



THE VICTORIAN BAR

**SUBMISSION TO THE  
SENATE FOREIGN AFFAIRS,  
DEFENCE AND TRADE  
COMMITTEE**

INQUIRY INTO THE DELIVERY AND  
EFFECTIVENESS OF AUSTRALIA'S BILATERAL  
AID PROGRAM IN PAPUA NEW GUINEA

27 MARCH 2015

## THE VICTORIAN BAR SUBMISSION TO THE SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE COMMITTEE

### INQUIRY INTO THE DELIVERY AND EFFECTIVENESS OF AUSTRALIA'S BILATERAL AID PROGRAM IN PAPUA NEW GUINEA

#### THE VICTORIAN BAR

1. The Victorian Bar is pleased to be able to file a submission for the purposes of this important inquiry.
2. The Victorian Bar is a private, voluntary, self-funded, non-profit professional association of barristers who practice in Victoria. The work of the barrister is built on the tradition of providing independent legal representation and advice to all in the community.
3. The Victorian Bar serves the public interest in a number of important ways. Relevant to this submission is the Victorian Bar's establishment and ongoing provision of advocacy training in the South Pacific region, including Papua New Guinea. Providing this training strengthens our ties with our South Pacific neighbours and supports the rule of law in our region. It also contributes to capacity building within each jurisdiction.

#### THE VICTORIAN BAR'S RELATIONSHIP WITH PNG

4. As the Australian government has observed,<sup>1</sup> Papua New Guinea, our nearest neighbour, faces significant development challenges that will need to be overcome if the country is to achieve stability and prosperity. Fertile agricultural land, rich mineral deposits and large oil and gas reserves are major sources of wealth and growth for Papua New Guinea. However, the benefits of this growth have not been equitably distributed. A lack of quality infrastructure, insecurity, weak governance, low education levels and poor health services constrain service delivery and economic development.
5. The Victorian Bar notes that the aid program to Papua New Guinea is Australia's second largest bilateral aid investment. Australia's aid investments in Papua New Guinea aim to support improvements in health, education, law and justice, transport infrastructure, gender equality, and governance.
6. The programs run by the Victorian Bar give particular support to the law and justice sector in Papua New Guinea by improving access to justice and preventing and addressing corruption.

#### ADVOCACY TRAINING: 'IN COUNTRY' TRAINING

7. The Victorian Bar has a 25-year history of providing assistance to the advocates of the South Pacific by delivering 'in country' advocacy training.
8. The training provides participants with an opportunity to improve essential advocacy skills, including effective preparation, performance and communication skills for both criminal and civil matters, in a supportive learning environment. Members of the Victorian Bar and judges and magistrates of the

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<sup>1</sup> <http://www.dfat.gov.au/geo/papua-new-guinea/development-assistance/Pages/papua-new-guinea.aspx>.

Victorian Courts deliver the workshops, each on a volunteer basis and each incurring personal expense and loss of time from their practices.

9. The advocacy training programs are well established, particularly in Papua New Guinea. With the aid of the Papua New Guinea-Australia Law and Justice Partnership and its associated Transition Program (and previously AusAID), Advocacy Skills Workshops are conducted for:
  - national lawyers of the Papua New Guinea Public Prosecutor's Office;
  - the Public Solicitor's Office;
  - the Attorney General's Department;
  - the Ombudsman Commission lawyers; and
  - the trainees at the Legal Training Institute of Papua New Guinea.
10. To date, a total of 58 Victorian barristers, judges and magistrates have travelled to Papua New Guinea to deliver advocacy training, many of them on numerous occasions between 1990 and the present day.
11. As well as Papua New Guinea, Victorian barristers have taught advocacy in the Solomon Islands, Vanuatu, Samoa, Nauru and Fiji.
12. Each year the Victorian Bar is invited to conduct advocacy training in Papua New Guinea. This is a testament not only to the need and demand for such training but also to the success of the programs offered and Papua New Guinea's own desire to strengthen its relationship with Australia's legal system.

