Submission to the Joint Committee of Public Accounts and Audit

Indigenous Law and Justice Inquiry

Aboriginal and Torres Strait Islander Legal Services prefer the description: "Skilled, Specialist Service Provider" to "Separatist and apartheid"

From: The Victorian Aboriginal Legal Service Cooperative Limited and National Aboriginal and Torres Strait Islander Legal Services Secretariat

"How societies deal with 'otherness' and 'sameness' will impact on their ability to allow individuals freedom from oppression and enough scope for the exercise of liberty…The experience of Indigenous people, their tenacity in the face of racist and assimilationist policies, is testament to the fundamental and central role identity plays in our lives." **Larissa Behrendt**

ATSILS prefer the description "Skilled, Specialist Service Provider" to "separatist and apartheid"

What can this inquiry achieve?

VALS and NAILSS believes that if the tendering of Aboriginal and Torres Strait Islander Legal Services (ATSILS) proceeds that the scope for the Committee's Inquiry to have any impact on the delivery of and quality of services will be close to zero.

VALS has already written to the Chair of the Committee expressing this view and urging the amendment of the tender timeline to enable the Senate inquiry and this Inquiry to complete its work and for this work to be considered by the community and the Government.

Some of the matters raised in the Inquiry terms of reference have not been raised before in relation to ATSILS or mainstream legal services. This highlights the scarcity of policy development on legal aid and the additional scrutiny that faces Indigenous organizations. Some of the terms of reference are vital to being able to make informed decisions in the future and VALS and NAILSS welcomes the opportunity to address these issues.

This Inquiry can assess:

- the value and capacity that ATSILS represent
- the rationale and merit of tendering services
- the merit of policies which will stop ATSILS from doing prevention, education, policy analysis, law reform submissions and test cases.

This Inquiry will we hope, accept our proposal that an opportunity exists to build on the strengths of ATSILS, other Indigenous legal services and other legal aid providers to build a more effective service system that builds better justice outcomes. That opportunity would be easier to realize if political parties recognized the benefit of partnerships and an integrated approach in working with Indigenous organisations and communities.

VALS and NAILSS Approach in this submission

VALS and NAILSS will address the issues in the Inquiry first by making some general points about the policy and program context that we are operating in. Second, we will provide responses to the issues outlined in the Committee's terms of reference. We provide responses in the reverse order eg tendering first then issue d) staffing c) gender balance b) coordination and a) Civil, criminal and family case balance. Although all these issues are interconnected we believe this structure will minimize the need to repeat information as we are moving from big picture to smaller subsets of the issues using this approach.

General Comments

There is no valid policy, economic or practice basis for the proposed changes to ATSILS outlined in the Exposure Draft of a Request for Tender for the Purchase of Legal Services for Indigenous Australians. VALS and NAILSS do not believe that a case has been made for these dramatic changes to ATSILS nor do we believe a valid case can be made. We are concerned that in the current policy climate there is a great danger that the consideration of facts and evidence, indeed the real capacity and value of Indigenous legal services will be overlooked.

Reports provided by Government agencies, such as the Australian National Audit Office Review of Law and Justice Program provide some clear evidence that ATSILS are delivering valuable services on a shoe string.

The Review of the Law and Justice Program provides the following overview of ATSILS:

- Services provided have increased dramatically
- Funding has been static since 1991
- Demand has and is likely to increase
- Services require between $12.5 and $25 million extra
- They are the primary provider of legal services providing approximately 89% of all services. (Pg, 25-6,46 Australian National Audit Office, 2003)

ATSILS have been operating in a climate of uncertainty for the eight years following the 1996 Productivity Commission recommendation that ATSILS be mainstreamed. This uncertainty has become more debilitating since June 2003 when ATSIS was created. Since that date ATSILS have been on six monthly or less funding periods. To a program which is acknowledged to be under funded and have difficulty retaining staff the move to shorter funding periods is at best an example of careless and incompetent program management and at worst part of an agenda of destroying Indigenous organizations.

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC 1996) recommended simplification of funding accountability requirements and three year funding. This did not occur. Instead Organisations have been subject to:

- continual uncertainty about funding
- ongoing evaluations and reviews
- erratic policy changes
- a decline in funding levels
- increased demand
- expanding population numbers
- Continued expansion of the prison population and high over representation rates of indigenous people
- poor or non existent support from ATSIS and
- an increasingly hostile policy environment for Aboriginal organisations.

