



NAAJA Submission to the Legal and Constitutional Affairs Committee's inquiry into access to justice

30 April 2009

1. Background

1.1 Background - NAAJA

NAAJA is a non-profit private company established on 1 February 2006. It involved the merger of three existing Aboriginal Legal Services in Darwin, Nhulunbuy and Katherine from community council based organisations into a single entity company called NAAJA. We have offices in Darwin, Katherine and Nhulunbuy and employ a staff of 71 including 38 lawyers, with 46 per cent of our staff being Aboriginal.

We provide high quality and culturally appropriate legal aid services for Aboriginal people in the Northern region of the Northern Territory in the areas of criminal, civil and family Law. NAAJA has an information barrier between our criminal and our civil/family sections. In 2007/2008, 46% of NAAJA's civil and family clients were female.

Our company has a dynamic and talented team of lawyers and staff that aim to work towards gaining justice for Aboriginal people and keeping their culture, tradition and law strong. Our priority is the provision of legal representation and advice to Aboriginal people and, in providing this service, we are also fully engaged in pursuing the rights of Aboriginal people through law and policy reform. NAAJA also has a separately funded advocacy program, community legal education program, research project and mediation project.

Unfortunately, NAAJA's capacity to provide legal services is severely constrained by the inadequate funding we receive. As Cunneen and Schwartz point out, "the issue of the adequacy of legal representation for Indigenous people goes to the heart of questions of access, equity and the rule of law".¹

1.2 Delivery of legal services in the Northern Territory

In the past 10 years the Northern Territory adult prison population has increased by 45%. This is a staggering (and shamefully unsustainable) rate of growth. There are currently 200

¹ Cunneen and Schwartz *Funding Aboriginal and Torres Strait Islander Legal Services: Issues of equity and access* (2008) 32 Crim LJ 38 at p 39

more prisoners in NT gaols than at this time last year, a rate of growth almost three times that predicted even by the Northern Territory Government.

In 2007/2008, the rate of imprisonment of adults in the Northern Territory was 568 per 100,000 adults which is almost 3.5 times the national average rate of imprisonment of 164 per 100,000 adults.² In 2007/2008 82% of the prison population was Aboriginal.³

Furthermore, in the last 5 years the Northern Territory juvenile detainees have increased by 50%. During 2007/2008, 89% of juvenile receptions involved Aboriginal detainees and 98% of sentenced juvenile receptions were Aboriginal.⁴

In 2007/2008, the Northern Territory had the highest rate of recidivism at 44.6%, as compared with a national average of 37.5%.⁵

These figures are a stark reminder of the extent to which Aboriginal people continue to be disadvantaged in the criminal and civil justice system. One positive mechanism to address that disadvantage in the criminal justice system is to ensure the provision of on-going culturally appropriate legal aid services so as to reduce Aboriginal peoples contact with the system. Similarly in the civil justice system, disadvantage can only be addressed by culturally appropriate legal aid services including mediation, education, access to justice and advocacy.

1.3 Executive summary

In our experience as detailed in this submission, the current allocation of funding and resources to legal services in the Northern Territory demonstrates Indigenous people are unable to access justice.

Access to justice for indigenous people in the Northern Territory context must be seen against a backdrop of inadequate funding for Aboriginal legal services, as well as structural and systemic discrimination in the justice system which is beyond the scope of this submission and this inquiry.

In this submission, we set out NAAJA's position and experiences with respect to:

- a) The adequacy of legal aid, detailing the inadequate Commonwealth funding to NAAJA, the dramatic growth in NAAJA workload and the significant lack of parity of funding between Aboriginal and 'mainstream' legal aid in the Northern Territory, when funding and workload are compared.
- b) The ability of people to access legal representation, which examines two case studies affecting our clients in remote communities - the difficulties for victims of crimes in accessing crime compensation and the lack of legal advice and representation available for defendants to domestic violence order applications.