## **ADVOCACY TRAINING: READERS' COURSE**

13. Since 1987 the Bar has accepted applications from South Pacific lawyers to undertake the Bar Readers Course, free of charge. Since then, a total of 136 lawyers from Papua New Guinea, Vanuatu, the Solomon Islands and Indonesia have attended and completed the Readers' Course. Of this number, 97 have been from Papua New Guinea.
14. These readers are full participants in the course and complete all exercises and assessments. As well as gaining an insight to Victorian law, courts and processes, they enrich and expand our understanding of the concerns, challenges and opportunities they face in their home jurisdictions.
15. At the conclusion of the course, these practitioners are not eligible to sign the Bar Roll, not having been admitted to practice in Victoria. However, they receive a Certificate from the President of the Bar Council and sign a special Register of Overseas Counsel that records their participation.
16. The training programs have at their core the following key features and aims:
  - to develop skills relevant to practice in Papua New Guinea;
  - to embed an understanding of the importance of ethical practice and principles which underpin the rule of law;
  - capacity building;
  - develop a deeper understanding, appreciation and knowledge of each other;
  - to create meaningful networks and relationships;
  - efficient, cost effective and as useful as possible; and
  - respectful of cultural differences.

## MENTORING PROGRAM

17. This year, the Victorian Bar successfully applied for and received a grant of funding under the Papua New Guinea-Australia Law and Justice Partnership Transition Program to run a mentoring program for female participants of the Legal Training Institute of Papua New Guinea. The program will follow the Intensive Civil and Criminal Advocacy Program to be conducted in July 2015.
18. The mentoring program consists of a weekend of sessions run by members of the Victorian Bar and members of the Papua New Guinea legal profession on topics intended to build confidence and to develop leadership skills in women entering the legal profession in Papua New Guinea. The sessions will encourage active dialogue and workshopping of ideas spanning topics as diverse as advanced ethics, case preparation and performance through to the challenges of managing practice with family, recognising discrimination, bullying and harassment in the workplace and how to overcome it, and how to contribute to the rule of law by stepping up to leadership positions and encouraging others to do the same. The mentoring scheme will allow for participants in the program to be 'matched' with members of the Victorian Bar. The mentoring relationship is intended to give newly admitted women lawyers in Papua New Guinea access to members of the Victorian Bar via skype, email, telephone or face-to-face (as the case may be) as they progress through their legal career. A flexible and organic relationship will be encouraged to suit the dynamics of each pair. Interactions can involve advice about career decisions, difficulties in the work place or at home, ethical dilemmas, case preparation and discussion around opportunities for advancement within the profession. As far as can be seen, a program of this kind has never before taken place in Papua New Guinea.
19. The mentoring program evolved after delivery of the July 2014 Advocacy Workshop at the Legal Training Institute where some of the Victorian Bar team noted the particular difficulties experienced by women who have ability but struggle to gain sufficient confidence and skill to go on to a satisfying and successful career in the Papua New Guinea legal profession, whether as an advocate or in another form of legal practice.
20. Their anxiety is well founded. Research shows entrenched disadvantage for women in Papua New Guinea. Papua New Guinea's systems of family and community relationships often exclude women from leadership and decision making roles. Women's place in community relationships minimises their opportunities to be put forward for public office or to obtain roles which might groom them for qualification for leadership.
21. It is increasingly recognised in Papua New Guinea that cultural and systemic obstacles exist to impede women from participation in leadership.<sup>2</sup> This extends to participation in the legal profession and successful progress to senior roles. As observed by the Department of Foreign Affairs and Trade's *Draft Investment Design: Law and Justice support in PNG*, contemporary Melanesian conceptions or assertions of gender relations pose a fundamental challenge to the democratic notion of equal participation for all, resulting in a host of inequitable outcomes for women such as under representation in politics and political processes. While women account for 20% of elected leaders worldwide they account for only 3% of elected leaders in the sovereign states of the Pacific, including

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<sup>2</sup> Tapo, J, 'Equal Representation and Participation of Women in Decision-making Positions in Papua New Guinea: Some Dilemmas' in Sullivan, N (ed), *Governance Challenges for PNG and the Pacific Islands* (Madang: DWU Press, 2004) at 165; Garap, S, 'Women caught in a 'Big man' Culture: Challenges for Future Democracy and Governance' in Sullivan, at 157.