The Exposure Draft announced in March 2004 revealed that the default policy setting was to mainstream ATSILS. A policy of keeping ATSILS constantly on their toes has been replaced by one premised on cutting services off at the knees.

ATSILS in Action

Last week we had a case where the Field Officer gave evidence about customary law in a case. The magistrate said the he would probably have recommended a prison term but the information from the Field Officer convinced him that there was a more appropriate alternative. ***Mt Isa Aboriginal and Torres Strait Islander Corporation for Legal Aid***

Critical Assessment of Government self determination policy two years ago prophetic

The 2002 Social Justice Commission Report reported on the Government's approach to Aboriginal self determination-raising the question: is the governments approach a stylistic or language change or something more substantive. The Commissioner concludes that the Government's approach is far more substantive than semantics. He then lists five main concerns:
"..the Government's reliance upon inflammatory, provocative untruths to reject Indigenous self determination…..
..the failure or perhaps refusal of the Government to accept that any consequences flow from recognizing the unique, distinct status of Indigenous peoples in this country….
..no underlying basis, no guiding principles, for relations between governments and Indigenous peoples…..
…..the Government's current framework is oppositional in its approach and sets up Indigenous people as competitors of Government…it is a strange almost paranoiac view of partnership…..
…no general acceptance by the Government of the legitimacy of Indigenous peoples being the primary decision makers on matters that effect their daily lives….(Pg47-52 Human Rights and Equal Opportunity Commission ATSI Commissioner, 2002)

Since that report, the proposed tender of ATSILS, the unilateral abolition of ATSIC and the mainstreaming of services, indicate that the Social Justice Commissioner's concerns were well founded. The labelling of Indigenous specific services as a form of apartheid indicates how far Government's respect for Indigenous organisations has deteriorated. The logic of this enthusiasm for mainstreaming if extended to other groups would see the abolition of multicultural organizations funding, women's policy, veteran affairs and youth services to name but a few.

Royal Commission into Aboriginal Deaths in Custody progress has been undermined by other big picture policies

There are some useful reforms occurring as a result of State Governments working with Indigenous communities to implement "Royal Commission" recommendations. However there have been other trends at a State and Commonwealth level which in many cases have undermined the progress made. Since the release of the Royal Commission recommendations there has been a national increase in the number of prisoners. This has affected all States but Queensland was one of the worst affected states.

ATSILS in Action

ALS provides a bus for Aboriginal youths to get home at night. Businesses in town were so impressed they have donated walkie-talkies. They are gradually lowering crime rates, getting kids off the streets, run programs to encourage kids to go home, not hang around the street. The local Magistrate is very concerned about what will happen if there is no ALS, as they are the only service that turns up for call-overs, Legal Aid often calls for help of the ALS solicitor to attend their clients too, emergency field officers – agreement with police to contact ALS re people in custody, legal Aid not available after hours, ALS available 24 hours**. *South East Queensland Aboriginal Corporation for Legal Services – Toowoomba, Qld 2004.***

Facing a potential trebling of their prison population in a decade the Queensland Government commissioned some research in 1998.The research by the Criminal Justice Commission identified a series of factors which had contributed to the increase. Interestingly higher crime rates were not a significant cause.

"The increase in prisoner numbers since 1993 cannot be explained on the basis of pre-1993 trends and exceeds anything that might be explained by population growth".

"These data graphically demonstrate the extent to which the rise in prisoner numbers is a system-wide issue. The increase in convictions resulting in imprisonment points to the impact of police activities and court practices. The increase in the number of prisoners on hand over the rate of admissions points to the potential role of correctional practices. Importantly, all these factors are framed by the broader legislative and regulatory context determined by the Queensland Parliament". (Criminal Justice Commission, 2000 , p. xi)

"The post-1993 increase in prisoner numbers is largely a result of the uncoordinated operational agenda of the key justice system agencies. Any substantial change in the size of the prisoner population, therefore, will require a whole-of-government commitment to major policy changes across the broader criminal justice system". (Criminal Justice Commission ,2000 p. xiv)