² Northern Territory Department of Justice – Correctional Services Annual Statistics – 2007-2008, http://www.nt.gov.au/justice/policycoord/documents/statistics/NTCS%20Annual%20Statistics%202007-08_EBook.pdf, p 3

³ Ibid p 4

⁴ Ibid p 8

⁵ Ibid p 12

- c) The cost of delivering justice, with particular reference to language and cultural barriers; insufficient time to take instructions, provide advice and prepare matters; lack of available services (citing the example of mental health services) and travel costs which impact upon legal services, clients and families.
- d) Alternative means of delivering justice, which looks at recent NAAJA initiatives to address over representation in the criminal justice system and the lack of long term funding to continue this work.
- e) The adequacy of funding and resource arrangements for community legal centres, with reference to the inadequate provision of independent tenancy advice in regional and remote communities in the Northern Territory, despite millions of dollars being allocated for housing reform.

2. The adequacy of legal aid

2.1 Inadequate Commonwealth funding to NAAJA

NAAJA is funded by the Commonwealth Attorney General's Department under the Legal Aid for Indigenous Australians program.

On 28 February 2008 NAAJA signed a contract with the Commonwealth Attorney General's Department to deliver legal services to the Top End of the Northern Territory for a 3 year period commencing 1st July 2008.

The new contract has the following percentage increase in our budget allocations over and above our allocation for 2007/2008:

2008-2009	1.08%
2009-2010	1.09%
2010-2011	3.4%

Clearly, these allocations don't take into account even very basic CPI increases. Hence, the budget we had drafted for 2008-2011 which only included the basic 3% CPI for Rent and Salaries and 1% CPI on operational expenses had a shortfall of the following in:

2008-2009	\$239,517
2009-2010	\$369,390
2010-2011	\$391,735
Total	\$1,000,642

Furthermore, as Cunneen and Schwartz point out, NAAJA's budget must also be assessed in the context of rises in Indigenous population (between 2001 and 2006, the Northern Territory estimated Indigenous resident population increased by 17%),⁶ the average age of

⁶ Australian Bureau of Statistics 4705.0 - *Population Distribution, Aboriginal and Torres Strait Islander Australians, 2006* Released 25 August 2007 <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4705.0> (viewed 14 April 2009).

the Indigenous population,⁷ and increasing Indigenous criminalisation (as discussed above). Hence, NAAJA is operating with a fall in real funding while there is increasing demand and human imperative for its services. This compromises NAAJA's ability to "provide sufficient quality and quantity of legal services".⁸

Thus far, NAAJA has been able to 'survive' because in 2007/2008 and 2008/2009 we received additional funding for the Northern Territory Emergency Response (NTER). This funding has been used to employ 10 Solicitors across our 3 offices in criminal, civil and family Law. The fact that NAAJA has been able to employ 10 additional solicitors with such limited additional funding is a testament to the earnings sacrifice of people committed to work with and advocate for our clients.

This funding runs out on 30 June 2009 and although we requested additional NTER funding for 2009/2010 as far back as December 2008, we have since been advised that we will only be notified about whether we will receive additional NTER funding after the May budget.

We have serious concerns for our service and clients if funding is not received, as we will be forced into removing positions in our company and providing reduced legal services to communities. This is at a time when NAAJA's workload in civil, family, criminal and advocacy has increased significantly as a result of the NTER.

The lack of notice we will receive about this funding makes it extremely difficult for us to plan and also impacts upon our ability to retain and recruit staff.

2.2 Growth in NAAJA workload

In 2007/2008, NAAJA provided advice and representation to 7,418 Aboriginal people for civil, criminal and family matters and in the 5 years to 2007/2008, there has been an increase of 20% in the number of criminal matters and 90% in the number of civil matters undertaken by NAAJA.

The increase in the NAAJA workload is also reflected in the increases in the last two financial years in the number of criminal lodgments and listings in Northern Territory courts with:

- a) an 11% increase in criminal lodgments ('fresh' criminal matters) in the Magistrates Courts in the Northern Territory,⁹ with the largest increase of 26% in one of NAAJA's 3 regions (Katherine);¹⁰ and
- b) an 18% increase in the number of criminal listings (a listing reflecting each time a file is brought back to Court) in the Magistrates Court,¹¹ again with the largest increase of 23% in the Katherine region.¹²

⁷ More than half (54%) of Indigenous respondents to the 2006 Census were under 25 years of age. Australian Bureau of Statistics 4713.7.55.001 - *Population Characteristics, Aboriginal and Torres Strait Islander Australians, Northern Territory, 2006* Released 27 March 2008 <http://www.abs.gov.au/AUSSTATS/abs@.nsf/MF/4713.7.55.001> (viewed 24 April 2009).

