

Youth Access To Justice In South East Melbourne:

A DISCUSSION PAPER



YOUTH ACCESS TO JUSTICE IN SOUTH EAST MELBOURNE: A DISCUSSION PAPER

This Discussion Paper has been produced by the Springvale Monash Legal Service Inc and printed with assistance from the Danks Trust.

The Paper has been prepared to encourage discussion of, and further research into, issues of access to justice for the youth of the South East region of Melbourne, and particularly to stimulate activity amongst local service agencies, the police and the communities, toward the establishment of positive projects and programs.

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The research for this Paper was undertaken as part of a Project initiated by a partnership between the **South Pacific Foundation of Victoria, Inc** (SPFV) and the **Springvale Monash Legal Service, Inc.** (SMLS). The bulk of the work was carried out by senior Monash University law students engaged in community development programs under the supervision of SMLS community development worker, David Taylor. Comprising, as its main objective, the preparation of a Resource Guide and this Paper, the Project was established by representatives of SPFV (Raina Smith, Georgina Brown and Mat Taia), and of SMLS (Guy Powles and David Taylor). It was steered by these representatives with the advice and assistance of a group of experienced Pacific community people, which included particularly Peter Pa'apa'a, who advised many working sessions at SMLS, and leaders of churches and other community groups who attended meetings from time to time. Temukisa Vaeluaga, Helen Lee, Steven Francis and Peter Pa'apa'a made useful comments on drafts of the Paper.

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FOREWORD

Despite the geographical proximity of Australia to our neighbours of the Pacific, and despite the long term settlement of Oceania communities here since the 1950s, we Australians have yet to fully engage with our Pasifika cousins. The Pacific of the Australian imagination tends to represent a mix of picture postcard ideal combined with images of poor governance and rioting within an “arc of instability”. I believe that this reading of the Pacific is sometimes transferred onto our understanding of the Pasifika peoples themselves, as something exotic and other, somehow unknowable and unpredictable.

As someone who grew up in Australia with a Tongan mum and an Australian dad, I have been privileged to experience and witness the depth of culture of the Pasifika people, of the paramount regard for God and family, of the important connection made between home in the islands and home in Australia, and of the sacrifice of the individual for the community and of the need to transfer these values from parents to children. These aspects of the cultures of the Pacific are all but unknown by the broader Australian public. This near invisibility is also reflected in our service infrastructure as well with little or minimal service delivery and support funded with a focus on the needs of Pasifika people in all their cultural diversity.

The laudable attempt on the part of the Springvale Monash Legal Service and the South Pacific Foundation of Victoria to develop information resources and support increased understanding on the part of the service system about the needs of Pacific island young people must be applauded. The authors are also to be commended for providing an overview of the justice system for Pasifika communities themselves. I hope that more initiatives of this type are supported in the future. Investment in young people is an investment in our collective future.

Dr. Steve Francis

**Centre for Multicultural Youth Issues
Melbourne**

Note on artwork: The artwork for the front and back covers produced by a group of Pasifika youth in the South East region of Melbourne was selected by the authors for what appears to be a representation of Pacific images on an Australian shore.

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YOUTH ACCESS TO JUSTICE IN SOUTH EAST MELBOURNE: A DISCUSSION PAPER

This Discussion Paper examines issues that arise for young people who come in contact with the law, the factors that hinder or obstruct their access to justice and how constructive ways forward may be found.

Information has been gathered for the South East region of Melbourne, and the focus is upon youth from Pacific Island and Maori families.

The Paper asks questions and seeks to stimulate discussion.

1.1 QUESTIONS FOR DISCUSSION:

A SUMMARY OF THE PAPER'S SUGGESTIONS – see Part 4 for details

Are the young people of the SE region receiving full access to justice through the police, the courts, lawyers and supporting agencies?

The Paper suggests that there are deficiencies in the justice system that warrant further research, particularly aspects of police and court practice and the services of legal advisers and professional agencies.

What does 'access to justice' mean?

Youth in the region frequently seem unaware how the justice system operates, and it is suggested that further attention be paid to ensuring that the youth are sufficiently informed to be able to make the decisions that the proper working of the justice system requires.

Is adequate support available to youth from agencies, communities, churches and families?

There are indications that youth in contact with the law are inadequately supported at critical times, and the Paper suggests that further studies be carried out to ascertain more clearly the nature and extent of the problem.

What initiatives and programs might be developed to address problems that are identified, and who will carry them forward?

The Paper suggests greater attention be paid to the need for programs directed at better mutual knowledge and understanding, through widespread engagement, involving the Police, court staff, representatives of local government and social agencies, community churches, Pasifika leaders and families. It is suggested that considerable effort should be put into planning and establishing a program of on-going dialogue between all concerned. Such effort may be critical, at this time, for the continuing advancement within Australian society of young people of Pasifika and other migrant backgrounds in the SE region.

1.2 THE IDEA FOR THIS STUDY

1.2.1 OBJECTIVES IN THE SE REGION

One of the objectives of Springvale Monash Legal Service (SMLS) is to improve access to justice for all citizens, particularly minority and immigrant groups, and the younger members of the community. The complexity of the Australian legal system, including the rules, practices and procedures of the police and the courts, is such that most people who come into contact with it need professional guidance in order to understand their rights and know how to seek justice.

SMLS can draw on its experience to assess the ways in which the most effective guidance can be given. It has a background in developing and offering informational awareness programs and materials, and providing assistance to the youth in the community, as well as to older citizens, who are charged with offences. In the case of the youth (in this Paper, 'youth'

include ages 10 to 25, male and female, singular and plural), SMLS also seeks to identify and facilitate access to the support strategies appropriate in the particular case. Very often the major concern is to ensure that all alternatives to custodial sentences are fully explored by officials and magistrates.

In Melbourne's South East (SE) region where SMLS is located, there are several large groups of immigrant families and their descendants, and SMLS has from time to time been engaged in community education projects or programs of particular relevance for different cultural groups such as the Vietnamese, Italians, and more recently, the South Sudanese.

In 2004, SMLS and the newly-established South Pacific Foundation of Victoria (SPFV) formed a partnership to devise and run a community education pilot project aimed at addressing 'Access to Justice' issues for Pasifika youth in the SE region of Melbourne. The term 'Pasifika' was adopted for current purposes (widely used in Sydney) to apply to all people in Australia who are from Pacific Island countries or are Maori, or who are their descendants. In fact, the Pasifika families in the SE region are predominantly Polynesian people originating from the South Pacific Islands (predominantly Samoa, Tonga, Fiji and Cook Islands) and New Zealand (Maori).

1.2.2 THE PARTNERS

SMLS is an independent community legal service associated with Monash University Faculty of Law and assisted financially by the City of Greater Dandenong and Legal Aid Victoria. In addition to providing free legal advice and assistance, SMLS runs community development programs in which senior law students carry out tasks under professional staff supervision. The SPFV, which originated as a group of Maori parents in the South East, has been broadening its 'South Pacific' base across Melbourne, and is today run by a committee with Maori, Samoan and Tongan membership. SPFV leaders seek improved contact and dialogue with government, police, courts and related agencies, believing that Maori and Pacific Island people are often 'invisible' or 'off the radar' to such agencies. They are very concerned that many Pacific Island families are unaware how the legal system operates, and what citizen's 'rights' and 'access to justice' entail.

An impetus for this Project came from a 2000 Report, entitled 'Oceanic Peoples in Victoria: Report on the Maori and Pacific Islander Community of Victoria' and published by a community-based group convened by Peter Pa'apa'a. It drew attention to the inadequacy of relevant statistics, the lack of government support for Pasifika initiatives and the need for more thorough research into the needs of Pasifika peoples as a growing component of Victoria's population. The Report also offered insights into where difficulties might lie for 'access to justice' for Pasifika youth in the SE region. It is referred to in this Paper as the 'Oceanic Peoples Report'.

Before the Project began, initial inquiries and discussions in the SE region among service providers and community workers indicated clearly that there is insufficient knowledge and understanding of –

- the weaknesses in Victoria's criminal justice system in relation to young people's contact with it, and
- the way in which young people, and their families and communities, relate to the system, particularly in terms of their awareness of 'access to justice' matters.

There is much to learn before meaningful reform can occur, particularly having regard to the diverse social and cultural composition of Victoria's society. SMLS, in partnership with SPFV, felt that they could make a significant contribution to greater understanding of access to justice issues.

