

Your Reference  
Our Reference VS - 138  
Enquiries ☎ 9269 0138



30 July 2002

Executive Officer  
Victorian Parliament Law Reform Committee  
Level 8, 35 Spring Street  
Melbourne 3004

GPO Box 4380 Melbourne 3001  
350 Queen Street Melbourne 3000  
DX 228 Melbourne  
Tel (03) 9269 0234  
Fax (03) 9269 0440  
[www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

Dear Ms Mason

### **Inquiry into Oaths and Affirmations with reference to the Multicultural Community**

Victoria Legal Aid (VLA) is Victoria's largest law practice with services in the criminal, family and civil jurisdictions. The services VLA provides are legal assistance, including in-house casework, legal advice, duty lawyers and a range of legal education and information services. During the 2000-01 financial year, VLA undertook over eleven thousand in-house cases in the civil criminal and family law sections of the organisation, provided multilingual telephone information to more than sixty-seven thousand clients, and distributed over 320,000 publications to the community. Legal aid clients are often the most marginalised Victorians, reflecting the lower end of the socio-economic scale (in 2000-01, 89% of legal aid recipients had income below the poverty line) or Victoria's diverse multicultural community. (Victoria Legal Aid, *Sixth Statutory Annual Report 2000-01*)

As mentioned, Victoria Legal Aid operates a Multilingual Telephone Information Service (MTIS) that responds to telephone requests for information and referral. MTIS provides its services in English and 13 community languages – Arabic, Cantonese, Croatian, Greek, Italian, Mandarin, Polish, Russian, Serbian, Spanish, Turkish, Ukrainian, and Vietnamese. In 2000-01, VLA responded to 5684 requests for information and referral from non-English speaking callers to the telephone service. (Victoria Legal Aid, *Sixth Statutory Annual Report 2000-01*)

VLA has considered the Terms of Reference and the Discussion Paper for the Inquiry. VLA's general position is that the system of oath taking as prescribed by the rules of the *Evidence Act* 1958 is inappropriate and anachronistic. Part IV of the *Evidence Act* has not undergone any major changes since 1958, apart from s.102 (on affirmations being made instead of oath) in 1984 and the extension of the list of persons who may witness statutory declarations (section 107A). Since 1958, however, Victorian society has undergone a massive shift in population and ethnic make-up, transforming a once monocultural society to a diverse multicultural one. The drafters and legislators of 1958 could have had no sense of the migration of people first from southern and central Europe, then Vietnam and Indo-China, sub-Saharan Africa and the Middle East. The *Evidence Act* of 1958 reflected a white, Anglo-Celtic culture with high levels of Christian (principally Anglican and Catholic) religious affiliation. Victorian society has changed dramatically since then and the laws should keep pace with the changes in society.

The recent Census reveals that in 2001, Christians represented 68.0% of the national population (down from 88.3% in 1961), with the two major denominations, Anglican and Catholic, accounting for 46.5% of the population (down from 59.8% in 1961). Buddhism accounted for 1.9% of the population and Islam for 1.5%. In 2001, around a quarter (25.3%) of the national population stated they had 'No religion' or chose not to answer the question. In Victoria, 798 393 people stated they had "No religion" a greater number than all other religious affiliations, except Catholic. Since 1961, the number of people who stated they had 'No religion' has increased from 0.4% to 16.6%.

Accordingly, VLA would like to see a change in the law such that a non-religious affirmation or a solemn promise to tell the truth should replace the system of oath taking. The maintenance of a system of religious oaths in a highly secularised social context is an unpleasant irony and an objectionable aspect of our justice system.

This submission will address each of the Terms of Reference in turn.

