

Australian Government response to Report 403 of the Joint Committee of Public Accounts and Audit: Access of Indigenous Australians to Law and Justice Services

Introduction

Recommendation 1

That the Attorney-General's Department put in place measures to ensure that questions taken on notice to the Joint Committee of Public Accounts and Audit are either responded to within requested timeframes or that reasons are provided showing why responses will be delayed together with a proposed alternative date by which responses will be received by the Committee.

Agreed.

The Attorney-General's Department takes very seriously its responsibilities to the Committee and to the Parliament. At a private briefing of the Committee on 17 March 2005, officers of the Department undertook to answer by 30 April the questions tabled at that briefing. Several of those 51 questions related to issues that were then under consideration as part of the Budget process. To ensure that the Committee was provided with the most relevant information, the answers to those questions were provided on 11 May 2005: the day after the Budget was announced.

If a similar situation arises in the future, the Department will answer the question by the due date.

Funding and distribution of resources in Aboriginal and Torres Strait Islander Legal Services by case type

Recommendation 2

That based on available data and need, all future contracts between the Attorney-General's Department and providers of services that are currently delivered by Aboriginal and Torres Strait Islander Legal Services designate specific requirements of family, civil and criminal case loadings and provide adequate funding to meet these requirements.

Agreed.

1 July 2005 marked the commencement of the new administrative arrangements for the provision of legal services for Indigenous people in Victoria, Queensland and Western Australia. The requests for tender for the provision of Indigenous legal services to Northern Territory and South Australia were released on 2 August 2005 with contracts commencing on 1 February 2006. For New South Wales (including the ACT) and Tasmania, the

requests for tender were released on 28 January 2006 with contracts commencing on 1 July 2006.

The new providers of legal services to Indigenous Australians have been, or will be, selected through a competitive tendering process. Multi-year performance based contracts will replace the annual grant funding structure under which Aboriginal and Torres Strait Islander Legal Services (ATSILS) have been operating.

The publicly released Request for Tender, Legal Aid Services to Indigenous Australians provides the draft legal services contract under which all Indigenous legal services will ultimately operate. Clause 3(1)(b) of this contract refers the successful tenderer to tables at Schedule 1 which stipulate annual service delivery targets in the areas of civil, family and criminal law.

The Government recognises that Aboriginal and Torres Strait Islander people have significant civil and family law requirements and has made formal provision to meet these needs. The Government's priority for Indigenous legal aid is to provide legal representation for clients where there is a risk of incarceration or where there is a real risk to a person's physical safety. Priority assistance is also given to Indigenous persons where cultural or personal well being is at risk. An additional priority is where a family member of a person who died in custody seeks representation at an inquiry into the death. Particular emphasis is placed on meeting the needs of women and children. These priorities are shaped by the extremity of need identified within Indigenous communities and prior investigations such as the Royal Commission into Aboriginal Deaths in Custody and the Council of Australian Governments (COAG) National Framework for Preventing Family Violence and Child Abuse in Indigenous Communities.

Indigenous legal aid is a specialist program within a larger network of available services. Community legal centres, legal aid commissions, Family Violence Prevention Legal Services (FVPLSs), community crisis centres, women's legal service offices and Indigenous women's projects all offer varied services which augment the capabilities and stipulated service targets of Indigenous legal aid providers.

Indigenous women and access to legal services

Recommendation 3

That the Attorney-General's Department ensure that Family Violence Prevention Legal Services focus on the provision of family and civil law services to Indigenous Australians, particularly through the legal representation of clients.

Agreed in part.

FVPLS units provide professional legal representation and assistance to Indigenous Australians for a range of legal needs including family and civil

law. FVPLSs play a key role in combating family violence in Indigenous communities.

FVPLS units are required to comply with the Family Violence Prevention Legal Services Operational Framework. This specifies 'legal advice and casework assistance' as the first service delivery priority, followed by counselling, support, protection, referral and information services. The Operational Framework specifically stipulates that each 'FVPLS must employ a full time solicitor, that is independent of, and separate from, the position of unit Coordinator'. A solicitor is now based with every FVPLS unit and there are supplementary legal practitioners employed in smaller units to ensure maximum service outputs and service availability.

However, to receive civil law assistance within a FVPLS unit, an Indigenous client must also be affected by family violence considerations. In circumstances where family violence is not a component, a person with need for legal aid will be referred to another legal service provider capable of delivering culturally sensitive assistance.

In this context, 'family violence' is broadly interpreted to reflect both the extended nature of Indigenous families and the contexts in which various forms of violence may occur between kinspeople in Indigenous communities. The Operational Framework defines family violence as including 'all forms of violence in intimate relationships.' A 'family' is defined to cover 'a diverse range of reciprocal ties of obligation and mutual support' which can include, for example, 'aunts, uncles, cousins and children of previous relationships'. This definition ensures broad access to the legal representation services available at FVPLS units, to women, men and children.