1.2.3 PURPOSE OF THE DISCUSSION PAPER

Broadly speaking, the purpose of this Paper is to report on the research and investigation carried out by SMLS in the course of the Pilot Project, and, in the process, to identify areas that appear to require further, more detailed, study and discussion. The Paper draws on information obtained in the SE region. It does not attempt to present findings, as such. Instead, the Paper asks questions and indicates what potentially may be useful lines of inquiry to be pursued not only in the SE but also across Greater Melbourne generally.

The Project of which the Paper is part has produced A Resources Guide for South East Melbourne. which may be accessed and downloaded at the SMLS website www.smls.com.au. This contains contact information about courts, police, legal services and youth counselling and other service-providers, as well as community organisations such as churches and cultural groups. The Resource Guide is intended to assist Pasifika youth and their families to find appropriate services quickly, and also to raise awareness and encourage collaboration between the various providers. The Guide is available initially on-line at the Legal Service web-site, with a view to seeking feedback from services, agencies and users – and ensuring that it is accurate – before a printed version is published. In fact a regularly up-dated and easily downloadable Guide on the web may prove the more useful product, long-term.

Readers of this Paper may find it useful to be able to refer to the Guide in conjunction with the Paper.

It is hoped that readership of the Paper will include –

- the judiciary, court staff, members of the police, lawyers and service agencies,
- youth workers and educators working in local secondary schools,
- the various churches and community bodies and individual youth and other members of Pasifika communities, and
- government and community leaders who may be willing to commit resources to further examination of the issues raised.

The Paper is necessarily tentative in its approach, seeking further comment from a wide range of experienced people and organisations, but it has clear objectives – namely,

- to provide food for thought for those in authority,
- to engage Pasifika communities, their leaders and their youth,
- to stimulate exchange of ideas, and
- to identify issues for further research and discussion, perhaps across Greater Melbourne.

1.2.4 RESOURCES AND METHODOLOGY

The bulk of the work on the Access to Justice Project has been carried out by senior Monash University law students engaged in community development programs under the supervision of SMLS community development worker, David Taylor. Comprising, as its main objective, the preparation of the

Resource Guide and this Paper, the Project was established by representatives of SPFV (Raina Smith, Georgina Brown and Mat Taia), and of SMLS (Guy Powles and David Taylor). It has been steered by these representatives with the advice and assistance of a group of experienced Pacific community people, particularly Peter Pa'apa'a, who advised many working sessions at SMLS, and includes leaders of churches and other community groups who attended meetings from time to time.

Research of the existing literature found valuable studies by, in particular, Steven Francis, Leulu Va'a and Helen Lee (Tongan-Australian, Samoan and English descent, respectively), who have carried out household studies in Pacific Island communities in Australia – see the list of References at the end of the Paper. Unfortunately, no studies have empirically assessed 'access to justice' experience. The students explored the SE region for the purpose of identifying the relevant Federal and State government, local authority and non-governmental welfare agencies, and the community-based organisations and individuals with experience in the Project field. Contact details and relevant data were collected during the period March 2004 to February 2005, and updated in August 2006.

The literature research, and widespread discussion generated by the involvement of people contacted, suggested lines of inquiry that should be pursued. A group of 17 experienced individuals (known as the Experts Panel) were asked a series of questions, particularly on the matters relating to Pacific cultures and Pasifika experiences in Melbourne. Their observations were critical to the success of the preparation of the Paper. The contributions of Temukisa Vaeluaga, community worker, have been most helpful. A number of Pasifika youth from a range of backgrounds made a significant contribution to the Project with comments on the issues as noted from time to time.

1.2.5 LIMITING FACTORS

Certain factors have limited the effectiveness of the research for this Paper.

- 1.2.5.1 **Researchers:** The project did not have at hand sociologists or other professionals trained in the methodology of empirical community-based research. Instead, the Project was designed in the manner described above to make use of the personnel available, which meant that the Project could be run by SMLS with its available resources - extra funding would not have been forthcoming. Accordingly, this Paper does not attempt to produce empirical data on specified aspects of 'access to justice' experiences of Pasifika youth.
- 1.2.5.2 **Mobility of Pasifika youth:** Clusters of Pasifika families can be found in the outer Northern and Western suburbs and in South East Melbourne. However, the locations of most families are dispersed and there is evidence of considerable travel across Melbourne by Pasifika youth for a variety of reasons and at varying frequencies. For example, due to the location and number of small ethnic churches of various denominations, people do not necessarily attend church in their immediate neighbourhood, so participation in church activities may require frequent trips to locations some distance away. Consequently, while the focus of this Project is on South East Melbourne (particularly the municipalities of Greater Dandenong, Frankston, Casey Cardinia and to a lesser degree, Kingston), no clear and consistent distinction can be made between information and issues relevant to South East Melbourne and those that apply elsewhere across the City.

1.2.5.3 Absence of relevant statistical data: A serious handicap suffered by all who research Maori and Pacific Island communities in Victoria is the lack of relevant data organised according to ethnic origin or cultural group. This may be because the great cultural diversity of Pacific Island peoples is not fully appreciated by authorities in this country. There are at least twelve (12) unique and very distinctive cultures (and many more smaller different language and cultural groups if the multi-cultural character of Melanesian societies is considered) represented in Maori and Pacific Island communities in Australia.

Any convincing study of the experiences which these communities are undergoing in their interaction with the Australian legal system requires examination of cultural factors. Published research has been critical of the considerable limitation that this lack of data has placed upon the effectiveness of studies of Maori and Pacific Island migrant communities in Australia (see Cunneen 1995: 117-119; Pa'apa'a 2000: 6-7, 14-18; Lee 2003: 256-258).

The data available is inadequate. Published immigration information is organised only according to country of birth or country of origin, while the Police in Victoria record only the former. Further, other records in Australia erroneously show 'Pacific Islands' as a cultural group. These categories are useless for the study of most Maori and Pacific Island people living in Victoria because –

- they fail to distinguish between Maori and Pakeha New Zealanders,
- they also record as New Zealanders Pacific Island people who enter Australia after residence in NZ (and the great majority of Cook Islanders, Niueans and Samoans who enter Australia do so by virtue of their NZ residency, which they have acquired under arrangements between the governments of NZ and their countries), and
- as in the case of all migrant families, they record as Australians all the Maori and Pacific Island people who are born here (for example, second and third generation members of Maori and Pacific Island families), regardless of the strength of adherence to traditional culture which may persist over decades in Australia, particularly under the influence of new arrivals, family reunion and visits to countries of origin.

Since the 1996 Census, the Australian Bureau of Statistics has asked a question about each person's 'ancestry'. The Census Guide accompanying the Form for this year's Census (of 8 August 2006) rather interestingly gives, as an example, the pointed instruction – "If the person is a Pacific Islander, please report their ancestry as accurately as possible, for example, Samoan, Tongan or Cook Islander". However, gathering this information is of little use unless it is published in a useable manner.

In Victoria, the only agency in the criminal justice system which records information as to ethnic origin is the North and West Metropolitan Region Juvenile Justice section of the Victorian Government's Department of Human Services. This offers a breakdown of its Juvenile Justice client information, but its only published comparative table treats 'Pacific Islander' as a single entity.

In consequence of the lack of relevant data, not only is it difficult to calculate the respective sizes of Maori and Pacific Island ethnic communities in

Victoria, it is also impossible to make assessments along ethnic lines of such critical categories of information as types of police response (for example, Police cautions (Caution) and the Criminal Justice Diversion Program (Diversion)), access to legal assistance, case handling before, during and after court appearances and court outcomes (and see Cunneen 1995: 117).

Fortunately, the valuable community-based research directed at households and individuals which is listed in References at the end of this Paper has provided the Paper with a factual foundation upon which to proceed.

1.3 YOUTH ACCESS TO JUSTICE IN VICTORIA

1.3.1 SETTING THE SCENE

1.3.1.1 **Definitions:** Before focusing on Pasifika youth in Parts 2. and 3., this section will outline the position that applies generally across the board to all youth in Victoria.

Who is a ‘youth’?: This project takes a broad inclusive view of young people aged 10 to 25, using ‘youth’ to mean male and female, singular and plural, as the context requires. Age can be a poor guide to a person’s maturity, but the law makes arbitrary distinctions, and the importance of knowing the laws relating to age is explained in section 1.3.3 below.

What is ‘access to justice’?: In Victoria today, ‘access to justice’ means –

- sufficient knowledge and reasonable understanding of what is happening,
- adequate assistance and support, both legal and personal,
- time, and freedom from pressure, to think about and make the right decision.
- fair treatment by police and other authorities, and
- opportunity to participate fully in court proceedings.