Professor Arie Frieberg who has conducted a review of sentencing for the Victorian Government has attributed the increase in prison numbers across Australia largely to a shift to more punitive attitudes to prisoners and a reduction in rehabilitative programs and policies. "As society turns from rehabilitative and deterrent notions to punitive and preventive ones, prison sentences may become fewer, but considerably longer. Notions of selective and collective incapacitation may replace the moral and ethical grounds for punishment. Unfortunately, the empirical basis of these incapacitative strategies has yet to be established."(Pg 14, Frieberg, 1999)

Frieberg in his review of Victorian sentencing highlights that sentencing rates are increasing ahead of crime rates. "In Australia, as possibly elsewhere, there is little evidence that increasing imprisonment rates have significantly affected crime rates. Victoria's crime rate over the last decade, which has shown small annual increases for the most part, appears to be unrelated to the numbers in prisons. Victoria's prison population has grown from 2,250 in 1992 to 3,464 in November 2001, of which 2,890 were sentenced prisoners." (Pg 41 Frieberg 2002)

Nevertheless there has been significant media and state government attention on being "tough" on crime. This has often meant higher minimum sentences, new laws, limits on judicial discretion and building more prisons. This is an expensive way to mislead the public into thinking something constructive is being done about the problem. The dominance of tougher sentencing policies has meant that the over representation rate of Indigenous people has continued to be unacceptably high, around 14 times the non Indigenous rate and the total number of Indigenous prisoners has skyrocketed. Tough sentencing policies have largely been pursued at the expense of smart sentencing. The public and in many cases the government have not been made aware of the costs and ineffectiveness of increasingly punitive sentencing policies. In 1991 Indigenous people constituted 13% of the prison

population, since 1999 the proportion has been approximately 20%. (Human Rights and Equal Opportunity Commission ,2004)

The recent Indigenous Justice discussion paper from the Commonwealth Attorney General's Department continues to ignore the criminological facts when it talks about sentencing. It states that the need to reduce imprisonment rates and sentence lengths has to be balanced against the need to protect the community. While media stories about "light sentences and "early release" may support this false dichotomy the criminology evidence is that heavier sentencing is not a solution to community safety fears or an effective way to reduce crime rates.

There is a pressing need to put evidence before the public to dissuade people from pursing more punitive sentencing in the mistaken belief that it is a solution. It is in fact part of the problem. While some politicians have made political capital out of this ignorance there is a need to contest and inform the community about the real causes of crime and an appropriate mix of responses. Public opinion which in many cases is not well informed on this issue needs to be better informed. It is unacceptable to walk away from the issue and say, "Oh well the public wants us to be tough on crime."

According to Frieberg, "Public confidence is best addressed by improving the public's knowledge of the system and making the process more transparent. Research into public opinion and sentencing consistently finds that the more information that is provided to respondents the less punitive are their responses, especially when the polling takes the form of sentencing vignettes or simulated sentencing exercises." (Pg 42, Frieberg 2002)

In the past societies believed that the earth was flat, that women should not vote and that witches should be burnt but we have moved beyond these understandings and that needs to be the objective in relation to sentencing policies.

Practical Reconciliation

Apart from sentencing the emphasis on practical reconciliation has also had some unfortunate effects on the capacity to deal with justice issues. Altman and Hunter(2003) monitor the impact of "practical" reconciliation by reviewing changes in the socioeconomic status of Indigenous Australians during the decade 1991-2001, a period that closely matches the 'reconciliation decade'. The authors state, "It is of particular concern that some of the relative gains made between 1991 and 1996 appear to have been offset by the relatively poor performance of Indigenous outcomes between 1996 and 2001." (pg v ,2003).

ATSILS in Action

Field Officers actually represent clients in court, they are all Indigenous people, they also interface between clients and non-Indigenous staff, eg, in Family Law matters they liaise with non-Indigenous staff to make sure they are aware of indigenous issues, heavily involved in law reform (eg, parental responsibilities and family relationships, re grandparents), train Child Support Agency staff on Indigenous issues, sit on Family Law Practitioners Association Law Reform Committee. ***Aboriginal Legal Service of Western Australia 2004.***

The review also highlights limitations in the idea of 'practical' reconciliation such as:

- Advocates of practical reconciliation often ignore the fact that physical and psycho-emotional needs must be satisfied simultaneously.
- Practical reconciliation fails to recognise that many of its practical outcomes are driven by social, cultural and spiritual needs.
- The current policy agenda ignores the interdependencies between many of the dimensions of Indigenous disadvantage, particularly how social and historical factors can influence contemporary Indigenous practical outcomes.

