

# North Australian Aboriginal Family Violence Legal Service



Submission to the Senate

Finance and Public Administration References Committee

Inquiry into Access to Legal Assistance Services

April 2015



## North Australian Aboriginal Family Violence Legal Service

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### Submission of the North Australian Aboriginal Family Violence Legal Service

The North Australian Aboriginal Family Violence Legal Service (NAAFVLS) wishes to make the following submission to the Finance and Public Administration References Committee for inclusion in its inquiry into access to legal assistance services.

NAAFVLS provides legal services to Aboriginal and Torres Strait Islander people across the Northern Territory's Top End. Funded under the Commonwealth Indigenous Advancement Strategy, our services have expanded to include a range of legal services for Indigenous Australians in remote communities. Our legal services include family violence legal support such as Defendant Domestic Violence Orders (DVOs); wills and estates, succession in law; superannuation; and money-management related legal services.

NAAFVLS was previously funded under the Family Violence Prevention Legal Services (FVPLS) programme and contributed to the Productivity Commission's inquiry into Access to Justice Arrangements as an FVPLS provider. Our submission to the Finance and Public Administration References Committee is in keeping with our submission to the Access to Justice Arrangements report and its recommendations.

The responses below are listed against the relevant Terms of Reference (a through c).

#### **a. the extent to which Aboriginal and Torres Strait Islander Australians have access to legal assistance services**

With regards to the Northern Territory in particular, NAAFVLS maintains that it is of concern that several relatively large communities do not have access to legal assistance services such as ours, despite being part of the 'Bush Court' circuit. Such communities include (but are not limited to) Amanbidji, Belyuen, Bulman, Daguragu, Milingimbi, Minjilang, Palumpa, Pepperminarti and Warruwi; collectively home to over 4,000 residents. This means, for example, that alleged perpetrators of family violence in these communities may have access to (criminal) legal assistance services but the alleged victim has no available legal assistance.

The Access to Justice Arrangements findings support this view, stating that, "There are gaps in the coverage of specialised services' and 'family violence services do not always reach high need areas.' (Finding 22.3, page 773).

In particular, the 'gaps' to specialised services include the total lack of information – outside the criminal and family violence field – regarding services most Australians take for granted. Isolated communities are often 300 to 1000 km from white community services' advice and assistance, making some legal services entirely inaccessible. For instance, legal information on consumer rights, employment, discrimination and credit/debt issues is virtually non-

existent in remote communities. The accrual of debt can have serious long-term ramifications. NAAFLVS is aware that members of communities, have no knowledge of how to manage a Telstra contract, and may not know they must continue payments if their mobile phone is damaged, lost or stolen, which can lead to serious financial and legal consequences. One resident of an isolated community was being harassed by a debt collection service and demands for payment over a six month period regarding payments on a car loan he had taken out some years previously. He owed over \$20,000.00, had recently lost his job, and did not know about his rights under bankruptcy.

Employment-related legal advice is another area of concern that NAAFLVS is aware from discussions with clients. Those lucky enough to obtain some form of employment are not aware they have rights under the *Fair Work Act* in regard to dismissal issues or discrimination at the workplace. Rather than question why they have been dismissed, or what their correct payment rate is under an award, or what their employer's obligations are in relation to a work related injury, they simply walk away bewildered or embittered. Understandably, such experiences also affect individuals' willingness to seek new employment. Frustrations built up due to powerlessness from these experiences can lead to alcohol abuse, domestic violence and crime – and the consequential costs.

While the North Australian Aboriginal Justice Agency (NAAJA) is nominally funded to provide for these areas, the reality is that the demands for criminal and family assistance mean there is little left to service other matters.

Of course, it can be claimed that the communities are too isolated to be provided with assistance, but many are located near mining ventures which claim to support communities through funding, but in fact do little. Instead they fly in contractors to undertake work which in many cases could be undertaken by community based workers. Plant operators and kitchen staff could be employed. Instead the community workers are overlooked with claims they fail the OH&S requirements. With adequate support and training from the mining operators, these issues could be overcome and a sense of pride distilled. Instead there is antipathy, marginalisation and hopelessness.

Understanding of governance and contract law also impacts Indigenous communities. In the absence of trained (and qualified) community leaders, it should be no surprise when funds in Aboriginal trusts from mining royalties are misspent. While self-determination is often espoused as a reason for Indigenous communities to manage their own affairs, Aboriginal trusts in receipt of royalties cannot be expected to manage funds appropriately if adequate training in governance and associated legal issues is not provided and funded, including support for degree-level qualifications.

**b. the adequacy of resources provided to Aboriginal legal assistance services by state, territory and Commonwealth governments**

NAAFVLS is the only family violence legal service provider to assert that the current funding provided by the Commonwealth is adequate to provide the return on investment and performance required by the Commonwealth for our existing service delivery area. This view has not changed following the allocation of Indigenous Advancement Strategy grants funding.