1.3.1.2 **Why is access to justice important?:** A primary reason is that it is the only way of ensuring that alternatives to prison or detention are fully explored in each case

There should always be concern over the sentencing of youth to prison and correctional facilities. A period in such institutions can be humiliating and degrading. The natural process of maturing, and learning to become a contributing and well-adjusted member of society, will be interrupted, possibly postponed for years, and, in some cases, may never eventuate, due to the exigencies of the custodial experience. There can be exposure to people with a background of criminal behaviour, often associated with drug cultures. The stigma of having served time in a prison or detention centre can negatively affect a person’s whole life, particularly in regard to prospects of employment and opportunities for obtaining credit or insurance.

Family, and close community members, to whom imprisonment would naturally bring great shame and sadness, will want to help the youth offender avoid a custodial sentence if at all possible. There are a number of resources that can be accessed in this regard. But most people who have not been through the Australian education system (and many who have) will have very

little knowledge of what these resources are, where they can be found, or how and when to use them.

1.3.2 TYPES OF COURT PROCESS AVAILABLE

The conventional court process is adversarial in nature. Until the question of guilt is determined, the British system of justice requires the police prosecutors and defendant to dispute facts and law ‘at arms length’. If the defendant pleads, or is found, ‘guilty’, the court is then able to carry out an investigation into the further question of sentence, but the two sides are still opposed.

Developments are now occurring towards the implementation of ‘restorative justice’ processes. In July 2003, reform occurred in the Children’s Court where Magistrates may ask people directly involved, such as the police officer/informant, defendant, respective families, legal representatives, community members and social workers to sit together to talk through matters such as motive, trauma, remorse, atonement and rehabilitation. A plan is negotiated between all parties which sets a number of goals and stipulations aimed to assist in making amends to the victim, and reducing the likelihood of further offending. By this means a young offender is encouraged to appreciate the consequences of actions and to participate in the healing of relations.

A different approach is taken in the Diversion Program, requiring the defendant to take certain action that may lead to some reparations and the healing of relations (see under section 3.3 below). Further ‘restorative justice’ reforms are planned for young offenders in the Magistrates Court.

1.3.3 WHAT INFORMATION IS NEEDED AND WHAT DECISIONS NEED TO BE MADE?

While every situation is different, there are certain points in time during a person’s contact with the law when knowledge and help are particularly important – if justice is to be done. For example, it is critical for young people to have information about the legal significance of their age. Then there are occasions when people should know very clearly what action – or failure to do something – is illegal. Difficult decisions may have to be made when a person is in contact with the police, because the way in which dealings with the police are handled can often determine the final outcome in court. Then, of course, going to court requires a lot of information to be assimilated so that crucial decisions can be made in order to ensure that the justice system works fairly. For this reason, full legal advice and representation is usually essential.

Attached to this Paper is an Appendix: WHAT THINGS A YOUNG PERSON MAY NEED TO KNOW, OR OBTAIN LEGAL ADVICE ABOUT, which sets out the sorts of information that a youth may need, and the questions he/she may need to find answers to and make decisions about.

1.3.4 LEGAL AID, ADVICE AND ASSISTANCE

1.3.4.1 What can a lawyer do?: If a lawyer is consulted and given all the facts about the circumstances of the case and about the youth concerned, the lawyer can help make the best decisions about what to do, including answers to the questions raised in section 1.3.3 above. For example, should the youth apply for ‘diversion’ of the case, so that, if certain conditions are carried out, there

will be a discharge and no conviction entered on the record. Without legal advice, the youth may go to court and fail to give the Magistrate important evidence about the circumstances of the offence and personal background and future prospects – with the result that the Magistrate may impose a sentence in a detention centre or prison. Without knowing all the significant facts about a person, the Magistrate’s hands are tied, and alternatives to prison, such as a community-based order, may be difficult for the Magistrate to justify. For this reason, the courts and legal aid agencies alike “strongly recommend” that every person required to attend court on a charge should first obtain legal advice.

- 1.3.4.2 Legal service providers: People who cannot afford to pay a lawyer can go to an office of Victoria Legal Aid (for the SE region see the Resources Guide), or they can see the VLA duty lawyer at the Magistrates Court on the day the case is called in court. The duty lawyer may be very busy during the short time before the court begins each day. The VLA booklet *Your Day in Court* (an excellent guide) makes it clear that the duty lawyer may not be able to see everyone or take every case on the day. Community legal services such as SMLS give free legal advice and can arrange legal representation in court, which the youth will have to pay for unless a successful legal aid application is lodged (and SMLS can assist with filling in an application). In some cases, SMLS can provide representation for basic legal matters through the student appearance program at no cost. Private lawyers are required to give you an estimate of their fee for the case. Some firms may give the first interview free. It is wise to find out beforehand which lawyers in the area regularly take cases in the local Magistrates Court. Whatever the situation, legal advice is of little use unless it is obtained in time to act on it – which means the lawyer should be consulted a week, or at least several days, before attendance is required at court.

1.3.5 GENERAL AND SPECIALIST ADVICE AND SUPPORT SERVICES

- 1.3.5.1 Juvenile Justice (JJ) units: A youth who is required to attend Children’s Court, or, up to age 21 to attend the Magistrates Court, may be assisted by the advice of Juvenile Justice staff of the Department of Human Services, who are usually available at the court. The aim of JJ Units is to assist young people so that they benefit from the justice system and do not re-offend.

The court may ask JJ workers to supervise a young person who must carry out a community order on probation, such as youth supervised and attendance orders. JJ workers may also provide support with issues including health, counselling and family support. JJ workers will implement education and deterrent programs, such as the road trauma program. This is a pilot program particular to the SE region, aiming to address issues relating to young people and motor vehicle related offences. Approximately one in three offences involving young people are related to motor vehicle offending (from discussion with Juvenile Justice worker August 2006).

- 1.3.5.2 Interpreters: If the youth, or a witness, has difficulty using English (perhaps having come to Melbourne straight from a non-English-speaking environment), the court should be asked to arrange for an interpreter – this must also be done a few days before the hearing.

- 1.3.5.3 **Doctors / psychologists / counsellors and reports for court:** If there is a particular aspect of the case which the Magistrate should know about in order to make a fair and appropriate decision – such as information about health, behaviour, mental state, use of alcohol or hard drugs, or other health or personality issues, then the youth should see the appropriate doctor or other specialist who will write a report for the court. Juvenile Justice pre-sentence reports or Children’s Court Clinic reports may also be required. It is important to know that reports take several days to prepare.
- 1.3.5.4 **Local agencies:** There are several agencies in, or linked to, the SE region which offer advice, education and support to young people of diverse backgrounds. The Resource Guide lists many of them. The following list indicates with an *asterisk those agencies which have offices in the SE.

for emergency accommodation –

Western Accommodation and Youth Support Services (WAYSS)*

for drug and alcohol programs –

Windana Society, Turning Point, South East Alcohol and Drug Services (SEADS)*, and the Youth Substance Abuse Service (YSAS)*;

for more general services –

Visy Cares Centre*, Springvale Community Aid and Advice Bureau (SCAAB)* and Centrelink* (Kildonan Child and Family Services in the northern suburbs);

and for cultural specific services –

the South Eastern Migrant Resource Centre (SEMRC)* and the Centre for Multicultural Youth Issues (CMYI)*.

If a youth has been in contact with one or more of these services, in addition to the benefits they have to offer, it may be possible to obtain from them evidence which would be of great assistance in court.

1.3.6 INFORMAL ADVICE AND SUPPORT AT COURT ‘ON THE DAY’

The participation of family members and church and other community leaders in the court process may be the only way of ensuring that justice is done in a particular case. The Magistrate may rely on evidence given by such persons who come to court to support the youth, or may simply be impressed by their attendance at court for the case. Letters to the court from others, such as an employer, sports coach, teacher or instructor, may also carry some weight. In other words, by the time the Magistrate comes to consider what decision to make concerning the youth, every effort should have been made to mobilise all relevant support – and thus, to fully inform the Magistrate so that his/her decision will be fair and just, and in the best long-term interests of the youth.

2.1 CULTURAL, RESIDENTIAL, GENERATIONAL AND RELIGIOUS FEATURES

2.1.1 MAIN CULTURAL GROUPINGS

Although no official statistics are available for the cultural composition of Victoria, or any particular region such as South East Melbourne (as explained in section 1.2.5.3 above), the extensive survey of types of data reported in the Oceanic Peoples Report permits a crude estimate for Victoria of the ranking by size of the Maori and Pacific Island populations. The largest cultural group is the New Zealand Maori, followed in descending size by Samoan, Tongan, Fijian (Indigenous and Indo-Fijian), Papua New Guinean, Cook Islander, Nauruan, Solomon Islander, Ni-Vanuatu, Niuean and other groups. The first four of these groups are substantially larger than the others.