⁸ Cunneen and Schwartz, n 1 p 39

⁹ Statistics provided by Court Support Services, Northern Territory Department of Justice, April 2009

¹⁰ Ibid

Even larger increases have been recorded by police prosecution services with a 26% increase in police prosecution files between 2006/07 to 2007/2008, and an anticipated additional 25% increase between 2007/2008 to 2008/2009, resulting in a projected 57% increase over two years.¹³

This increased workload of the Courts and prosecution services resulted in an additional \$3.3 million funding from the Northern Territory Government for additional prosecutors, magistrates, courts staff and security.¹⁴

This increased workload of courts and prosecutions also reflects a dramatic increase in NAAJA workload, given that the overwhelming majority of people facing criminal charges in the Northern Territory are Aboriginal, and NAAJA represents the overwhelming majority of Aboriginal people facing criminal charges in the Top End of the Northern Territory.

2.3 A comparison between “Aboriginal” and mainstream legal aid¹⁵

a) overall funding and workload

A comparison of NAAJA funding allocation with those of the Northern Territory Legal Aid Commission (NTLAC) highlights a significant lack of parity of funding between the 2 organisations.

In 2007/2008, NTLAC (which covers the entire Northern Territory, rather than just the Top End as NAAJA does) received \$2.5 million more in funding than NAAJA.

Our Solicitors have heavy individual caseloads and high workloads in comparison to other legal aid providers and they operate in culturally challenging and complex conditions.

Over the 2007/2008 period of comparison, each NAAJA solicitor attended to approximately 144 new casework matters in addition to casework matters that continued from the previous financial years. In total, in 2007/2008, NAAJA solicitors handled 3,529 criminal matters and 515 family/civil matters.¹⁶ This does not include the additional 1523 duty files which were also handled by NAAJA solicitors.

¹¹ In our experience, the increased number of listings reflects the increased number of lodgments as well as increased prosecution of breaches of bail, suspended sentences, community service orders, increased numbers of warrants of arrest being activated, additional court case management and more complex and protracted bail applications.

¹² Court Support Services, n 10

¹³ Internal police statistics provided April 2009.

¹⁴ *Better Court Facilities - Protecting Territorians* Northern Territory Minister for Justice and Attorney General, Press Release, 27 April 2009

<http://newsroom.nt.gov.au/index.cfm?fuseaction=viewRelease&id=5462&d=5> (viewed 28 April 2009)

¹⁵ These comparisons have been made using data from NAAJA’s Annual Report 2007/2008 and NTLAC’s Annual Report 2007/2008

http://www.ntlac.nt.gov.au/left_menucontent/DocAnnualReport/NTLAC_AnRep_2007_08_WEB.pdf

¹⁶ This includes the very small number of matters which are briefed out by NAAJA every year.

By comparison, NTLAC staff only handled 1,367 criminal matters and 307 family/civil matters over the same period. This means that each NTLAC solicitor attended to approximately 76 matters per year (we presume this is, likewise, in addition to matters that continued from previous financial years).

Such disparity has “severe ramifications” for NAAJA’s capacity and, therefore, the adequacy of legal services available to Indigenous clients.¹⁷

b) funding to “brief out” and pay for client expenses

NAAJA has extremely small annual brief out budgets of \$85,000 for criminal matters and \$30,000 for civil and family matters.

The range of matters undertaken by NAAJA extends to extremely serious criminal, civil and family law cases. Since NAAJA was formed in February 2006, we have acted for 23 clients charged with murder. Thus far in every case we have been able to brief senior counsel (instructed by a NAAJA solicitor) to appear. NAAJA has only been able to do this because in recent years we have been able to apply for funding to the Expensive Indigenous Case Fund which is administered by the Commonwealth Attorney General’s Department. Without this fund, we would only have been able to provide experienced counsel to a small proportion of these 23 clients, as each serious matter costs on average \$25,000 - \$35,000.¹⁸

However the Commonwealth Attorney General’s Department has always advised that the Expensive Indigenous Case Fund is limited and recent advice is that there is no further funding available. Since then we have had two additional clients charged with murder. We have nonetheless made an application for funding with respect to these two matters, but if they are unsuccessful, as would seem likely, NAAJA will not be able to afford to pay for counsel.