Indigenous lawyer and academic Larissa Behrendt has argued that practical reconciliation should not be seen as a replacement for a rights focus. Instead she argues that practical reconciliation will fail if it is not linked to a rights framework. "Practical reconciliation does not attack the systemic and institutionalized aspects of impediments to socio-economic development." (pg 11,2003)

Positive Policies

The COAG regional pilot projects aimed at improved whole of government approaches to more effective indigenous service provision and planning are one of the last remaining Commonwealth Government initiatives which recognises a sense of partnership and valuing of Indigenous input and participation.

The proposed tender of ATSILS

Summary responses to the questions put by the Committee

Q. Do you think there was sufficient consultation in the development of the tender conditions?

A. No. There was no consultation with anyone to our knowledge. The ANAO report No 13 recommended that such consultation should occur. We have asked ATSIS but received no reply as to whether there was a cost benefit analysis of the changes.

Q. Are the policy directions accompanying the tender an improvement over the old ATSILS policy framework?

A. No. The policies devalue Indigenous participation and control, limit core services to reactive case work and proscribe advocacy, law reform and prevention programs. The policies delete important priorities such as "where cultural and personal well being is at risk" or "public interest cases".

Q. What will be the impact of tendering particularly in remote areas?

A. The services will cost more to run as a result of means testing and the tendering regime. The role of ATSILS will become narrower than any other legal aid provider. Their capacity

to be proactive or contribute to systemic improvements will be removed. Hence services will become less effective and less attractive to Indigenous clients.

In states with multiple ATSILS there is likely to be loss of social capital and organizational capacity as result of forced amalgamations or totally new providers. In states with an existing provider there is likely to be either total loss of social capital and organizational capacity if there is a new provider or partial loss and increased fragmentation if there are several providers funded.

Overview of Issues about the proposed tender of ATSILS

VALS with the support of law firm Arnold Bloch Leibler made a detailed submission to ATSIS on the limitations of the Exposure Draft Purchasing Arrangements in relation to ATSILS. This is included as an attachment. There are three parts to our comments in this section in relation to the tender:

- An outline of the tasks of Indigenous Field Officers which are essential to effective ATSILS
- A section which highlights prevention, policy and law reform activities of ATSILS
- A section which discusses the rationale for the tender and some key issues with it.

Windows on the vital role of Field Officers (Client Service Officers in Victoria) and the work they undertake within ATSILS.

Under the proposed tender, Field Officers and their roles are virtually overlooked. There is no requirement to employ any Indigenous staff. This section will include details about the work of Field Officers which can provide a picture of the realities of the work they undertake at ground level.

If a Koorie person chooses not to use VALS and instead uses a mainstream law firm or Victoria legal aid, the staff of that law firm will often utilize the expertise of VALS Field Officers …these services recognise the important role Field Officers can play in assisting Koorie people with legal problems. ***VALS Clients Service Officer (Field Officer)***

VALS Client Service Officer (Field Officer)

Field Officers, or Client Service Officers as they are titled in Victoria, hold a role that is part para legal, part welfare/social worker part ambassador or advocate and part mentor and coach. Field Officer roles vary slightly from area to area but they essentially bridge the gap between the white legal system and the Indigenous person's experience and culture.

Below are some examples from Victoria and other States of the work Field officers do. These examples illustrate far better than policy and statistics the reality of the work that is done and is needed to ensure justice for Indigenous Australians.

Field Officers:

- **Are in Touch with Aboriginal and mainstream organisations** - VALS Client Service Officers (CSO) are closely connected with key Aboriginal organizations and service providers in the area. These include: the Regional Aboriginal Justice Advisory Committee, The Child Care Service (a child protection service), the Aboriginal

Cooperatives, the Community Justice Panels, Koori Community Trusts, mainstream legal services and youth services, the Sheriffs Office, police and corrections staff.