2.1.2 RESIDENCE

As mentioned above, Pasifika families may group according to their cultures, but the groups do not represent large conglomerations in particular suburbs. For example, there are observable concentrations of Samoan and Tongan families in the North and East of Melbourne just as there are in the SE region. Where numbers are higher, services and businesses follow, as in shops selling Island-style food in Altona, Hoppers Crossing, St Albans, Footscray and Dandenong.

2.1.3 GENERATIONS IN AUSTRALIA

Just as there is some youth and family mobility in travelling from one suburb to another in Melbourne to maintain contact with relatives, so Pasifika families typically nourish close relationships with relatives in New Zealand, or (if not Maori) their country of ethnic origin. Family members will move in and out of Australia from time to time. There is also a degree of fluidity between families within Australia, as between Brisbane, Sydney and Melbourne. From the point of view of any study of youth today, it is significant that the great majority are either the sons and daughters, or the grandsons and grand daughters, of Pasifika immigrants (most immigration having occurred since 1950).

It may also be relevant to know whether a particular Pacific Island family has come to Melbourne direct from their island home or whether a period of time – perhaps a generation – has been spent in New Zealand. Maori immigrants, and those Pacific Island immigrants who have lived for a time in New Zealand, have had the opportunity to become acclimatised to city life and the absence of traditional methods of social control.

2.1.4 RELIGIOUS AFFILIATIONS

Pasifika families are predominantly Christian, and those belonging to Pacific Island church denominations have brought particular styles of religious worship and church structure with them. Individual churches in South East Melbourne are typically not large, but there are many of them, and congregational allegiance is a major factor sub-dividing cultural groups. For example, Samoans in South East Melbourne belong to one of –

- several Samoan Congregational parish churches;
- Catholic churches;
- Baptist churches;
- a Uniting church;
- a Methodist church;

- a Samoan Victory Worship Centre;
- a Samoan Assembly of God church;
- a Seventh Day Adventist church; or
- a Mormon church.

Tongan families are also divided into several fairly small congregations.

2.2 PASIFIKA YOUTH IN FAMILY AND SOCIETY

2.2.1 SOME FACTORS FOR POSSIBLE CONSIDERATION

Pasifika youth are often stereotyped. Many perceptions of them are in fact misconceptions (Francis 1995: 180). Section 1.3 above has raised the issues that concern all youth generally when they come into contact with the law. This section attempts to summarise certain factors which also apply to most ethnic minority groups, and may be relevant for Pasifika youth, in particular.

Of course, any of the factors below may be relevant to some young people and not others, and individuals may be affected in different ways. There is no single ‘Pasifika youth experience’ that can be studied. These factors have been mentioned here because, in addition to the published studies, Pasifika youth and families, and community leaders, are talking about them. The authors of this Paper are not qualified to comment on them, except to say that they seem to need further discussion as part of the ongoing consideration of access to justice for Pasifika youth.

With the help of the published studies, and research for this Paper, it is possible to raise these matters for consideration. Some are culturally sensitive, and people will have different views about them.

2.2.2 CULTURAL IDENTITY

2.2.2.1 **Diversity:** A common misconception is that all Pasifika youth are of similar cultural background – hence ‘Pacific Islanders’ is used as a generic term (Francis 1995: 180). Although the great majority of Pasifika youth in Victoria are from Polynesia (such as Samoa, Tonga, New Zealand Maori, Cook Islands, Niue and Fiji), the other two main cultural areas of Melanesia (Solomon Islands and Papua New Guinea) and Micronesia (Nauru and Kiribati) are also represented here. In the case of every country, social organisation and customary rules of behaviour differ markedly. Not only does every country have its own language, but in Melanesian countries people also speak the distinctive language of their own tribe or clan.

2.2.2.2 **Search for identity – personal and cultural:** Pasifika youth are the same as young people of any society – they are confronted by an array of issues that are associated with adolescence and the search for personal identity, often leading to some conflict with their parents and other elders. At the same time, Pasifika youth in Melbourne are trying – “... to balance the expectations of their parents and the implications of their Pacific Island backgrounds with the demands of their peer group and the requirements of life in Australia – a search for cultural identity which is not fully resolved until adulthood ...” (Francis 1995:182, 188). The ‘mixed’ heritage of some young people may further complicate their identity issues, while for others diversity of heritage is a source of richness.

2.2.2.3 **The extended family:** As the fundamental kinship unit, the extended family is the principal feature common to all Pacific Island peoples. It is the – “...foundation of Pacific Island cultures and represents an extensive network of relationships binding many people into a communal network of ties.” (Francis 1995:182). Kinship obligation, and reciprocity of giving and receiving, drive the social system. The elderly and the young are cared for, and the youth are invariably assigned a range of tasks both within the extended family and in the wider community. Responsibility for the care of younger children is often taken by older siblings, grand-parents, aunts or uncles (Lee 2003: 40-1). Together these relationships are seen as a collective responsibility for the well-being of all members of the kinship.

2.2.2.4 **Family and community in Australia:** Migration to Australia has dislocated families and often split extended families into nuclear units. Pacific Island ideology which places the strength and solidarity of family and community before individual need (Francis 1995:181) is eroded in Australian city suburbs where it is difficult for families to live close together, and where newly-arrived nuclear families may be isolated and have difficulty in building wider relationships. Perhaps the singular term ‘community’ is inappropriate to describe the members living in Melbourne of a single cultural group (such as ‘the Tongans’ or ‘the Samoans’), as they are each a widely scattered population (see Part C. 1.b). above), and not all known to one another (Lee 2003:18).

Nevertheless, studies of Tongan and Samoan families settled in Australia reveal that a sense of ‘community’ persists; ‘the Tongan way’ is a concept that shapes their identities (Lee 2003:275); and the Samoan community is able to express a life of its own, characteristically by the practice of Samoan culture (Va’a 2001:252). Again, the household studies draw attention to the diversity of experience across Pasifika families in Australia.

2.2.2.5 **Families and discipline:** The studies drawn upon for this Paper refer to the ‘generation gap’ and the disciplining of young people. The demands upon youth to respond to broad-based peer pressure and conform to ‘Australian ways’ puts them at odds with parents concerned to preserve accustomed family structures and rules. Very often parents want the young ones to adhere to the family’s commitment to traditional obligations and religious observance – and parents may demand obedience as they would in an Island context. When youth become aware of different attitudes to family discipline in Australia, they are more likely to rebel against parental authority.

Also, by Australian standards, some of the physical punishments administered to young people for breaking family rules, disobeying their parents or bringing shame on the family, are regarded as harsh or unduly violent; and there are no cultural checks present here as there would be in a village situation. Parents sometimes struggle to understand the law, as the very fine line between discipline and abuse can be misinterpreted due to parents’ firm understanding that it is their responsibility to discipline the children and encourage them to be good citizens. The studies see rebellion against discipline as a factor leading to alienation from the family, and isolation from support in times of need (Francis 1995:183; Va’a 2001:192-4; Lee 2003:163-7).

2.2.2.6 **Youths ‘hanging out’:** Many Pasifika youth who ‘hang out’ together in groups do so for social activity, peer support, personal identity, self esteem and friendship networks, They may congregate in ‘public spaces’ such as

shopping malls, parks, beaches and streets. However their high visibility sometimes leads police, security guards and other authorities to regard them with suspicion (Lee 2003:168). Although in the great majority of cases they are simply spending time together, they are often asked by the police to 'move on' (Francis 1995:190). A 1999 study of Pasifika youth-police relations in Melbourne found the relationship to be 'generally antagonistic', and the young people felt that police members should have more information about them and get to know them better. There was little evidence of gang formation, and the study concluded that the term 'gang' should be reserved for groups engaged in persistent criminal activity (White and others 1999:35-39). However, the current trend toward 'gangs' in Sydney should be a warning, and there are already 'gang' trends visible in parts of Melbourne.

Research for this Paper picked up on some evidence of hostility between Pasifika youth and the police, and indications of police ignorance of Pasifika cultures. These should not be dismissed, but there have also been the positive signs of police-community activities in recent times (see sections 3.2 and 4.1 below).

The studies suggest that the communities should find and allocate space, such as a hall, where young people may be relieved of some of their boredom and develop further interest in music, dance, indoor sports, and group discussion of issues of common interest, such as relations with other cultural groups and participating in Australian society. The Experts Panel and young people consulted for this Paper favoured the concept of a 'Pasifika Community Centre', and would naturally like to see such a facility in the SE region. Of course, just having a place 'to hang out' will not solve the issues, and structured programs will be essential. There is clearly scope for more research into the prospects of such a proposal.