In comparison in 2007/2008, NTLAC was able to brief out work to the value of \$1,593,043 to private practitioners (including disbursements).

It must be noted that NTLAC generally take on criminal and family cases where NAAJA is conflicted, and that some of the amount paid to private practitioners by NTLAC includes referrals from NAAJA because of conflicts (for example, in a criminal matter where there are a number of co-defendants who are seeking to blame each other). However, the position with respect to conflicts in civil matters is much more difficult. NTLAC does not have an in-house civil law practice (small grants are paid to private practitioners for legal aid for civil law matters) and there are extremely limited options for civil law referrals in most remote areas (where a Family Violence Prevention Legal Service is the only other regularly visiting legal service and they have restricted areas of practice).

NAAJA also has limited funding available to pay for client expenses. In 2007/2008, NAAJA spent \$128,421 on client expenses, in a context where such expenses are generally higher. For example, where NAAJA needs to serve another

¹⁷ Cunneen and Schwartz, n 1 p 38 - 39

¹⁸ NAAJA is fortunate to have experienced counsel who are prepared to accept our briefs at reduced rates.

party in a family matter, the costs of service are approximately 5 times higher in a remote location as compared with an urban location. Similarly, NAAJA will often be required to pay significant amounts in remote travel and accommodation costs for a family to be properly represented at a Darwin or Katherine based Coronial Inquest into the death of a relative.

In comparison, NTLAC spent \$646,520 on disbursements on in-house cases. This equates to \$386 per NTLAC in house client, as compared with \$32 for each NAAJA client.

c) ability to attract and retain senior staff

In 2007/2008, NAAJA employed 6 additional staff than NTLAC yet NTLAC paid an additional \$897,000 on staffing salaries than NAAJA. This means that the average salary for NTLAC is \$73,489 as compared with \$52,251 for NAAJA.

As with other ATSILS, NAAJA unfortunately suffers from high staff turn over, partly as a result of lower salaries and higher workloads than other legal aid organisations (such as NTLAC). In 2006/2007, NAAJA's staff turn over was 21% and in 2007/2008, this has increased to 26%. Currently, the average length of employment for a solicitor is 12 months.

This high staff turn over affects productivity across the organisation and ultimately, the quality of outcomes for our clients.

As Cunneen and Schwartz comment "the ability to attract, train and retain high quality legal advocates is essential if requirements of fairness and equality before the law are to be met".¹⁹

3. The ability of people to access legal representation

All of the funding issues outlined above impact upon the ability of our clients to access legal representation, however in the following two case studies we seek to highlight particular instances in which Aboriginal people are currently unable to access legal representation.

In part, these particular instances highlight the funding shortfalls which arise because the Northern Territory Government has refused to provide any funding to NAAJA (arguing that the funding of ATSILS is solely a Commonwealth responsibility), yet the legislative and policy decisions of the Northern Territory Government have had such a dramatic impact upon our workload.

As a comparison, the Northern Territory Government provided \$3,545,000 in funding to NTLAC in 2007/2008.

3.1 Applications to the Victims of Crime Assistance Scheme

¹⁹ Cunneen and Schwartz, n 1 p 43

On 1 May 2007, the Northern Territory moved to a new administrative crime compensation scheme, based on the New South Wales model, in which legal costs are not awarded for assistance provided to the applicant. Prior to this, crimes compensation was a court based scheme in which legal costs were awarded for the representation of applicants.

Critically, up until the expiration of the old scheme (the *Crimes (Victims Assistance) Act*), NAAJA took an active and central role in ensuring access to the scheme, particularly for our clients residing in remote communities, and was able to recoup its legal costs of doing so from the Northern Territory Government.