### **The significance of sacred texts to witnesses, other parties and jury members of particular faiths**

VLA recognises the importance people from different faiths place on sacred text. We also appreciate that the Bible, Old Testament or New Testament is inappropriate given the vast religious diversity in the Victorian community. The introduction of certain seminal religious texts - the Koran, the Bhagavad Gita, the Torah, Guru Granth Saheb (Sikh), I Ching, Sutras, Upanishads, Urantia Book, Zohar and the Vedas (Hindi), or, in the case of Buddhism, the lighting of candles - may provide some coverage for the range of religious beliefs practised in contemporary society, but it would certainly not be possible to provide the complete set of sacred texts in all courts, tribunals or other locations where oaths are sworn. VLA's experience is that judges and court officials have a severely limited appreciation of these texts and the practices associated with swearing on such texts, but it is also unreasonable that such court officials ought to be expected to have such a various and intricate theological understanding.

It is a matter of providing equal access to the entire religious canon or none of it. Rather than have a situation that will inevitably be biased against smaller and less acceptable religions, VLA supports bringing to an end the system of oath taking on sacred texts and replacing it with affirmations or solemn promises that carry the force of law. It is culturally inappropriate to have people swear oaths on texts they do not believe in (or indeed may be inimical to their lifestyle). An evidentiary system in which people make non-religious affirmations or solemn promises is not burdened with offending any religious or cultural group and therefore, indirectly, allows people to freely practice their own religion.

The point that needs to be made to all individuals as part of the affirmation is that they understand the purpose of the affirmation, gravity of the situation in which they are communicating, and that their words, if knowingly untrue, may ultimately be punishable by imprisonment. The collective experience of VLA indicates that there is a very high level of respect to the current system of oaths and affirmations from persons from different cultural backgrounds, but that there may be a lack of informed understanding. Achieving this level of understanding and clarity should be the

minimum standard to be attained in administering affirmations to all people. Achieving such a standard may require a rewording of the affirmation or solemn promise.

### **The provision of a sufficient range of appropriate texts and minimum standards in this regard for all Victorian jurisdictions**

As outlined above, the determination of what is a sufficient range of texts is very complex. What is left in it and what is excluded? Why are certain texts (and religions) excluded? If we are all equal before the law, why are some religions not afforded equal dispensation under the law? This complex issue should not be resolved by a half-measure and we certainly do not seek, however unintended, a league table of the top three, or top five religions. The capacity to resolving the issue is evident by instituting a non-religious affirmation or solemn promise to tell the truth. The committee ought to consider the significant merit in such simplicity.

Although it does not have a specific policy in this area, VLA has had on it premises and has utilised the following texts at various times for the purposes of witnessing affidavits: the Bible, the Koran, the Torah and the *Guru Granth Saheb*. We are aware the Refugee Review Tribunal are very sensitive in these matters and have allowed Buddhists to obey the ritual associated with the lit candle, but we are unaware of any overt or consistent policies in this regard from courts or tribunals. It is unreasonable to expect solicitors, justices of the peace, members of the police force, etc. to have the complete canon. It is unachievable and a minimum standard would be an affront to certain less popular religions. VLA is aware that people from the same ethnic culture practise different religions - such as the Vietnamese and Indian Hindus. It would be wrong to place court officials administering oaths and people charged with witnessing affidavits in a position where they have to 'guess' the relevant sacred text based on the appearance of the person they are dealing with. This is not so much a case of ethnic stereotyping but rather a statement that derives from a recognition that ethnicity and religion are sometimes heavily interrelated and that, on the whole, the legal community is ignorant about the religious make up of many cultures.

### **The provision of cultural awareness training to all court staff and persons before whom affidavits are sworn**

Solicitors at VLA report that, in the main, court staff appropriately administer oaths in court. We are not in a position to make general statements about specific jurisdictions but are aware of situations where oaths and affirmations have been challenged in court. A recent Preston Magistrates Courts case demonstrates how the issue of the oath adversely affects court proceedings. The defendant was Moslem and took the stand and swore on the Bible because no Koran was available. The prosecutor then attacked him, saying that the defendant had sworn on the Bible, and he therefore felt free to lie because it was not the Koran and he had no religious belief in the Bible. The defendant said that was not the case and he thought that the Bible represented the same thing as the Koran and would tell the truth. The Prosecutor, however, continued to badger him about it.