Ultimately, the causes of youth disaffection with society are the same for most cultural groups, namely unemployment, inadequacies in schooling, lack of training opportunities, unconcern – even hostility – from those in authority, and an absence of organised community activity generally.

2.2.2.7 The church: It is apparent that the roles of church ministers, pastors and priests, as well as lay leaders of the churches, can be central in the religious and also social life of the various communities. The majority of the clergy are themselves Samoans, Tongans or Cook Islanders, often trained in Island theological colleges. In the case of those Samoan families who have been accustomed to living under the day-to-day rules of the village and their chiefs, there seems to be a tendency to look to their minister or pastor for assistance and leadership in the context of city life in Australia. Their pastor is their matai (chief) (Va'a 2001, 136-138). For most Tongan families, their church provides the main social network (Lee 2000:8). Temukisa Vaeluaga confirms that Pacific families in general view church as a social network, a village community.

Churches are also making considerable demands on people's money and time. While some have established youth groups that provide not only religious education but also a venue for socialising and leisure activities, and sometimes more serious discussion of issues affecting Pasifika youth, other churches have done little to recognise the particular needs and concerns of young people (Lee 2003:41-45, 160-163). It seems that the support and comfort found in the church by parents is not always shared by the younger generation.

For Pasifika youth making their way in this country, it is significant that – “...church does not occupy the same place in Australian society and is not seen by young people here as the source of inspiration and guidance it is in the Islands” (Francis 1995:186). On the other hand, research for this Paper has identified several church-run activities designed to meet the needs of Pasifika youth in Melbourne, and it seems that churches today may be more alive to these issues.

Church-inspired social interaction and networking amongst parents in the context of spiritual nurturing is seen as a way forward – with workshops offered while people are gathered in the one place (Temukisa Vaeluaga).

- 2.2.2.8 **Schools, and education generally:** Experiences of Pasifika youth and their families with the Australian school system are clearly relevant to the issues discussed in this Paper. Cultural misunderstandings often impede progress (Francis 1995:186-7; Lee 2003:52-6; Experts Panel). Some of the schools contacted for this project have allocated significant staff and programs to work with the larger cultural groups (which for some schools includes Pasifika youth), while others do not, or make little effort – and, in all cases, schools would like to have more resources for these purposes. Ideally, schools with significant Pasifika youth would appoint young counsellors from Pasifika backgrounds.

In some cases, there is lack of understanding on the part of parents when young people are suspended or expelled from school. The rights of parents and children, including the right to alternative education facilities, need to be more widely known. With regard to ‘access to justice’ awareness for all youth, school programs have the potential to make a very great difference, and the responsibility resting on the education system to take action in this area is correspondingly heavy.

- 2.2.2.9 **Dealing with authorities:** A strong impression gained by court staff, legal aid lawyers and the Experts Panel is that Pasifika youth and their families are generally unaware of agencies, personnel, programs and procedures designed to assist them – and, if they are aware, they are often reluctant to use them. The Oceanic Peoples Report was concerned that Maori and Pacific Island families often preferred to find their own solutions rather than approach official authorities (2000:52-9). Reluctance to seek assistance from authorities may sometimes be due to the shame of having to ask, or of being seen to be in trouble (Lee 2000:9 and 2003:50-2; the Experts Panel).

A further factor, which is due to cultural ignorance or misconceptions on both sides, is shyness or deference shown to authorities which in some circumstances is interpreted as lack of cooperation, or even truculence. Police and some court staff have reported failure to make eye contact, and avoidance of verbal interaction, as evidence of guilt or insolence. In fact, the “cultural characteristic of deference which is shown to those in authority ... can increase the chances of prosecution and harassment” (Francis 1995:191). A youth’s refusal to identify him/herself may be due to fear of bringing shame on the family – and of personal retribution at home.

PART 3 THE CRIMINAL JUSTICE SYSTEM AND PASIFIKA YOUTH

3.1 YOUTH IN CONTACT WITH 'THE LAW'

Researchers on this Project asked certain members of the police force, court staff, Registrars and Magistrates, and providers of legal and other support (formal and informal) for youth in the SE region, about their knowledge of, and experience with Pasifika youth as a sub-set of the young people they deal with. Initiatives were identified, and suggestions discussed.

3.2 THE POLICE

Members of the police force in Melbourne work with a large number of cultures. The most recent relevant report was done over seven years ago (the 1999 study of Melbourne Pasifika youth and the police - see 2.2.6 above). It was said that, without a fairly thorough introduction to those cultures, there was a tendency for the police to stereotype young people, which seemed to generate hostility among the youth concerned. Unaware of cultural modes of behaviour, police members sometimes over-reacted to youth behaviour. Today, the situation seems much improved, and, as always, the evidence is largely impressionistic. A sense of 'antagonism' was reported, and the Experts Panel and youth who have assisted this project refer to a perception of police 'harassment'. Improvements in this area take time.

For Pasifika youth, the existence of any police hostility toward them as members of particular ethnic groups (guilt by association), or due to misunderstanding of cultural modes of behaviour, is a highly significant factor in determining whether they will receive justice in the legal system. Members of the police exercise crucial discretions, such as whether to administer a 'talking to', to issue a caution, to arrest or proceed by summons, whether to agree to the case being dealt with by the 'diversion' process, and whether to describe the matter to the Magistrate in court in a balanced and fair manner.

On the positive side, Victorian Police have taken a number of initiatives, including establishing centrally the Youth Advisory and Multicultural Advisory Units, and appointing Youth Resource Officers and Multicultural Liaison Officers to the Police Districts. Structured consultation with communities has begun under the supervision of the Community and Cultural Division of Victoria Police. However, the police budget for these initiatives and local activities is small. The Youth Advisory Unit is aware that Pasifika youth are over represented in the penal system, and is concerned that action is needed.

Research for this Paper produced a mixed collection of observations, indicating a demand for both increased police involvement with communities in the SE, and consideration of a higher profile for Pasifika youth within police/community planning for the region.

For example, the 'High Challenge' program aimed at developing teamwork and leadership skills and challenging youth to achieve goals and overcome obstacles seems to have immense potential. 'Newstart', and the school-related 'Police Youth Corps', appear also to have real value. For the benefit of Pasifika youth, who might be encouraged to respond through teamwork opportunities, it might be helpful to involve Pasifika community leaders

in running programs. Partnerships might be arranged with culture-specific organisations. (In these endeavours, if youth currently within the justice system are to be involved, confidentiality and the protection of the youths' privacy would need to be taken into account.)

Some programs such as the 'Streets Surfer Bus', 'Police Citizens Youth Clubs', 'Blue Light' discos and clubs, and police-organised sports teams, are in demand but are labour intensive. None are consistently based in the SE region. In the past year, there have been soccer and basketball matches between local police and young people in the SE region. Also, local police may liaise with service providers to develop links to tackle a specific social problem as a group, utilising the personal experience of each member. Further, police have regularly presented information about the role of police at local schools and Adult Multicultural Education Services (AMES).

Other initiatives are important components of recent reforms in dealing with minor crime. These include the 'Ropes' program, commencing in Dandenong from March 2007, which is funded by the Children's Court and facilitated by Victoria Police. This six hour program involves both teamwork and consequential thinking elements, and is expected to be conducted monthly for young people aged 13 to 17 years. There is also a 'group conferencing' process, which implements a restorative justice approach.

Appropriate police relations with particular ethnic groups, such as the diverse groups making up the Maori and Pacific Island category, would seem to require information about them and an awareness-raising program. There would be community leaders and experienced workers who could assist the police in this regard.

3.3 THE COURTS

Court records do not reveal the ethnicity of persons charged with offences. Also, court staff, Registrars and Magistrates are generally unaware of the particular character of each of the ethnic backgrounds of Pasifika youth, and, consequently, of their implications. This was also the impression gained by most members of the Expert Panel. Some senior court staff acknowledged that there could be improvement in the way in which youth from minority cultures are dealt with in the court precincts. As far as Pasifika youth are concerned, a senior court staff member has the perception that Pasifika youth are seriously un-informed as to the police and court procedures they are required to follow, and as to the legal and other assistance which is available to them if they seek it. Most Experts Panel members confirmed that Pasifika youth frequently found the court process strange but were ashamed to ask for assistance.

Magistrates are in a difficult position in that judicial convention requires them to make decisions on the basis of evidence placed before them. Some are of the view that the obligation rests on the person charged with an offence to present to the court any facts relating to culture, background and family/community support which that person wishes the Magistrate to take into account. Other Magistrates, particularly those in the Children's Court, take upon themselves some responsibility for requiring such relevant facts to be presented. One such Magistrate expressed the concern that Pasifika youth appeared to be over-represented in the court system.