Under the new scheme, a newly established Crimes Victims Services Unit (CVSU) is supposed to undertake all aspects of claim application, management and resolution and there is no role envisaged for NAAJA. However:

- a) The CVSU has no presence in the Top End other than in Darwin, and no budget for travel outside Darwin, the expectation being that our clients will have to access the scheme by completing an application form at a Police Station or by telephone.
- b) Many of our clients will not be able to access the scheme because they do not have access to a local police station or a telephone and, if even if they do, won't be able to because of language difficulties, cross-cultural communication problems, cultural sensitivities due to the difficult subject matter and/or a lack of literacy to fill out complex forms.
- c) Most of our clients in remote areas will not have the resources, capacity or legal knowledge to appeal decisions about their case or complain about CVSU performance levels.
- d) The CVSU has no real capacity to coordinate the administrative aspects of a claim by an applicant on a remote Aboriginal community, i.e. gathering evidentiary information and documentation, organisation of specialist medical and like appointments, and advocacy.

Thus, in a very real sense, many of our clients are being denied access to victims of crime compensation only because they are Aboriginal and do not reside in Darwin.

In June 2008, NAAJA applied to the Northern Territory Government for funding to act as "agents" for CVSU clients in rural and remote communities in the Top End by taking initial instructions, completing an application on behalf of the Victim and then acting as a bridge between the client and CVSU in gathering further information, clarifying instructions, arranging appointments and the like, and then facilitating an appropriate explanation to clients once the claim is finalised.

Nearly a year later, we are yet to receive a response.

We are concerned that without access to legal services, many victims of serious assaults in the Northern Territory will be unable to access crimes compensation. This is disturbing given recent research showing indigenous women are almost 70 times more likely to be seriously assaulted such that they require hospital treatment for head injuries than non-

indigenous women.²⁰ This same research also found that in rural or remote areas, both indigenous and non-indigenous people were seven times more likely to suffer head injuries than people in cities.²¹

3.2 Lack of services for defendants in domestic violence order applications

Following legislative and policy changes in the Northern Territory, there has been a dramatic increase in the number of domestic violence orders issued - in the period between 2003/2004 and 2008/2009 the number of domestic violence orders lodged in Northern Territory courts almost doubled²² and between 2004 - 2008, there was a 175% increase in police initiated domestic violence orders.²³

Appropriately, there are a number of services available to assist victims of violence in obtaining domestic violence orders. The Northern Territory Government funds Domestic Violence Legal Services in Darwin, Katherine and Alice Springs. The Commonwealth then funds specialist Aboriginal Family Violence Legal Services in Darwin, Katherine and Alice Springs to provide legal advice and representation to victims of violence in remote communities surrounding each urban centre. Under the *Domestic and Family Violence Act*, the Northern Territory police and child protection services can also apply for domestic violence orders to protect individuals and children, with police having additional powers to take out orders, which are then referred to a court for confirmation.

However, there is a dearth of services available to provide legal advice and representation to defendants in domestic violence order applications.

In urban centres (Katherine, Alice Springs, Tennant Creek, Darwin), defendants can approach NTLAC for advice and then apply for legal aid funding for representation in the usual manner.

However, in our experience what is required is a duty lawyer service as our clients attend the NAAJA office in the respective Court on the day the matter is mentioned, wanting to have advice then and there and generally not wishing to return to Court.

Critically, this service is not available outside regional centres and NAAJA criminal lawyers on bush circuits are often under enormous pressure from clients and Courts to fill this gap. This is often impossible to do because NAAJA's resources are already so stretched. Defendants are not only without legal representation but can also be without appropriate access to an interpreter.

In our experience, this often results in Aboriginal defendants consenting to orders they do not understand (resulting in further Court contact) and/or which are inappropriate for the circumstances in the particular case. There are also, often, misunderstandings between Aboriginal families and police which result in the police making orders with an

²⁰ Ashleigh Wilson *Remote women live with violence* May 19 2008, The Australian, <http://www.theaustralian.news.com.au/story/0,25197,23720064-5013172,00.html> (viewed 24 April 2009)

²¹ Ibid

²² Court Support Services, n 10

²³ Northern Territory Police *Violent Crime Reduction Strategy 2008* p 2 <http://www.nt.gov.au/pfes/documents/File/police/publications/strategic/ViolentCrimeReductionStrategy2008.pdf> (viewed 24 April 2009)

inappropriate choice of parties and inappropriate terms of the orders. This, in turn, can and often does result in misunderstandings and tensions within and amongst Aboriginal families.

