by VIYAC Project Officer, Clarisse Slater.

To download the report or for more information visit:

<http://www.viyac.org.au/news> or contact Clarisse on (03) 9267 3714.

Aboriginal and Torres Strait Islander Health and Welfare

The Australian Bureau of Statistics (ABS) has released a report on the Health and Welfare of Australia's Aboriginal and Torres Strait Islander peoples.

To access this report, go to:

<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4704.0?OpenDocument>

Policemen disciplined over Paul Carter death

been making appropriate decisions about his own safety.

Patterns of ongoing mistreatment by police when dealing with members of the Aboriginal and Torres Strait Islander community, and the failure to seek accountability and remedy in such instances, was starkly highlighted in the inquest into the death of the late Mr Paul Wayne Carter - an Aboriginal man who was left by police on the Stuart Highway near the Mildura airport and was subsequently struck by a heavy transport vehicle and died.

The events on the 6th and 7th of August 2006 have been the basis of a disciplinary hearing for police officers involved.

Senior Constable Nigel Hoyle will be transferred out of the Mildura police service area for 12 months and, Steve Ritchie, a Constable at the time, has been put on a 12-month good behaviour bond.

Steve Ritchie is now a Senior Constable.

Coroner to the inquest, her Honour Judge

Coate, made findings in 2009 including, but not limited to, the following:

- Mr Carter was not in police custody at the time he was struck by the truck.
- Mr Carter was in the care of the police and police were required to make decisions about him consistent with his welfare.
- S/C Hoyle and C/ Ritchie knew that Mr Carter was an alcoholic prone to erratic behaviour, and that his brother had died that day.
- The request by Mr Carter to have him placed on the side of the road, 13 kilometres away from his father's home at midnight in the middle of winter on the day that his brother has died should have alerted S/C Hoyle and C/ Ritchie that he may not have

- S/C Hoyle and C/ Ritchie knew that Mr Carter: was a vulnerable Aboriginal man who was an alcoholic and whose brother had died that day; was unpredictable and erratic with a low intellect; girlfriend had ended their relationship that night; bore visible physical scars of self mutilation; had a long and detailed criminal history with Victoria Police; was delivered was a dark stretch of open highway that had no footpaths and is an interstate trucking route; and that he was dressed in relatively dark clothing.

The Coroner found that S/C Hoyle and C/ Ritchie left Mr Carter in inherently dangerous circumstances and failed to exercise common sense and humanity, qualities that may have prevented Mr Carter's death.

Staff Update

Appointments

Vicki Shaw, Senior Legal Secretary; Gary Bamblett, Metropolitan Client Service Officer; Tarneen Onus-Williams, Receptionist; Karen Boon, Morewell Client Service Officer; Danny Isley, Ballarat Client Service Officer; George Briggs, Prison Support Officer; Elisa Dickenson, Criminal Law Solicitor; Ariella Gild, Criminal Law Solicitor; and C'Zarke Maza, Criminal Law Solicitor.

Farewells

ATSILS Research and Coordination Officer, Rachel O'Brien, is moving to the Aboriginal and Torres Strait Islander Legal Service Queensland (ATSILS QLD) with the appointment of the new Chair of the ATSILS National Forum, ALTSILS QLD CEO Shane Duffy. VALS also says goodbye to Client Service Officer Aaron Scafi.

Internships

Farhan Rechman 3 week internship with the Leo Cussens Institute. VALS wishes Farhan well with his admission in January. Claire Deane, Leo Cussen Institute Practical Training Course. Jarrah Jones, University of Melbourne School of Social and Political Sciences Sociology Internship. And Gatwech Wal, Homeglen Tafe Justice Studies.

Work experience

Tess Roberts, The Academy of Mary Immaculate and Nalita Curry, Charlton High School.

With Thanks

VALS would like to thank Linda Bamblett for her work in the Acting CEO position in the past months.

VALS was established as a community controlled Co-operative Society in 1973 to address the over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system. VALS plays an important role in providing referrals, advice, duty work or case work assistance to Aboriginal and Torres Strait Islander peoples in the State of Victoria. Solicitors at VALS specialise in one of three areas of law, being criminal law, family law and civil law. VALS maintains a strong client service focus which is achieved through the role of Client Service Officer (CSO). CSOs act as a bridge between the legal system and the Aboriginal and Torres Strait Islander community.

VALS is actively involved in community education, research and advocacy around law reform and policy development. VALS strives to:

- Promote social justice;
- Promote the right of Aboriginal and Torres Strait Islander Australians to empowerment, identity and culture;
- Ensure that Aboriginal and Torres Strait Islander peoples enjoy their rights, are aware of their responsibilities under the law and have access to appropriate advice, assistance and representation;
- Reduce the disproportionate involvement of Aboriginal and Torres Strait Islander peoples in the criminal justice system; and
- Promote the review of legislation and other practices which discriminate against Aboriginal and Torres Strait Islander peoples.

VICTORIAN ABORIGINAL LEGAL SERVICE CO-OPERATIVE LTD.
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Dates for your Diary

January

4th VALS offices re-open.

14th Due date for submissions in response to the *Family Law Amendment (Family Violence) Bill 2010*. www.ag.gov.au

17th County Court first sitting day.

26th Survivor Day/Australia Day. www.australiaday.com.au/studentresources/indigenous.aspx

31st Supreme Court sitting starts; Term 1 starts

February

7th Federal Court sittings start

13th Anniversary of National Apology to the Stolen Generations.

<http://reconciliation.org.au/nsw/education-kit/stolen-generations/>

March

4th Federal Court sittings end

8th International Women's Day
www.internationalwomensday.com

14th Labour Day

21st International Day of the Elimination of Racial Discrimination.

www.un.org/depts/dhl/racial/