Cultural factors may arise in many circumstances, for example in considering suitability for ‘diversion’, in bail applications, in a trial, in considering whether a pre-sentence report is needed, and, of course, in deciding the appropriate sentence. It may be helpful for Magistrates and senior staff to have access to material relevant to Pasifika youth in Melbourne prepared and published by cultural experts for each of the main Pasifika ethnic groups.

Diversion, the Criminal Justice Diversion Program: This is a good example of a process offering an alternative to a custodial or other heavily punitive sentence, which will work fairly only if the person concerned is aware of it and the police and court apply it in a consistent manner.

Briefly, under this program, if certain steps are followed by the police and court staff, the Magistrate has the power not to enter a conviction if certain conditions are complied with by the person charged with an offence. Such conditions may include a suitable written apology to the victim of the offence; some practical indication of remorse, by way of compensation or restitution; or undertaking counselling or voluntary community work.

The initial steps require the person charged to acknowledge responsibility for the offence, and, if asked, the police officer/Informant must advise the court staff in writing that he/she agrees that the diversion program is suitable in the particular case. Thus, successful use of the program depends upon the person charged being aware that it exists and asking for it, and also upon the police officer concerned forming a reasonably favourable opinion of the offender. The officer’s discretion is not reviewable, but the police prosecutor may be asked by the offender to request the officer to reconsider.

If a favourable police report is received, court staff have a responsibility for seeing that the matter is prepared for the Magistrate to consider, but are under no legal obligation to select any particular case for diversion.

SMLS has recently prepared a paper, *The Criminal Justice Diversion Program – a Discussion Paper*, outlining the strengths and weaknesses of the program (see References). The major benefits were seen as its restorative justice elements, aimed at offenders making amends with victims and the community, while avoiding criminal conviction. On the other hand, the Paper stresses the need for greater education about the program, for both the community and legal practitioners. This is particularly evident with regard to the police discretion referred to above. It is clearly the obligation of anybody who gives advice to defendants to be aware of this program, and, where appropriate, to request police officer/informants to consider Diversion. As far as solicitors (Legal Aid and private) are concerned, there may be a professional duty to ensure that the issue has been adequately considered. Access to this aspect of the justice system may depend upon such obligations being carried out.

Pasifika youth who are otherwise eligible for Diversion, are at risk of ‘by-passing’ the program due to lack of awareness of the implications of their behaviour when confronted by police. Their physiological size, and police perceptions of their culture-based non-communicative demeanour, can lead to misunderstandings or unfortunate physical contact, and alienation of any good will on the part of the police. Without appropriate advice, a young offender will not know how to take advantage of this program.

As noted, police discretion in the application of the program can restrict access to it. Police officers are not trained as judicial officers, and may apply subjective and personal opinions to their decision making process, rather than applying the principles outlined in the Sentencing Act 1991 which provide a conceptual foundation for judicial officers when sentencing offenders.

Further, the discretionary nature of the process is underscored by the Magistrate's power to determine whether it is "appropriate" that the offender should participate in the Diversion program. There are no guidelines, and no requirement that the Magistrates serving in a region of Melbourne should adopt similar or consistent approaches to the desirability or otherwise of using the program. In the SE region, there is some evidence of inconsistency between Magistrates.

Increased community awareness - together with increased scrutiny - of the working of the Diversion program would assist in enabling greater access to it.

3.4 LEGAL ADVICE AND REPRESENTATION

There are no statistics as to the use made by particular ethnic minority groups of lawyers, whether for legal advice alone, or for representation in court. As far as Pasifika youth are concerned, the Experts Panel gained the impression that over 50% go to court without advice or representation. As in the case of court records, statistics kept by Victoria Legal Aid, community legal services and private lawyers do not reveal the ethnic background of clients in a systematic way. Information from these sources is thus impressionistic and often anecdotal. Lawyers consulted by Pasifika youth commented that they had no knowledge of particular cultures and that it was often difficult to obtain information about a youth's background. Victoria Legal Aid lawyers deal with youth from a wide range of cultures and there is no authoritative material available on most of them, including Pasifika cultures. Duty lawyers, who handle a number of cases a day in court, are not in a position to spend much time following up on cultural matters. Community legal centres, which may be able to allocate more time, are not in fact seeing many Pasifika youth – perhaps not enough to warrant devoting resources to researching and preparing cultural material.

One problem has been the difficulty in gaining access to the appropriate Victoria Legal Aid booklets or other printed brochures which suit the immediate need. For example, should the young person be looking at material on the relevance of age, getting help at court, police powers or failure to pay fines? To meet this concern, SMLS students in 2005 researched and printed a booklet designed to assist young people in the SE region to use the various resources available – A Legal Resource Pamphlet for Youth. (This pamphlet is distinct from the more general Resources Guide which, as an on-line companion to this Paper, is accessed through the SMLS website – www.smls.org.au)

Given the central importance of legal advice and assistance, and the impression that a substantial number of Pasifika youth do not obtain it, perhaps questions should be asked as to why this is so. Research and discussion, more focused than has been possible in this Project, could

usefully examine how Pasifika youth and families perceive lawyers and legal aid, and whether Victoria Legal Aid, community legal services and private lawyers should be doing more to assist Pasifika youth to make their way through the legal process – in other words, to obtain justice in it.

3.5 SUPPORT SERVICES

Section 1.3.5 of this Paper has reviewed advice and support services which are generally available, as well as certain agencies identified in the SE region. Some of the latter offer programs designed for specific migrant and ethnic groups. Research for this Paper indicated that none are designed for Pasifika youth, as such. Connections Child, and Youth and Family Services (Narre Warren Branch) employ Pasifika workers.

Information gained from the variety of agencies, services and programs operating in the SE region, together with the Experts Panel and youth themselves, is that Pasifika youth are generally unaware of the sources of assistance and support that are available to them. Greater awareness on their part, combined with the designing of certain services and programs to suit their needs, should go some distance towards better equipping them to avoid contact with the legal system, and to handle their experience within it, should that become necessary.

In the SE region, initiatives taken within Pasifika communities themselves appear to be few, and are mainly church-based (see section 3.6.2 below). In the North and West of Melbourne, a number of programs have been developed by or through Pasifika leaders, who have used music and dance, skilfully designed to appeal to the youth, as a means of drawing them together in groups where discussion can be opened up and problems shared. This is not a matter of cultural maintenance so much as gaining experience in one's culture in the context of successfully managing life in Australian society. One organisation is 'Brown Roots', which runs a program, 'Fusion', that encourage young Polynesian people to join groups for training and participation in music and dance which range from traditional to contemporary. Based to the West of Melbourne, they perform widely at functions and have become immensely popular with young people of all backgrounds.

To initiate such an activity successfully, much depends on the talent and commitment, with perhaps a little charisma, of the organisers. Perhaps people with such qualities will come forward in the South East.

3.6 INFORMAL ADVICE AND SUPPORT

3.6.1 PARENTS AND EXTENDED FAMILY

Background information and some discussion of the roles of the Pasifika youth, parents and extended family in Australia has been offered under section 2.2 above. Advice from the Experts Panel and the Oceanic Peoples Report, seems to indicate that that information applies, in a very general way and with the usual many exceptions, to many if not most of the Maori and Pacific Island people living in the SE region of Melbourne. In other words, there are probably situations in which Pasifika youth are so ashamed of the contact they have had with the police that they do not

tell their parents or extended family about it until too late. (Delay can have disastrous consequences in a legal system which runs according to strict schedules and time limits.) From the opinions obtained for this Paper, it seems that sometimes youth are frightened of the punishment they might receive. They may confide in other young people, but as there is often only limited general knowledge among Australian teenagers about what to do, or where to go for help, talking amongst the peer group may just reinforce misconceptions. Misconceptions are further enhanced through mainstream media US ‘law and order’ dramas, which provide, at best, a colourful representation of US criminal law and police practice that is misleading for Australians generally.

Also, if it is correct that many adult members of Pasifika communities (along with members of most minority groups) are similarly unaware of the assistance available to them, the younger members of their families are less likely to consult them, often not wanting to upset them. Of course, this ‘generation gap’ is a common problem affecting all families in Australia these days. The question here is: If youth fail to obtain help from their families, will that affect their prospects of gaining justice in the court system? Research for this Paper clearly indicates “Yes”.