Furthermore, as domestic violence order applications can now refer to children, such applications can be a de facto child protection and/or custody application, in which only one party is represented.

This issue has been raised numerous times with both the Northern Territory and Commonwealth Governments but no funding has been provided for the legal representation for defendants in domestic violence order matters, particularly in remote communities.

It is fundamental that all domestic violence orders are appropriate and understood by all parties to the order, otherwise the order will fail to protect the very person it was meant to assist.

4. The cost of delivering justice

4.1 language and cultural barriers

A comparison between NAAJA and NTLAC funding must also consider that the provision of legal advice, education and advocacy “to communities organised according to traditional customs can be complex and far more time consuming than comparable work in non-Indigenous communities”.²⁴

In our experience, this is eminently the case. Many NAAJA clients live in communities with strong adherence to traditional law and customs. For the majority of our clients, the operation of the mainstream legal system is totally foreign and fundamental legal concepts such as “guilty” and “not guilty” are poorly understood.

In part, this because most of our clients in remote communities speak English as a second, third or fourth language²⁵ or (particularly with younger clients) speak almost no English at all. Furthermore despite the best efforts of the Aboriginal Interpreter Service, legal services are unable to access accredited (or experienced) interpreters.

4.2 insufficient time to take instructions, provide advice and prepare matters

These language and cultural communication issues are exacerbated by NAAJA funding which means that our solicitors have only one day prior to court in the community to prepare, in turn meaning that many clients cannot be seen beforehand. With the long court lists in many communities, this leads to limited time being available for each client.

These problems extend to limited preparation time for complex hearings, as the standard practice is to collect the brief material upon the solicitor’s arrival to the bush court even

²⁴ Cunneen and Schwartz, n 1 p 42

²⁵ An Australian Indigenous language was spoken at home by 59% of Indigenous respondents to the 2006 Census. Australian Bureau of Statistics *Population Characteristics, Aboriginal and Torres Strait Islander Australians, Northern Territory, 2006* Released 27 March 2008
<http://www.abs.gov.au/AUSSTATS/abs@.nsf/MF/4713.7.55.001> (viewed 24 April 2009)

where the client is in custody and will only be flown to the community on the day of the hearing. This often makes it impossible to get effective instructions, in circumstances where there will be pressure on the solicitor to proceed quickly because of the expense incurred in flying the client in custody to the community and the fact that other witnesses may have been called.

Limited funding also means that wherever possible, NAAJA staff drive to attend bush courts while court staff and prosecution services generally fly. This requires NAAJA staff to travel long distances, generally on poor quality roads, often after court has finished for the afternoon. For some bush courts, (for example Kalkarindji and Lajamanu) where there is no accommodation available in the community, NAAJA staff travel 1.5 – 2.5 hours each way every day to attend court, as well as having to prepare for matters for the following day.

4.3 lack of services available for clients

In our experience (and as reflected in national statistics), there are high rates of mental health problems amongst our client group,²⁶ and a severe lack of appropriate services to assist them. Despite this, it is often extremely difficult to obtain state provided psychiatric assessments of defendants when they are located in remote communities. Even when a psychiatrist assessment is ordered by the Court, the Northern Territory Government generally does not provide psychiatrists to travel to the remote community to conduct the assessment or cover the costs of the client travelling to have the assessment done in an urban centre. This leaves NAAJA in the position of having to either fund, or to ask the client to fund, the travel costs to have an assessment conducted. In many communities that we service, this may involve chartering a plane or finding a vehicle which can transport the client hundreds of kilometres. In our experience, this is totally unsatisfactory. NAAJA is not funded, or appropriately staffed, to transport extremely vulnerable clients in this way. We currently have clients who are waiting “in limbo” in remote locations to have court ordered assessments conducted and other clients for whom the court refuses to order assessments, on the basis of the logistical difficulties of conducting such assessments.