- **Meet demands for assistance 24:7 -** Mainstream and alternative service providers are open from 9.00am to 5.00pm. In contrast, Field Officers take their jobs home with them as they are on call. When the mainstream and alternative service providers close for the day, the Field officers become drug and alcohol workers, social workers, housing worker, mental health workers etc. Field officers pick up the need for services after 5.00pm. This is significant as a lot of crimes occur after 5.00pm. Field Officers never stop, as they are on morning, afternoon and night shifts.

- **Interpreter, Mentor and Support:** If it were not for Field Officers, the Aboriginal community would be nowhere. Solicitors would also be lost without Field Officers. Field Officers are the most important link in the chain for legal service delivery. If this link disappears problems are certain to arise. Field Officers interview clients, gather information on clients, including background (ie: health problems, family structure, underlying issues and anything that will help in court etc).

"..***come with me to the police station to have your warrant executed, it will make it easier for you. "***

- Field Officers are called by the police about outstanding warrants to arrest. Field Officers make arrangements for the client to attend at the police station with the Field Officers to have the warrant executed. There are advantages attached to a person attending a police station on their own accord, such as being more likely to be re-bailed than a person who is required to be taken to the police station by police.

- **Visit clients in police cells -** Field Officers make arrangements for clients, such as taking a bankcard away and give it to spouse to take money out from the bank whilst the client is detained in custody;

"…keep your bail sheet on the fridge so that you will be reminded of your court date"

- **Have the trust of the Indigenous community**
  Field Officers break down what solicitors tell the clients (eg. jargon) and have the trust of the clients. When a solicitor is talking to a client, the client will often look to the Field Officers for support and to see what the Field Officer thinks about the situation. Indigenous people feel safer going to their own people.

- Arrange for the client and solicitor to talk;

- Sit in on interviews;

- Provide an extra source of support within the court room;

- Follow up clients if they do not turn up to court

- After the court case, inquire as to how the client thought the proceedings went;

- Tell clients of their options in recognition of the fact that many clients will not read pamphlets and dispense information where appropriate;

- Help people who have had a traumatic experience to open up, such as adolescents;

- Reinforce what solicitor tells client;

- Organise travel for clients who have court matters in other areas;

- Give character evidence on behalf of clients when able;

- Organise accommodation for Indigenous people who are arrested whilst passing through the area;

- Field Officers steer clients in the right direction and refer them on to other agencies. For instance, helping clients fill out Crimes Compensation forms;

- Be of assistance to police in domestic violence situations.

- **Are exposed to needs for law reform** - Field Officers observe how the law works in practice on Indigenous people and are in a position to tell the relevant authorities of any problems they come across. Field Officers speak to the VALS CEO, solicitors and research staff about potential law reform issues after reflecting on everyday experiences;

- **Education and Prevention** - Help involve Aboriginal people in preventative educational measures, such as those listed below.

- Have talks with Magistrates;

- Distribute educational information;

ATSILS in Action

All Field Officers are trained through the National Indigenous Legal Advocacy (NILA) course or its predecessor the National Indigenous Legal Studies course. NILA is the only nationally accredited program for the training of Field Officers. They operate a return home scheme in conjunction with Correctional Services, instigated courts to run District Court sentencing in Cape Community, provide educational programs, re legal rights and provide mentors for juveniles. ***Tharpuntoo, Cape York Legal Service Aboriginal Corporation 2004.***

- **Talk to police** - A police officer, in referring to a group of Aboriginal people congregated in a park, remarked that he hoped that they would not get into any trouble. The police officer lacked knowledge of why Aboriginal people congregate in public places (ie; housing issues, low income). When Field Officers talk to police

officers about beliefs such as that above, they continue and supplement the cultural training the officers receive before leaving the police force.

- Take part in cross cultural programs;

- Take adolescents to Melbourne to meet academics at the University of Melbourne to make them aware of possibilities open to them;

- Organise some camps as a preventative program for kids and police;

- Try to intervene before an arrest, such as Field Offices sometimes receive calls from police to assist a drunk before trouble starts;

- At Koorie Open Door Education (KODE) schools, a Field Officer is called to respond to incidents before the police are called, which is a sign of respect for the role of Field Officers;

- Assist in obtaining Community Based Work orders for clients that have been handed down by Magistrates and Judges.