However, additional funding would be required to adequately resource NAAFVLS to deliver legal services to provide for all high need areas in the Top End, including those areas that are not currently being serviced under the IAS (or, formerly under the FVPLS). NAAFVLS estimates that our services could be delivered to the nine identified additional communities at a total cost of \$150,000 (exc. GST) per annum. NAAFVLS believes its lawyers can advise on a broader range of areas than is currently the case, and the additional monies will help to fund further personnel and community access. The Access to Justice Arrangements report supports the view that this represents good value for money: *“Although most providers were unable to provide cost estimates, one FVPLS provider (NAAFVLS), estimated ‘in the order of \$150 000’ (Tony Lane, NAAFVLS, trans., p. 1066) was required to meet unmet need in the nine communities that were not included as part of its current contract with the Australian Government. The Commission estimates that this additional funding would service an extra 80 clients at \$1,875 per client. Put another way, this corresponds to \$37.50 per head of the local area population for these types of very remote areas.” (Productivity Commission p.805).*

Further, NAAFVLS notes that the Access to Justice Arrangement report recommended that *“State and Territory Governments should contribute to the funding of these services as part of any future legal assistance funding agreement with the Australian Government.”*

While the Federal and Northern Territory Governments announced \$18 million towards the Domestic and Family Violence Reduction Strategy 2014-2017: Safety is Everyone’s Right, including \$12 million from the NT Government, the funding will be directed at urban and regional centres. Family violence legal services continue to rely on Commonwealth support alone to deliver services in remote communities. NAAFVLS would welcome a commitment and contribution from the Northern Territory Government towards providing broad-based legal access and assistance that will improve safety and wellbeing in our remote communities.

**c. the benefits provided to Aboriginal and Torres Strait Islander communities by Family Violence Prevention Legal Services;**

Family violence legal services perform a critical function. To date, family legal services have been provided to Indigenous victim-survivors of family violence and sexual assault in remote, Top End NT locations as part of an outreach programme delivered by NAAFVLS. This assistance may include:

- legal assistance and casework
- client assistance and court support
- counselling
- information and referral services
- community engagement
- law reform and advocacy
- early intervention and prevention
- community legal education
- family law

- child protection
- sexual assault
- victims of crime compensation.

These are essential services that should be available to Indigenous Australians in all high need locations.

As indicated, our legal services for remote community members are able to (and will) be expanded to cover beyond family violence legal support. The Indigenous Advancement Strategy, under which former FVPLS providers are now funded, has the flexibility to fund this broader service charter. Our staff have the capacity and qualifications to provide more legal services within the current delivery area. The full range of services to be delivered by NAAFVLS will now include family violence legal support, wills and estates (succession in law), superannuation legal support and money management legal support.

The evidence of the need for our services is compelling. Embitterment and disillusionment are integrally linked with alcohol abuse and violence. Indigenous women and men nationally are 35 times and 22 times more likely to be hospitalised due to family violence than other Australians. Approximately 65% of public hospital patients in the NT are Aboriginal or Torres Strait Islander people. Indigenous women and men are nearly ten and nine times more likely to die due to assault as non-Indigenous females and males, respectively (AIHW 2006). The rate of Indigenous family violence in the NT is staggeringly high:

- More than 60% of assault offences in the Northern Territory are associated with family violence.
- 82% of domestic violence victims in the Northern Territory are women.
- Indigenous women in the Northern Territory are almost 22 times more likely to be victims of domestic violence than non-Indigenous women.
- The vast majority of prisoners in the NT are Indigenous: As at 30 June 2014, there were 1,267 Indigenous prisoners in custody in an adult correctional institution in the Northern Territory, 85% of total prisoners.
- Indigenous women represent 73% of domestic violence victims in the Northern Territory. (Northern Territory Government 2014).

NAAFVLS supports the Productivity Commission finding that '*Specialised legal services for Aboriginal and Torres Strait Islander people remain justified*' (Finding 22.1). There continues to be a need for specialised legal services, including those delivered by NAAFVLS. (ref pp 773). '*The Commission considers both ATSILS and [Family Violence Legal Prevention Services] face a number of distinctive needs and service delivery challenges emanating from the cross-cultural issues, remoteness and language barriers of their clients. Together with Aboriginal and Torres Strait Islander peoples' well documented socioeconomic disadvantages and over-representation in the criminal justice system (SCRGSP 2011), these challenges create a distinctive service delivery environment for ATSILS and FVPLS. These unique circumstances warrant the continuation of specialised Indigenous-specific legal assistance services*' (ibid p.686).

NAAFVLS is firmly of the opinion that the lack of advisory services and lack of employment opportunities leads inevitably to disillusionment, increases rates of alcohol and drug abuse and violence, including family violence. Increasing funding to boost the frequency and range of services specialised legal service providers such as NAAFVLS can offer will help address the desperate need for assistance in isolated Indigenous communities. More assistance will mean improved safety and wellbeing and will go some way towards addressing the great disparity between the available access to justice for Indigenous Australians when compared to their non-Indigenous counterparts.

i. any other relevant matters

We note that the Finance and Public Administration References Committee is also conducting an inquiry into the Indigenous tendering process of the Indigenous Advancement Strategy, under which our legal service is funded. NAAFVLS is making a separate submission to the committee for that inquiry.

On behalf of NAAFVLS, I would be happy to discuss any of these issues further at your request.

Yours faithfully,

Tony Lane

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Chief Executive Officer

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