Solicitors within Victoria Legal Aid are authorised to administer affidavits under section 123C(1)(g) of the *Evidence Act*. VLA does not offer systematic cultural awareness training to its legal practitioners on the matter of oaths, affirmations and affidavits, although general cross-cultural awareness training is offered. It is also unaware of any programs of cultural awareness training being offered to judges and court staff, justices of the peace, the police, and all other groups of persons before whom affidavits can be affirmed or sworn.

### **Accessibility and diversity of classes of people currently permitted to witness affidavits and statutory declarations**

The classes of persons currently permitted to witness affidavits and statutory declarations have progressively expanded over the last ten to fifteen years. VLA suspects that these classes of persons do not understand the religious practices of different ethnic communities (some of which are alluded in this submission) and in a sense they should not have to have an understanding. The instrument of the statutory declaration is blind to religion and, as VLA has recommended, the affidavit ought to replicate this.

VLA supports extending the current classes of people permitted to witness affidavits and statutory declarations based on the principle that such instruments should be made as equally accessible as possible to all persons. If it is reported that the current classes of persons are not sufficiently accessible to different ethnic communities for the purposes of executing such instruments, then the law authorising the classes of persons ought to be changed to reflect substantial vocational patterns in different ethnic communities. VLA is not in a position to affirm which other groups should be allowed to witness affidavits and statutory declarations but do recognise that the current groups are biased towards legal and other professions that lack sufficient representation from certain ethnic communities.

Regardless of what classes of persons are authorised by the law, the law ought to be observed by such classes of persons. Problems that VLA has encountered include:

1. Pharmacists swearing Family Law Affidavits when they are not authorised to do so
2. Constables of Police, who know they are not authorised. to do so, swearing Family Law Affidavits
3. Oaths taken by solicitors, police officers and other groups of authorised persons without the interpreters' clause, or non-literacy clause.

These are very frustrating occurrences in the administration of affidavits and such matters have disrupted court proceedings.

A related issue for consideration by the Committee under this term of reference is the appropriateness of the use of either form. Should the use of statutory declarations and affidavits be proscribed for specific situations? Increasingly, telephone companies, credit providers, lawyers acting for credit providers, local councils and others, are using bastardised forms of affidavits and declarations. These "forms" appear to be designed more to intimidate the signatory rather than meet any evidentiary requirements.

---

## **Oaths and Affirmations for persons for whom English is a second language**

It is a source of concern that courts expect persons from non-English speaking backgrounds to swear or affirm, without the assistance of an interpreter. This happens in summary criminal cases and civil cases, particularly with witnesses who are not a party to the proceeding. Therefore, interpreters are not provided in cases where the person does not have the funds to engage one or where the law does not provide one as a matter of course. The *Magistrates' Court Act 1989* has a provision that requires the court to obtain the services of an interpreter for the defendant in cases punishable by imprisonment, but is silent in relation to other matters and civil cases. This clearly aligns the provision of justice too closely to the issue of gravity of the case, rather than protection of individual rights and interests.

VLA recognises that the use of interpreters is not cheap, but in a multicultural community access to justice requires special attention to such issues and the problems that may arise. Staff at a number of VLA regional offices witness the difficulties of people for whom English is a second language on a daily basis. From a purely practical perspective, the better provision of interpreters would reduce adjournments, shorten hearings and ensure better quality outcomes.

### **Conclusion**

Victoria Legal Aid considers the inquiry and reform of oaths and affirmations a necessary step to modernising the law, thereby making it more relevant for all Victorians and more reflective of multicultural Victoria. Archaic conventions in relation to sworn oaths, affidavits or statutory declarations should be reformed and couplings of the law with religion should be avoided as much as possible. VLA supports plain English laws, court procedures and legal instruments that do not invoke any deity in the name of truth, but which contain an acknowledgment of the seriousness of the contents of the communication, and an acknowledgment of the consequences of making false statements. The affirmation should be the only mechanism for the giving of evidence, thereby allowing people to practise freely their own religion outside the legal system

Yours faithfully

**TONY PARSONS**  
**MANAGING DIRECTOR**