The list of activities performed by Field Officers highlights the importance of their role and some of the needs that ATSILS clients have. The failure of the Exposure Draft to ensure that there are Indigenous staff to perform roles that meet the needs of Indigenous Australians, and the clear intention to encourage mainstreaming of legal services, underlines the threat to service effectiveness that the tender proposal represents.

ATSILS in action

We have daily incidents that may seem very minor to someone like Government where our Field Officers are called upon by the solicitor at court to 'gain' the confidence and faith of a client – particularly someone older or shy or first time offender or someone who is just paranoid of the system. ***Many Rivers Aboriginal Legal Service 2004.***

The Vital Role of Prevention and Proactive System Improvement which are dismissed in the proposed tender

"Those who are often treated as outsiders or even as threats to the dominant culture can actually deliver a great gift to the dominant culture; they can provide different values, different perspectives and therefore different starting points from which to consider concepts such as equality, fairness and democracy. They can also provide alternative starting points for institutional change. Indigenous people, as perennial outsiders, can offer Australians a different perspective on their institutions". **Larissa Behrendt**

The proposed tender no longer includes prevention, education, diversion, policy analysis, law reform or test case work as core services. This work is a function of Legal Aid Commissions and Community Legal Centres and it is not clear why ATSILS should have this function taken away. Below are some examples of this work from Northern Territory, NSW and Victoria.

Victorian Aboriginal Legal Service - Policy, Law Reform and Networking

- In the last six months VALS:
- research about improving diversion for young people has resulted in approval for pilot projects in two areas
- submission to the Victorian Law Reform Commission about changes to the Bail Act has led to draft legislation which will enable circumstances of Indigenous people to considered more fully
- continues to coordinate the quarterly Indigenous Womens Justice Forums
- obtained agreement in a protocol (about new Chroming laws) that police would notify VALS when they had to take a young person who had been chroming to a police station
- has negotiated a Memorandum of Understanding with the Equal Opportunity Commission
- has made a submission about proposed changes to regulation of Gas and Electricity utilities which will threaten the safety and wellbeing of disadvantaged consumers.
- has made a submission to the Law Reform Commission on Defences to Homicide
- has made a submission about a review to Child Protection policies
- continues to participate in Corrections Stakeholder meetings, steering Committee on Systemic racism research, Juvenile Justice Ministerial Round Table meetings, Department of Justice Aboriginal Justice Forum meetings, metropolitan and five Regional Aboriginal Justice Advisory Committees, Victoria Police Aboriginal Policy Reference Group meetings, Department of Human Services Consultation about Child Protection, Victoria Legal Aid Community Consultative Committee and the Federation of Community Legal Centres.

An Example from the Western Aboriginal Legal Service
Dubbo, New South Wales

In 2003 a petition spear headed by a local radio performer was signed by 11,000 concerned citizens. The petition sought to introduce a curfew for young people on the street at night in Dubbo. This led to an acrimonious debate about whether young people should be locked up or looked after. The Western Aboriginal Legal Service worked with other Indigenous and non Indigenous groups to set up a youth forum to help consult with young people and identify solutions. The service has now linked in with Juvenile Justice staff, the Legal Aid staff and Community Legal Centre staff to develop a Legal Awareness program to inform young people about their rights and obligations. This program will be run in schools and also be provided to young people who are not at school.

An Example from Northern Australian Aboriginal Legal Aid Service (NALAS)
Darwin, Northern Territory

- *Input on law reform and law related issues* – this has been another area where input by dedicated specialists has provided outstanding results. NAALAS is fully engaged in pursuing the rights of Aboriginal people through law and policy reform. This year we have participated in a number of fora including:
- Working Party to review the Anti Discrimination
- Aboriginal Customary Law Inquiry
- Itinerants Working Party
- NT Indigenous Justice Agreement
- Reintegration After Prison Reference Group
- Prison Court Appearances Working Group
- Darwin Regional Crime Prevention Council and Steering Committee

Further as a member of the Aboriginal Justice Advocacy Committee (AJAC) we led the fight to successfully overturn the Mandatory Sentencing legislation. Most recently we have played a major role in the current moves to develop circle sentencing ('Koori Court') in the NT and other alternatives to the way courts do business. NALAS (2004)

If the proposed new ATSIS tendering policies go ahead **none** of these sorts of initiatives will be done by ATSILS in the future.