4.4 travel costs

a) impact on legal services

NAAJA staff travel regularly to remote communities to provide legal advice and representation, deliver community legal education, conduct research and also to provide mediation services and training. Like other organisations with a focus on remote service delivery, increases in travel expenses such as through rising fuel costs can significantly impact upon our budget. Between 2005/2006 to 2007/2008, NAAJA’s travel costs increased by 46%.

b) impact on clients

Travel costs and difficulties also impact upon the ability of our clients to access justice. Even with the bush court system many people still have to travel hours at great expense to attend court, and this problem has been exacerbated by the recent funding of 18 new

²⁶ See <http://www.mindframe-media.info/site/index.cfm?display=84362#ref5> (viewed 24 April 2009)

temporary police stations under the NTER (Operation ‘Themis’).²⁷ Of these 18, only 3 communities currently have operational bush courts in them. As a result defendants from the 15 other communities who have been summonsed to appear in court often have to travel long distances, with the majority of these communities more than 100km from the nearest court, generally on poor or very poor quality roads.

This is in a context where the small number of available vehicles in remote communities are often unregistered and/or unroadworthy, and many drivers are unlicensed. Maintaining a vehicle to Motor Vehicle Registry standard is very difficult in a remote community context, with very poor roads, very low incomes, and large distances to travel for vehicle registration. Obtaining a driving licence is made more difficult by generally having to travel to complete the test, widespread poor English and literacy skills amongst young Aboriginal people, and a lack of options for driver training and suitable supervising drivers for those with their learners licence. Drivers’ licences have been confiscated for people found with an unregistered vehicle and vehicles can also be confiscated because of offences related to alcohol. Generally in these communities there is no public transport or very limited public transport. Most communities have no “bush bus” service and where a bush bus does service a community, this is generally once or twice a week and prices are often high.

Alpurrurulam (Lake Nash) is one of the 15 communities with a Themis police station and no local court. The nearest court is in Tennant Creek, with a travelling distance of approximately 480km to 580km, depending on road access. In the recent wet season, the community was entirely cut off by road for weeks and defendants would only be able to attend Court through chartering a plane at a minimum cost of \$3810. We have been told of clients who have gone into hiding because they are unable to physically travel to court and are aware that warrants have been issued for them.

Gapuwiyak is another example of these issues. Gapuwiyak is 220 kilometres from the nearest court (Nhulunbuy) - a 3-4 hour drive (when the roads are passable). As a result of the new permanent police presence, many more people from Gapuwiyak are now being summonsed to come to court for drive unlicensed and other minor charges. We commonly find that clients will spend approximately \$200 for a return trip to court (if they have access to a vehicle, otherwise the cost is \$1000 return in a taxi) to be given a \$100-\$200 fine.

The large distances and costs also mean that many clients are reluctant to adjourn matters or set them for hearing as this means they will have to make the trip again. This results in clients pleading guilty at the first instance and not having the benefit of alternative resolutions being negotiated with police. Additionally, because of the overcrowding in the communities and/or the lack of affordable accommodation in urban centres, most people prefer to come to court for the day, rather than arriving a day or two prior. This means that they are unable to speak with a lawyer prior to the case being heard in court, and usually arrive at court late in the day adding extra pressure to the process.

c) impact on families

²⁷ As part of the NTER, 18 police stations were either built or upgraded so that they were staffed by three full-time police, of which two were generally from the Australian Federal Police.

A related issue involves families being able to be present at Coronial Inquests.

Up until recently ATSIL funding guidelines specifically precluded NAAJA from acting for families of deceased persons in a Coronial Inquest unless the death was a “death in custody”. Whilst essentially historical in nature, such preclusion failed to recognise the often systemic failures in bureaucracy, resourcing and funding which resulted in Aboriginal deaths out of custody.

Following sustained lobbying by ATSILS, this preclusion was recently lifted. However, given the significant costs involved in Coronial Inquests (the import and complexity involved will generally require Counsel to be briefed) the lifting of the preclusion would have little meaning if ATSILS were not able to access the Expensive Indigenous Case Funding. To cover such costs from existing operational funding would not be possible.

As a general rule, Coronial Inquests are only held in existing Court house facilities so as to allow transcription services and appropriate standard accommodation facilities for the Coroner and his or her staff. In effect therefore, and notwithstanding that a Coroner may travel to a community for a brief “opening”, the family of a deceased person the subject of a Coronial Inquest will have to travel to Darwin, Katherine or Nhulunbuy to be present.