Not only does a youth who has been charged with an offence require legal advice, but he/she may need understanding and personal support in order that police and court interviews, and, if necessary, giving evidence in court, are handled properly. However, (as Temukisa Vaeluaga has observed in the Juvenile Justice sphere) parents and community representatives need to do more when assessments are conducted, to ensure family history, educational and health records are openly disclosed for the purpose of these decisions by the courts, and for the various types of reports referred to under sections 1.3.2 to 1.3.6 above.

Then, as indicated in those sections, it may be critical that parents be in court on the day when sentence is being considered. In some cases, it may make a great difference to the Magistrate’s thinking about what sentence to pass if a parent is willing to stand up and speak to the Magistrate. Legal advice should be obtained as to the best way to do this.

3.6.2 CHURCH LEADERS AND WORKERS

The background discussion above (sections 2.1.4 and 2.2.7) is supported by research for this Paper, which indicates that there is a wide spectrum of types of church support for Pasifika youth in the SE region. Some churches provide programs aimed at encouraging the youth to engage in cultural and educational activities, as well as religious ones, which will help them develop their sense of personal and cultural identity in Australia – and activities or programs which would lead to direct support for a youth who is in contact with the law. In some cases, the church leaders (religious and lay persons) will offer counselling to a youth in difficulties, or refer the youth for professional assistance. There are other churches which may not regard themselves as responsible for focusing on support for youth in these ways.

Much of the discussion of the role of parents (in the preceding section) may apply to churches as well. There are the same concerns about shame, and wanting to keep difficulties secret. These are very real concerns, and a youth or the family may want any talk with a church leader about their difficulties to be kept confidential.

As has been pointed out, it may happen sometimes that, if the church leader knows the youth and his/her background, the leader may be a very important witness in court (or could write a letter to the court) when the Magistrate is sentencing the youth. If the Magistrate believes that the youth has a caring family and an actively supportive church community, it is more likely that an alternative to detention centre or prison will be found.

Another important role for church leaders might be to become conversant with Legal Aid information booklets and information about legal advice services and support agencies. Members of congregations might wish to turn to church leaders for suggestions as to what they should do. Church premises might become places where information such as brochures can be found.

3.6.3 SCHOOL COUNSELLORS

In the course of working with schools in the region, SMLS has found that some school counsellors and school-based youth workers are particularly helpful to Pasifika youth. In some cases, the Experts Panel says, young people who are ashamed or frightened to inform their family will confide in the school counsellor. This is obviously not ideal. However, the counsellor is sometimes willing to write a letter to the court in support of the youth. It is desirable that school counsellors should have easy access to information about Pasifika cultures, and schools in the region might be encouraged, where possible, to appoint some persons with a Pasifika background as counsellors or youth workers. It has also been suggested that school counsellors be aware of confidentiality requirements, and the possibility of disclosing sensitive information in a report for the Magistrate alone.

3.6.4 SPORTS AND CULTURAL ACTIVITIES

This is another area which it is suggested should be researched further. The Experts Panel were mainly of the opinion that a high proportion of Pasifika youth engage in sport of one sort or another, and a wide range was indicated. The Panel unanimously stressed the importance of sporting and cultural activities. The published studies have pointed out the value of such activities in helping Pasifika youth attain confidence and a sense of place in Australian society.

Again, a youth caught up in the legal system may benefit greatly from support from leaders, coaches, instructors and peers in sports and cultural groups.

Research for this Paper has raised several questions. Despite the fact that official statistics are of little help, that thorough empirical research has not been possible and that some of the findings of the community household studies are out-of-date, the contributors to this Paper believe that they have identified areas of concern which need to be addressed. In this Part 4., the main areas will be summarised and suggestions made as to possible ways forward, through further research and discussion.

4.1 RELATIONS BETWEEN PASIFIKA YOUTH AND THE POLICE

The evidence indicates that it is timely for further and more significant dialogue to be established between the police and Pasifika groups which would strengthen relations from both sides. Such relations are critical to whether young people can obtain access to justice in the legal system – just as they are critical to the wider society’s entitlement to law and order. They are also the means by which illegal group behaviour can be discouraged.

This Paper suggests that police authorities and Pasifika community leaders, together with representatives of local government and social agencies, should consider building a process of enhanced dialogue leading to –

- better knowledge and understanding of Pasifika youth and their distinctive cultural backgrounds,
- acknowledgment by police members of the nature of the problems encountered by Pasifika youth in their search for identity in Australian society,
- appreciation by Pasifika youth, on their part, of police responsibilities and roles,
- further urgent consideration by Pasifika community leaders, police, local authorities and youth services, of ways of engaging the young people in activities designed to develop self-esteem and respect for others, and a sense of pride in culture and obligation to society, and
- ongoing learning on the part of all concerned of developments in Sydney and elsewhere so that police-Pasifika relations in Melbourne do not deteriorate to the point where gangs organised along ethnic lines become criminalised.

Further study is needed to ascertain the best ways of developing –

- training for members of the police,
- further police-youth programs of the types discussed in section 3.2 above. and
- possible recruitment of members of Pasifika communities into the police force, as officers or cultural/youth advisers.

4.2 ACCESS TO JUSTICE THROUGH THE COURTS

Further research is needed to examine Pasifika youth in the court system. This Paper has found that, by and large, they are unaware of the law and procedures. It is suggested that court staff, legal aid lawyers and police prosecutors should review the various points that may arise – from first police contact to Magistrate’s determination (identified under section 1.3 of this Paper) – at which young people are at risk of not acting in their best interests. Perhaps such research could lead to guidelines for all concerned, to ensure that appropriate and timely advice is given to the young accused.

The recommendations made in The Criminal Justice Diversion Program – Discussion Paper should be followed up in light of the observations made in section 3.3 above.

It is also suggested that some training be considered for the courts – for Magistrates and Registrars, and court staff who deal with the public – in relation to Pasifika cultures and certain features of such communities in Melbourne.

Pasifika people who are concerned about their youth in the legal system have shown interest in exploring alternatives to the adversarial style of conventional court process. Some asked whether a ‘Pasifika Court’ could be established following the Koori Court model. It must be acknowledged that the Victorian government would require some convincing that the cost and logistics of such a court are warranted and this Paper does not suggest that it would be feasible. Nevertheless, it is particularly appropriate that ‘restorative justice’ processes be made available to Pasifika offenders as their family-oriented cultures traditionally deal with conflict within their societies on a family-to-family basis. District and Family Courts in the Auckland region of New Zealand, where a large proportion of the population is Samoan, Tongan and Maori, have developed innovative measures in this regard. It is suggested that, if consulted, experienced people from the Pasifika communities in Melbourne might make a valuable contribution to consideration of adoption of similar approaches here.

4.3 LEGAL ADVICE, REPRESENTATION AND SERVICE AGENCIES

Consideration should be given to raising awareness and understanding of Pasifika cultures on the part of lawyers who practice in the Magistrates and Children’s Courts in the SE region. This applies to all practitioners, including legal aid and community legal centre lawyers, and private solicitors and barristers. A series of forums or seminars might attract considerable interest, particularly if supported by Victoria Legal Aid, the Law Institute and Bar Council.

There may also be the question – requiring further research – whether all lawyers advising or acting for Pasifika youth are making every effort to avoid custodial sentences. Concerns such as lack of time to explore matters with the client and make appropriate arrangements (perhaps a problem for duty lawyers), and lack of familiarity with the full range of

potential procedures which might be relevant to the youth's case, may require further examination.

Juvenile Justice, Centrelink, South East Migrant Resource Centre and other agencies represented in the South East would also undoubtedly benefit from a training program focusing on Pasifika communities.

4.4 PASIFIKA YOUTH, FAMILIES AND CHURCH ORGANISATIONS

It is clear that, as a matter of some urgency, there needs to be further inquiry and discussion into the development of programs designed to inform all concerned in Pasifika communities about how to deal with the law, the police, the courts and support services, and how to obtain legal advice and representation. With the guidance of leaders, information may also be disseminated about family and financial counselling and the range of other services available. The central position of churches in the lives of Pasifika peoples seems to indicate that the church leaders may be encouraged to participate in the design and implementation of such programs.

4.5 IMPLEMENTATION OF PROGRAMS: ENGAGEMENT AND DIALOGUE

For many reasons, it has not been easy for Pasifika communities to join in common projects, other than occasional cultural and sporting events. In this sensitive area of involvement with the courts, it is suggested that the organisation needed to take the suggestions of this Paper further could come from an authoritative body external to the communities. One of the local city councils could establish a suitable representative group, or perhaps, if funding can be found, a local agency, such as the Migration Resource Centre might be appropriate.