The Rationale for the Tender and its Scope

The last time ATSIC enforced a tender regime it was in NSW in 1996. ATSIC decided that there should be eight Services Providers and they would be Indigenous controlled. Due to lack of appropriate bids there were six Services Providers contracted to provide legal services in their respective regions. . Eight years later, the new plan is that Indigenous control is irrelevant and that there should be one Service Provider per state. (but more than one Service would be considered.)The fact that ATSIS policy can vary so dramatically in a relatively short period highlights the shifting sands of ATSIS policy, and a lack of adequate research and consultation that underlies these two proposals .

Minister Vanstone has stated in a radio interview that the tender proposal is about getting value for money. The Office of Evaluation and Audit Report of 2003 indicated that the Government was already receiving excellent value for money. The report's costings indicated that ATSILS were on average 60% cheaper than Legal Aid Commissions.(OEA,2003)

The Minister also said that there are some well performing Services who can expect to be funded and some poor performing Services that will not. This implies that the tender specifications are not the main selection criteria that will be used to select the new ATSILS but provider's track record will be the key. It also indicates that the Government has been ineffective at ensuring Services are operating effectively. VALS and NAILSS are not aware that there has been any evidence provided for these assessments of 'performers' and 'non performers'. VALS and NAILSS are not aware that ATSILS have been told where they stand on the performance ladder or the criteria used for this assessment.

Minister Vanstone in an answer to a question about an ongoing fraud inquiry involving an indigenous person included a reference to the tendering of ATSILS implying that it was a solution to a problem affecting ATSILS. This link by the Minister was quoted in the ABC

"7.30 Report" about the proposed tender. There is no basis for making this link. The ANAO review of the administration of the Law and Justice Program had a long list of criticisms of ATSIS program management but it was positive about financial management in relation to ATSILS. VALS and NAILSS do not believe it is valid or fair for the Minister to imply that ATSILS are not adequately financially managed.

The proposed tender is about much more than value for money. The tender proposes cultural accessibility criteria which are so minimalist they can only have been designed to encourage mainstream providers. The tender specifications restrict the range of core services and tries to lock ATSILS into a much narrower role. The introduction of a means test will be an administrative burden which will not be cost effective. ATSIS know this already as a result of piloting such a scheme (Keys Young 2001).

There are four types of Legal Aid Provider: the ATSILS, private law firms, Legal Aid Commissions and Community Legal Centres. ATSILS are the only ones being subject to tendering.

The proposed tender has put child welfare and personal safety as case priorities ahead of crime. Previous priority areas were not listed in priority order. More Child welfare and personal safety matters mean that there will be more cases where there is a conflict of interest. By mainstreaming ATSILS the government will be reducing the choice of providers at the very time they are proposing casework priorities which will require maintenance of a range of providers.

The Review of the tendering of NSW ATSILS (OEA,1999) recommended against any watering down of the Cultural Accessibility standards. The Office of Evaluation and Audit had no doubts about the limitations of tendering ATSILS.
In implementing its present contestability policy, ATSIC should be cognizant of the demonstrated and unwarranted costs of using services of other than non-profit legal providers. Recommendation 9 OEA (ATSIC) 2003

The ATSIS policy on contestability until March 2004 was to use tendering as a last resort for non performing services and that tenders should be to Indigenous organisations. These and other policies have been mysteriously ignored and replaced.

There has been no consultation with ATSILS or other stakeholders about the changes to contestability, core services, priorities and operating procedures. There appears to be no account taken of widespread concern and extensive critiques of the effectiveness of tendering.

Competition policy does not claim that all groups will be better off. It claims that there will be long term gains to the whole economy which will mean the pain of some groups will be outweighed by the gains of the majority. The estimate of the benefit of competition policy to the Australian economy over ten years was 23 billion dollars or a 5.46% gain according to proponents of the policy. Ranald and Thorowgood (Public Interest Advocacy Centre) quote Economist John Quigan who criticises the National Competition Policy figures. He claims that they have failed to consider the costs and exaggerated the scale of the benefits. He estimates that the benefits are more likely to be in the vicinity of $2 billion or 0.48% of GDP.