Recommendation 4

That the Attorney-General's Department acknowledge that urban Indigenous populations also require family violence, family and civil law services and locate Family Violence Prevention Legal Services accordingly.

Agreed in part.

Urban Indigenous communities have a need for family and civil law services. Family violence was identified in the COAG Reconciliation Framework as a key issue in Indigenous affairs.

On 24 June 2004, COAG agreed to a National Framework for Preventing Family Violence and Child Abuse in Indigenous Communities. The Australian Government made a \$22.7 million commitment over four years to double the number of FVPLS units, from 13 to 26 around Australia.

The Government contracted the Crime Research Centre at the University of Western Australia to identify high-need regions to support the establishment of new FVPLS units. The research took into account rates of family violence; the needs of individuals in particular locations; identification of existing

national infrastructure; and the particular need to provide services to rural and remote areas of Australia. The 13 new FVPLS units were established in areas identified by the Crime Research Centre and from stakeholder feedback. They are primarily in remote or regional areas.

The Government will continue to give priority assistance to those areas with the most acute requirements for service. The FVPLS units themselves will also make similar determinations with regards to their own allocation of resources as required by the Operational Framework:

In determining the locations of their service outlets, units must also have regard to the locations of related services, courts and prisons within the geographic area being serviced.

Indigenous communities based in major urban centres have greater access (than do those in remote or regional areas) to other legal service providers such as community legal centres, legal aid commission offices, Indigenous legal aid offices or ATSILS, other Indigenous support and referral services, solicitors undertaking pro bono work and Indigenous women's legal service units.

Recommendation 5

That the Attorney-General's Department ensure that Indigenous men are provided full access to all Family Violence Prevention Legal Services.

Agreed.

The Operational Framework requires that all services provided by FVPLS units are available to men, women and children. The units are required to 'provide culturally sensitive assistance to Aboriginal and Torres Strait Islander adults and children who are the victims of family violence, including sexual abuse.' Victims and perpetrators are defined as including 'aunts, uncles, cousins and children of previous relationships' and the definition of family is similarly broad in order to capture all the potential nuances of kinship ties seen in Indigenous communities. There is no restriction based on gender.

FVPLS units have been encouraged to employ male field officers, and men are working in unit management. FVPLS units are also encouraged, as part of their community awareness programs, to publicise the fact that men and women are welcome to use their services.

Retention of expert staff

Recommendation 6

That the Attorney-General's Department, in consultation with National Legal Aid and the National Aboriginal and Torres Strait Islander Legal Services Secretariat, develop a comparative scale of remuneration between Aboriginal and Torres Strait Islander Legal Services (ATSILSs) and Legal Aid

Commissions and review funding of providers of services currently delivered by ATSILSs as appropriate.

Not agreed.

The issue of relative remuneration rates has been addressed through the tendering of Indigenous legal services.

The tender is an open and competitive process that identifies service providers who can provide professional and culturally sensitive services. Service contracts require service providers to meet specified service levels across various law types (criminal, civil, family) and in specified geographic locations.

The service contracts require Indigenous legal aid providers to manage their staff with a view to delivering a professional legal service of sufficient quality and capability to meet the contract requirements. Accordingly, it is expected that service providers will attract and retain skilled and committed professionals through appropriate remuneration.

Recommendation 7

That the Department of Treasury grant Fringe Benefit Tax supplementation to Family Violence Prevention Legal Services.

Not agreed.

Following amendments made to the Charities Act in 2001, fringe benefit tax supplementation was introduced to assist a range of Indigenous organisations to meet the cost of FBT changes implemented in 2000. Various Indigenous organisations (including some ATSILSs) applied for supplementation in 2001. In the 2005–06 Budget, the Government announced that this supplementation would be extended.

The level of funding of FVPLS units takes into account the expenses and exigencies associated with rural and remote service delivery, including the need to attract and retain people who would be required to work in isolated locations. The Government does not believe that FVPLS units are in need of FBT supplementation, and the Committee's report does not give any reasons why the supplementation should be extended.

Recommendation 8

That the Attorney-General's Department, in consultation with the National Aboriginal and Torres Strait Islander Legal Services Secretariat and National Legal Aid, develop and implement a formal exchange program whereby solicitors from providers of services that are currently delivered by Aboriginal and Torres Strait Islander Legal Services and Legal Aid Commissions are afforded opportunities to work, for a specified period, within the other organisation.

Agreed.

On 27 July 2005, the Attorney-General wrote to the Chair of National Legal Aid (NLA) asking the legal aid commissions to consider this recommendation.