It is true that in order for programs within Pasifika communities to be successfully long-term and on-going, they should originate from and be owned by those communities. It is hoped that this will ultimately occur. In the meantime, this Paper suggests that, given the diverse nature of Pasifika communities, it is critical that state and local governments and service agencies should take the lead, in partnership with Pacific leaders, to do the research and develop the types of projects suggested here. Once it has been demonstrated how the gap in information and understanding in this area can be significantly narrowed, Pasifika communities may feel encouraged to initiate and drive programs on into the future.

This Paper has mentioned the need for further research based on better statistics, and it is suggested that the relevant data-collecting bodies, such as the Australian Bureau of Statistics, and Victorian police, courts and legal aid, be approached so that meaningful assessments can be made of the extent to which ethnic background makes a difference in the legal system.

Further consideration of the issues raised in this Paper will provide the

opportunity in South East Melbourne for greater engagement between Pasifika communities and the law enforcement sector that plays a major role in the lives of all citizens. On the one hand: it seems important that, in consultation with Pasifika leaders, one of the experienced agencies should organise meetings of interested people who would take responsibility for organising the preparation of materials on Pasifika cultures and issues affecting their youth – materials needed to assist in training for police, courts, lawyers and agencies. On the other hand: collaboration is needed, perhaps under the guidance of Victoria Legal Aid or a suitably funded community legal centre, to bring together material from the legal side which is best suited for Pasifika communities and their churches to use when they hold information and education seminars, workshops or other meetings for the benefit of individual Pasifika youth and their families. It may prove to be a two-step process – making appropriate material available, then engaging youth and communities in working with it.

The benefits of broad-based discussion between representatives of all concerned – the police, courts, legal aid, community legal centres, private lawyers, Juvenile Justice and the many supporting agencies, and members of Pasifika communities and their churches – will only flow if considerable effort is put into drawing up a plan and establishing a program of ongoing dialogue between the parties. The continuing advancement of young people of Pasifika backgrounds within Australian society may depend upon such effort.

APPENDIX

WHAT THINGS A YOUNG PERSON MAY NEED TO KNOW, OR OBTAIN LEGAL ADVICE ABOUT

Age: What can I lawfully do and not do, and what rights do I have at my particular age? Here are some responses –

- School is compulsory until age 15 when you can be suspended for committing offences.
- If you leave home before you are 17, and are in trouble, the Children’s Court can order where you should live.
- Until you turn 18, there are different rules with regard to drinking alcohol, buying cigarettes, sexual conduct, and gambling.
- Police powers to question you, or to search you or your house, may depend upon your age.
- You can be taken to court for committing an offence once you are 10.
- If you were under 18 when you committed the crime, and under 19 when the case goes to court, you will go to the Children’s Court, otherwise, in all other cases, you will go to the Magistrates’ Court.
- Your age will be very relevant when a Magistrate is deciding what alternative sentences might be possible and appropriate in your case.

Personal conduct: Before I do something which is risky and might possibly break the law in some way, how do I find out what the law says?

Contact with the police: What information must I give to the police if they ask me? What are my rights regarding arrest, search, fingerprinting, being held by the police, and release on bail?

Contact with security guards and bouncers: What are their powers? Are they the same as police powers?

Police interrogation: First, can I make phone calls? Who can / should I call? Do I have to tell them everything?

Statements to the police: What will my statement be used for, and who else will see it – will my family see it?

Police powers: What discretions do the police have? For example, regarding issuing a ‘caution’, or insisting on seeing my parents?

If charged with an offence: are there certain procedures that can help me? For example, obtaining details of the police file; applying for ‘diversion’ as an alternative to conviction and prison; or the ‘drug court’.

The plea: What should I consider in deciding whether to plead ‘guilty’ or ‘not guilty’? Will I have to give evidence, and what does that involve?

Legal help: What are the advantages and disadvantages of looking for legal help, and what are the options? Do I need a lawyer to help me decide whether to plead ‘guilty’? If I am guilty, why should I see a lawyer? If the police say that I do not need a lawyer, should I believe them?

Juvenile Justice: What does this do? Am I eligible for assistance from a Juvenile Justice worker?

Evidence about what happened: Should I speak to people who were there, and ask them to come to court as witnesses?

Sentencing: Should I find out what alternatives the Magistrate has in deciding what the sentence should be? For example, a ‘community-based order’, or ‘deferring sentence’ for six months or a year. Is there a ‘restorative justice’ process available for my case?

Evidence about myself: Should I see a counsellor, psychologist or doctor for a report to the court?

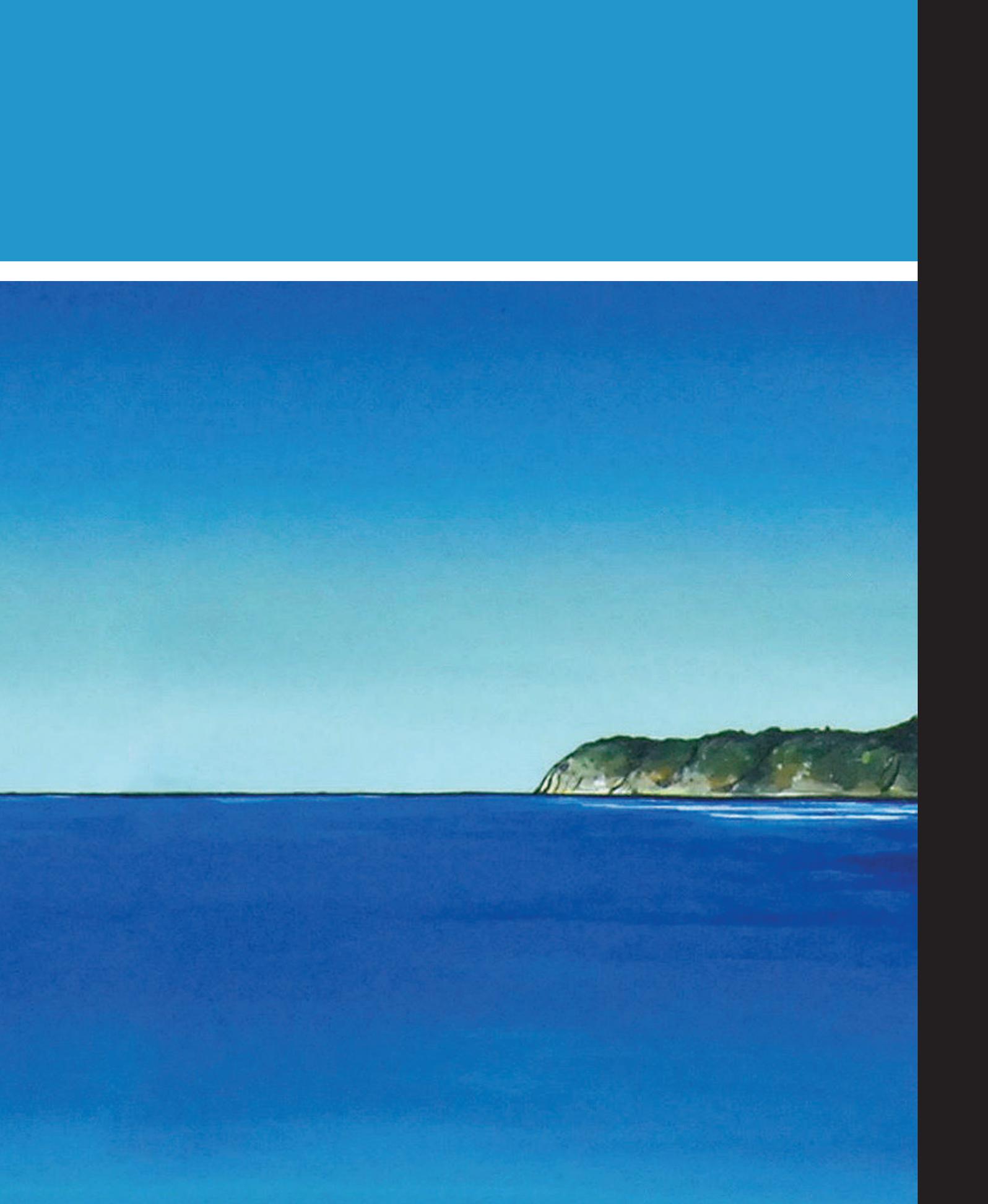
Evidence as to character: Should I ask family members, a church minister, a sports coach, or an employer to come to court, or give me a written reference for the Magistrate?

Evidence as to future support: Is it important for the Magistrate to know that I will have family or community support in the future? Again, witnesses may be necessary.

In short, it is probably correct to say that a youth in contact with the law who does not know how to answer the above questions as they apply to his/her case – or doesn’t have a lawyer to give advice as they arise – cannot be said to have genuine access to justice.

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