

Victorian Aboriginal Legal Service Co-operative Ltd.



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Our Ref: FEG: feg

8th May 2009.

The Secretary
Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir,

RE: Submission to the Inquiry into Access to Justice, 2009.

Introduction:

The Victorian Aboriginal Legal Service Co-operative Limited (VALS) is an Aboriginal community-controlled organisation currently contracted by the Attorney-General's Department [Cth] to provide legal aid services to Indigenous Australians in the State of Victoria.

Previous Inquiries, Existing Research and Reports:

There is already a raft of material which should inform Governments and policy makers about Access to Justice Issues. Legal Assistance Service Providers have made multiple submissions repeating the same concerns over the years, the main concern being inadequate funding, for example:

- (1) The Senate Legal and Constitutional References Committee Inquiry into Legal Aid and Access to Justice, referred to the Senate on the 17th June 2003 and completed in June 2004
- (2) The Senate Legal and Constitutional Affairs Committee Inquiry into the Australian Legal Aid System, referred to the Senate in 1996 and completed in June 1998

The Inquiry into Legal Aid and Access to Justice 2003:

The main messages to the 2003 Inquiry into Legal Aid and Access to Justice were that Legal Assistance Service Providers, despite working co-operatively to maximise service delivery, were even then unable to meet the demand that was presenting at the door; and that they believed that there were also significant numbers of people with legal needs who did not reach service delivery points.

The report of that Inquiry made 63 recommendations. Many of the recommendations were aimed at determining and meeting legal needs in Australia, including the legal needs of Aboriginal and Torres Strait Islander Peoples, and people living in rural, regional and remote areas.

What has changed?

- **Service Delivery Capacity and Funding:**

Since the 2003 inquiry, demand for services has increased and the cost of providing those services has increased. The Aboriginal and Torres Strait Islander Legal Services [ATSILS] have not received any meaningful increase in funding during the ensuing period. When funding increases to the Commissions and Community Legal Services have been made, they have been inadequate to address even the demand at the door. The situation has therefore worsened since 2003.

- **National Legal Needs Survey:**

National Legal Aid and the Law and Justice Foundation of NSW are undertaking a National Legal Needs Survey. It is expected that some results will be available from late 2010, with the main reports [national and for each State and Territory] to be released in the second half of 2011. It is understood that the results of this survey will provide the empirical evidence, that Legal Assistance Service Providers have previously been advised by funders, would be required in relation to approaches for increased funding.

While it is noted that the survey will not pick up sufficient samples of some of the most difficult to reach groups, such as people in isolated Aboriginal and Torres Strait Islander communities, the particularly large scale of the survey will allow for analysis and reporting in relation to legal needs of a wide range of the most disadvantaged groups, including Aboriginal and Torres Strait Islander peoples, Culturally and linguistically diverse groups, people with disabilities, recipients of government benefits, etc.

- **Global Financial Crisis [GFC]:**

The economy has worsened with very tough economic times predicted. More people are finding themselves in need of legal assistance in areas such as employment, credit/debt, mortgage repossessions, housing and tenancy, and consumer protection. In addition, difficult economic times are likely to put pressure on families, leading to an increase in demand in this area too.

Reduced employment will mean more people will meet legal aid means tests and be eligible for legal aid. This will result in further refusals due to the requirement to prioritise matters because of limited Legal Aid funding.

Main Priorities:

The following areas of legal need remain immediate priorities for funding:

- Legal needs of Aboriginal and Torres Strait Islander Peoples
- Civil legal aid - eg homelessness, social security issues, older people's issues
- Domestic/Family violence

"Funding Divide":

Current Commonwealth government policy is that Commonwealth funds can be used to provide grants of legal assistance for Commonwealth law matters only. This policy is generally known as the Commonwealth/State funding divide.

Family breakdown can involve both Commonwealth law and State law, such as child protection and domestic violence. If a case involves both Commonwealth and State laws, two separate grants of aid are required to be made because of the administrative and financial requirements which result from the Commonwealth/State funding divide.

Commonwealth funding should be available to provide grants of aid to address legal needs arising from family relationship breakdown regardless of whether the specific legal need arises under Commonwealth or State legislation. ALAF believes that a better way to prioritise the Commonwealth legal aid program is to base it on a defined legal need.

The artificiality of dividing a client's family relationship difficulties into Commonwealth and State matters is the antithesis of social inclusion principles, which call for a client - focused approach rather than a problem-focused approach to the needs of disadvantaged people.

Conclusion:

VALS therefore respectfully suggests that the recommendations from previous Inquiries be identified, prioritised and then implemented accordingly. We further suggest that the committee refers to the following; Cunneen Chris and Schwartz "Funding Aboriginal and Torres Strait Islander Legal Services: Issues of Equity and Access" (2008) 32 Crim LJ 38.

Please do not hesitate to contact the undersigned if you require any further information.

Yours faithfully,

Victorian Aboriginal Legal Service Co-operative Limited

Frank E. Guivarra
Chief Executive Officer