NLA replied on 9 August 2005, indicating that it is 'supportive of the general intent' behind this recommendation and noting that it was made 'in the context of maintaining expertise within Aboriginal and Torres Strait Islander Legal Services.' However, NLA has 'significant reservations' about the viability of establishing exchanges in some locations.

NLA has agreed to work with the Attorney-General's Department and providers of legal aid to Indigenous persons to assist in developing and implementing exchange programs as appropriate. 'NLA's strong view is that the programs themselves should be developed and implemented between Indigenous legal services providers and the Commission in each jurisdiction. This will ensure that programs are suited to local conditions such as the capacities of the providers and any community/cultural issues.'

NLA also provided examples of successful exchanges:

- the secondment of a family law solicitor from the Victorian Legal Aid Commission to the Victorian Aboriginal Legal Service
- the provision of a family law solicitor by ACT Legal Aid to the South East Aboriginal Legal Service, and
- the provision of one of WA Legal Aid's restricted practitioners to the Aboriginal Legal Service of WA to assist with a murder trial.

The NLA also noted that there have been other arrangements in the past between legal aid commissions and Indigenous legal aid services—not 'exchanges as such' but a result of the Commissions' recognition of the needs of certain Indigenous legal services offices and the capacity of Commissions to provide assistance at a given time.

Recommendation 9

That the Department of Education, Science and Training, in consultation with the Attorney-General's Department, the National Aboriginal and Torres Strait Islander Service Secretariat and the National Network of Indigenous Women's Legal Services, explore the feasibility of implementing a system of bonded scholarships where successful applicants on being accepted to the bar are required to provide a specified period of service to a designated provider of services currently delivered by Aboriginal and Torres Strait Islander Legal Services or Family Violence Prevention Legal Services.

Not agreed.

Under the Higher Education Support Act 2003, organisations such as the ATSILS and the FVPLSs can offer bonded scholarships to students through employer reserved arrangements. Under these provisions, the organisations

would enter into arrangements directly with higher education providers to provide particular courses or study programs that meet their professional or training requirements. The organisations would contribute to the costs of their students' education.

While the terms of these arrangements are matters for employers and universities to determine, the Department of Education, Science and Training could provide advice and general information relating to relevant higher education studies, such as performance statistics and student destination survey data, which may assist organisations in brokering arrangements and implementing such a scheme.

Recommendation 10

That the Department of Education, Science and Training ensure that places are available for the training and development of paralegal community support workers who are employed with providers of services that are currently delivered by Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services.

States and Territories have responsibility for determining training places.

Through the 2005–2008 Commonwealth-State Agreement for Skilling Australia's Workforce, the Australian Government requires States and Territories over the life of the Agreement to increase participation of Indigenous Australians at higher qualification levels, specifically at Certificate III and above, and also to create additional training places in regional and remote locations for Indigenous Australians. Additional training places for Indigenous Australians will also be available through the Joint Indigenous Funding Pool which has been established to improve outcomes for Indigenous Australians. The Commonwealth–State Agreement for Skilling Australia's Workforce requires that States and Territories match the Australian Government's contribution to the Joint Indigenous Funding Pool which will result in approximately \$23 million over 2006–2008 for Indigenous training.

The National Training Information Service shows three qualifications, a number of courses and a large number of units of competency in specific training packages that deal with legal issues. The Community Services competency standard has a number of units that could be used to train community support workers in paralegal work (ie 'working within a legal and ethical framework' and 'operating in a legal context'). There are also legal units of competency in the Health, Local Government, Financial Services, Business Services and Administration competency standards—all of which could be relevant to the work performed by the community support workers employed by the ATSILS and the FVPLSs.

Coordination of legal aid services to Indigenous Australians

Recommendation 11

That the Attorney-General raise the matter of Commonwealth and State/Territory funding for providers of services currently delivered by Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services with his state and territory counterparts with a view to gaining some level of state/territory contribution for these services.

Agreed.

The Attorney-General brought this recommendation to the attention of his state and territory counterparts in preparation for a meeting of the Standing Committee of Attorneys-General in Sydney on 4 November 2005. The Attorney-General will continue to encourage state/territory contribution for these services.