Papua New Guinea. Women account for only 25% of PNG's 76,000 public servants, and are significantly under represented at senior levels.<sup>3</sup> As at 2012 women represented 29% of the legal profession in PNG.<sup>4</sup>

22. Promoting gender equality and empowering women and girls is a core priority of Australia's aid program in Papua New Guinea. In this regard, the Victorian Bar notes the Foreign Affairs, Defence and Trade – Human Rights Sub-Committee's current inquiry into the human rights issues confronting women and girls in the Indian Ocean – Asia Pacific region, including:<sup>5</sup>
- barriers and impediments to enhancing the human rights of women and girls in the Indian Ocean – Asia Pacific region, especially regarding the impact of family and sexual violence, women's leadership and economic opportunities;
  - achievements to date in advancing women and girls' human rights in these key areas;
  - implications for economic and social development in the Indian Ocean – Asia Pacific region of promoting women and girls' human rights; and
  - the effectiveness of Australian programs to support efforts to improve the human rights of women and girls in the Indian Ocean – Asia Pacific region.
23. The Victorian Bar's mentoring program is designed to address barriers to accessing education and obtain mentoring and leadership roles for women in the law. The proposal is based upon a fundamental tenant of equality as identified by the Women in the Law in the South Pacific Survey Report that, 'equality can only happen when women, particularly marginalized women, are empowered to lead policy and legal debates and articulate solutions.'<sup>6</sup>
24. The Victorian Bar sees this program as going some way to improving Papua New Guinea's progress towards internationally-recognised development goals, particularly the Beijing Declaration and Platform for Action – an internationally agreed plan for achieving equality for women across 12 critical areas, relevantly –education and training, the economy, power and decision-making and human rights. Papua New Guinea is a signatory to this Declaration, which, in 2015, celebrates its 20th anniversary.<sup>7</sup>

## THE VICTORIAN BAR'S ONGOING CONTRIBUTION TO AUSTRALIA'S AID INVESTMENTS IN PNG

25. The Victorian Bar continues to develop its advocacy training programs in Papua New Guinea. Through its dedicated committee, the Pacific Rim Committee, the Victorian Bar is working on ways in which to support and develop relationships with Papua New Guinea. It is looking at, and learning from, successful advocacy programs in other countries, for example, programs run by the English Bar for Chinese lawyers.
26. The Victorian Bar sees itself as having a particular role in educating and promoting the rule of law and the delivery of ethically sound decision making in legal matters. To this end, ethics is a critical

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<sup>3</sup> Draft Investment Design: Law and Justice support in PNG, July 2014, p16.

<sup>4</sup> Women in the Legal Profession 2011-12 Survey Fact Sheet, South Pacific Lawyers Association.

<sup>5</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/Human\\_Rights/Terms\\_of\\_Reference](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Human_Rights/Terms_of_Reference).

<sup>6</sup> Women in the Law Report in the South Pacific Survey Report, February 2014.

<sup>7</sup> <http://www.un.org/womenwatch/daw/beijing/platform/>.

component of every advocacy training course delivered in Papua New Guinea.

27. Reflecting our close ties, there is scope for the Victorian Bar to further its practical involvement in, and support of, Papua New Guinea's legal system, including training for members of the Papua New Guinea judiciary. The Victorian Bar's commitment to the ongoing provision of training in Papua New Guinea sits within the Joint Understanding between Australia and Papua New Guinea on further bilateral cooperation on health, education and law and order.<sup>8</sup>
28. Good law and order is fundamental to Papua New Guinea's development and for promoting business confidence. The Victorian Bar's ability to continue to deliver 'in country' advocacy training, including mentoring and other programs in the future in Papua New Guinea is highly dependent on the continued support of the Australian government. Without this continued support, the delivery, quality and effectiveness of the training offered will be significantly affected and limited. Each year, the Victorian Bar is seeing a greater demand for advocacy training in Papua New Guinea. For example, there are a greater number of trainees coming through the Legal Training Institute. In 2014, training was conducted to approximately 130 trainees, the biggest number to date. A similar number is expected in 2015. Greater numbers, in turn, require a greater contribution from the Victorian Bar in order to make the programs offered sustainable.

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<sup>8</sup> <http://www.dfat.gov.au/geo/papua-new-guinea/Pages/joint-understanding-between-australia-and-papua-new-guinea-on-further-bilateral-cooperation-on-health-education-and-law-and.aspx>.