In the context of the very large extended families in Aboriginal culture this can and does impose a significant financial burden on families who may have to travel many hundreds of kilometres and accommodate themselves for a week in an expensive urban centre so they can be involved in the inquiry into the death of their relative.

NAAJA is sometimes able to build part of these expenses into its application to the Expensive Indigenous Case Fund but, as is discussed above, the fund is currently exhausted so the efficacy of this new capacity remains somewhat doubtful in the longer term.

The capacity for the family of a deceased person’s family to be able to participate, and be represented, in the Inquest into the death is a fundamental right which goes to the very core of access to justice. This is the more so for Aboriginal people in a parlous state of well recognised disadvantage.

5. Alternative means of delivering justice

5.1 Addressing over-representation in the justice system

In recent years NAAJA has begun a gradual process of attempting to address the underlying causes of the over-representation of remote Aboriginal community clients in the justice system. Two such causes that come to the fore in the context of our charter as an Aboriginal Justice Agency are a breakdown in community relationships with police, and a lack of adequate inter-community and inter-family dispute resolution processes.

As to community policing, NAAJA civil lawyers, working with communities and the Northern Territory Police, have put much effort into improving community policing

outcomes. In the last 2 years there have been significant steps forward in the communities at Galiwin'ku and Ngukurr involving, inter alia, the development of agreed community policing protocols, community leaders providing on-site cultural orientation to newly posted police officers, and a range of other initiatives aimed at improving dialogue, relationships and respect between communities and their police. Such initiatives have the capacity to positively impact a broad range of access to justice issues as, in our experience, dialogue and mutual respect will always achieve better outcomes than blind law enforcement.

Similarly, in the area of dispute resolution NAAJA has attempted to promote and support mediation and other alternative means of dispute resolution for remote Aboriginal clients and communities so that, in particular, civil disputes can be resolved without recourse to the Courts and, more generally, all disputes can be resolved absent contact with the criminal justice system.

The difficulty with all of this is that NAAJA is fundamentally a case work organisation. Other than a one-off funding grant to employ a single cross-cultural Mediator for 12 months in 2008/2009, we must rely on our already over-stressed case work resources to address these causes of over-representation. Unfortunately, such initiatives are also logistically hungry in terms of remote area travel, accommodation and facilities, the costs of which must be squeezed from non-related and already depleted case work funding.

Whilst much work remains to be done, the achievements so far in improving community policing outcomes and in alternative dispute resolution are significant. However, NAAJA's capacity to continue to work for such outcomes will always be constrained by the chronic underfunding referred to throughout this Submission.

6. The adequacy of funding and resource arrangements for community legal centres

We believe that the current funding arrangements for community legal centres are also inadequate. By way of example, currently in the Northern Territory the only funding for specialist tenancy advice is through the Darwin Community Legal Centre's (DCLS) Tenancy Advice Service. This service is only funded for two legal positions and although in theory it is meant to cover the entire Northern Territory, the service is not appropriately funded to travel outside the Darwin area (other than monthly visits to the town of Katherine). DCLS is not funded to travel to remote communities.

The Northern Territory and Commonwealth Governments are currently embarking upon major reforms to the provision of public housing in remote communities which will see thousands of remote Aboriginal community members being asked to sign leasing documents and being recognised by the Northern Territory Government as coming under the *Residential Tenancies Act*. For the vast majority of people signing these agreements, the rights and responsibilities of tenants will be difficult to understand. Despite lobbying by a number of legal services, we have seen no indication by either the Commonwealth or the Northern Territory Governments that there will be additional resources provided to legal services to provide independent legal information and advice to tenants, either when signing tenancy agreements or when they have a dispute with Territory Housing.

7. Conclusion

As set out in this submission, NAAJA has serious concerns about the limitations of the current system in providing access to justice for our client group. Without vastly increased resources from Governments (including the Northern Territory Government), we believe there will be continued dramatic over representation of Aboriginal people in the Northern Territory criminal justice system and a massive under representation of Aboriginal people in civil justice processes seeking redress for violations of their rights and entitlements.

We thank the Committee for the opportunity to provide comment and would be available to give oral evidence about these matters.