Recommendation 12

That the Attorney-General's Department, in consultation with National Legal Aid and the National Aboriginal and Torres Strait Islander Legal Services Secretariat, develop and require providers of services currently delivered by Aboriginal and Torres Strait Islander Legal Services (ATSILSs) to implement a memorandum of understanding between them and Legal Aid Commissions (LACs) that includes:

- *sharing each others duty solicitors;*
- *the provision of representation and advice by one organisation to the other's clients;*
- *the use of office space and facilities in ATSILSs by LAC solicitors for Indigenous clients when these clients are referred from ATSILSs to LACs;*
- *protocols requiring ATSILSs solicitors to introduce clients to LAC solicitors in the event that clients are referred from ATSILSs to LACs;*
- *access of ATSILSs solicitors to LAC technology, such as video-conferencing, in order to facilitate remote client contact;*
- *access of LAC solicitors to Aboriginal Field Officers employed with ATSILSs when required to communicate with clients;*
- *mutual sharing of vehicles for remote travel; and*
- *access of ATSILSs and LAC staff to in-house training programs run by the other organisation.*

Agreed.

These issues have been addressed through the new administrative arrangements for the provision of legal services to Indigenous Australians.

The terms of the requests for tender (those already released, and those yet to be released) and the contracts that have been entered into (in those states where tendering has been completed) include a standard for co-operation and relationships with other relevant service providers. These cover the cooperative arrangements between community legal service providers, listed in the recommendation.

Service providers are required to 'establish a sound working relationship with all other legal aid service providers operating in the same geographical area' through, for example, formal agreements making provision for (specified) arrangements.

Recommendation 13

That the Attorney-General's Department rationalise funding of Indigenous legal services by incorporating Indigenous Women's Projects, that are currently administered through mainstream Community Legal Centres, into the Family Violence Prevention Legal Services program.

Not agreed.

On 1 July 2004, four Indigenous law and justice programs previously administered by the Indigenous Law and Justice Branch of ATSIIS became the responsibility of the Attorney-General's Department.

To optimise the delivery of these programs, former ATSIIS staff were grouped together in the newly-created Indigenous Law and Justice Branch within the Department. The benefits of mainstreaming were maximised by locating this Branch within the same division as the Legal Assistance Branch. The Legal Assistance Branch is responsible for programs and policy relating to mainstream legal aid, financial assistance, community legal centres and the operation of the National Pro Bono Resource Centre.

These two branches now form the Indigenous Justice and Legal Assistance Division. Co-location creates many synergies and injects significant experience and a holistic perspective into the development and administration of Indigenous justice policies and programs. The Attorney-General's Department is well placed to harness mainstream law and justice services for the benefit of Indigenous Australians.

The Indigenous Women's Projects were established to provide broadly based legal aid and community support to women in need. FVPLSs were established with very specific guidelines and goals. There is no obvious advantage to be had by subsuming one program within the other, apart from the administrative synergies that have already been achieved.

Tendering out of Aboriginal and Torres Strait Islander Legal Services

Recommendation 14

That in centralising providers of services that are currently delivered by Aboriginal and Torres Strait Islander Legal Services, the Attorney-General's Department ensures that these services establish and maintain governance mechanisms that allow representation of and responsiveness to the views of the communities in their service area.

Agreed in part.

This issue has been addressed through the new administrative arrangements for the provision of legal services to Indigenous Australians. Under those arrangements, service providers are required to provide culturally sensitive services. This inevitably requires engagement with the Indigenous community in order to meet its distinct needs and expectations.

Recommendation 15

That in awarding tender bids, the Attorney-General's Department ensure that the current levels of paralegal community legal workers employed by Aboriginal and Torres Strait Islander Legal Services is not diminished.

Agreed in part.

This issue has been addressed through the new administrative arrangements for the provision of legal services to Indigenous Australians. Although the hiring of staff is a matter for service providers, under the new arrangements those providers are required to meet the standards of accessibility and cultural sensitivity specified in the contract. Service providers must have documented policies and procedures in place and evidence of training that ensures staff are sufficiently aware of cultural sensitivities when dealing with local communities. Recruitment of new staff must be undertaken with regard to the importance of cultural understanding. Training at induction, and on an ongoing basis, is also stipulated.

Recommendation 16

That the Australian National Audit Office conduct a performance audit of those areas of the Attorney-General Department's responsible for funding of Family Violence Prevention Legal Services and Community Legal Centres with regard to the same matters covered in the Audit Report No. 13, 2003–2004.

This recommendation is a matter for the Australian National Audit Office.

The Office of Evaluation and Audit (OEA), within the Department of Finance and Administration, has completed an audit of the FVPLS program administered by the Attorney-General's Department.

Recommendation 17

That the Australian National Audit Office conduct a performance audit of the Indigenous Law and Justice Branch of the Attorney-General's Department at the mid way point of the tender contracts in each jurisdiction with a view to identifying difficulties and recommending improvements in administration and service delivery.

This recommendation is a matter for the Australian National Audit Office.

A reserve topic for 2006–07 in the OEA's evaluation and work program is an evaluation of the extent to which Indigenous legal aid providers are delivering

better outcomes for the Indigenous client communities and better value for money for the Government since the tenders were released.