If there is benefit then it is likely to be far lower than first estimated and those benefits do not necessarily flow evenly to all groups or flow to some groups at all.

The Competition Principles Agreement contains a list of matters which governments may take into account "where relevant when assessing costs and benefits in relation to all aspects of National Competition policy." These include:

- Social welfare and equity considerations, including community service obligations
- The interests of consumers or classes of consumers

The Senate Inquiry into Competition policy raised questions about the appropriateness of extending competition policy to areas of social welfare provision. The Public interest test should be applied when considering whether to tender Aboriginal Legal Services. There is ample evidence that the services are poorly funded and working with disadvantaged communities. There is also evidence from the Office of Evaluation and Audit (ATSIC 2003) report that supports this and argues that competitive tendering will not lead to benefit.

In the UK a study of mainstream legal service providers which sought to compare the quality, cost and access of legal and non legal service providers was conducted by Richard Moorhead (2001, pg 276). Moorhead concludes "As a result the assumption that value for money will be enhanced by competition is questionable, or at least competition has to be carefully restrained and structured if it is to promote value for money in legal services.

If there is this level of uncertainty about how to use competition policy in relation to mainstream legal services how much more uncertainty must there be about applying the policy to Aboriginal Legal Services the most disadvantaged legal aid providers in this country.

Victoria which embraced tendering during the mid nineties has pulled back in significant areas. Local Government no longer has to tender out 50% or more of services The State has introduced a policy called Best Value which provides a form of annual audit of services. In the area of prisons where private providers were the big winners of new contracts in Victoria the new focus is on greater cooperation between providers. The conclusion reached was that in a mixed system there were benefits in trying to achieve more cooperation in pursuit of achieving more consistent and higher standards. Ironically the new head of Corrections driving this policy used to manage a private prison.

In the ABC 7.30 Report on the proposed tender of ATSILS it was reported that no state governments, no Legal Aid providers and no Directors of Public prosecution had been consulted about the proposed tender. The ANAO (2003) report recommended that consultation with existing providers, stakeholders and potential providers needed to occur prior to moving to tender. ATSIS ignored this advice.

The ability of Law and Justice Program components to recruit and retain expert staff. (Indigenous Law and Justice Inquiry term of reference d)

Summary

Q .Are Indigenous legal aid workers overworked, under resourced or under paid.
A. Yes
Q. If so how does it affect their ability to serve the Indigenous community?
A. It means that the time available per matter is very restricted and it means that there is a high level of staff turnover.

Q. If the legal aid services are losing people what can be done to keep them?
A. Salaries comparable to what staff of Legal Aid Commissions are receiving, Salary structures comparable to LACs, improved infra structure and staff involvement in strategic planning and work load monitoring.
Q. What changes would enable legal aid staff to better help their clients
A. See answer above plus: improved staff training and education.

The Office of Evaluation and Audit (2003) report about the Legal and Preventative Services Program makes it clear that staff recruitment and retention is a major challenge for ATSILS. The ANAO (2003) report makes it clear why this is the case. A summary of characteristics they identify was listed above but deserves repeating.

The Review of the Law and Justice Program provides the following overview of ATSILS:

- Services provided have increased dramatically
- Funding has been static since 1991
- Demand has and is likely to increase
- Services require between $12.5 million and $25 million extra
- They are the primary provider of legal services providing approximately 89% of all services. (Australian National Audit Office, 2003)

Experienced private practitioners who do a lot of Legal Aid work have become less common and "juniorisation" has been increasing.(Pg. 39 Law Council of Australia 2004) These people are usually at the very bottom of the income scale in private practice terms. Salary levels in Legal Aid Commissions are generally below this. Community Legal Centres are generally below this. With very few exceptions ATSILS would be at or below the level of Community Legal Centres staff in terms of pay level.

The work often involves considerable travel and clients often have multiple legal problems and a range of disadvantages which make contacting and getting instructions and making a defence challenging.

ATSILS in Action

Earlier this year, a regional Client Service Officer was dealing with another matter when a client attempted to hang himself in a police cell. It was more good luck rather than good management that the client is alive today. The CSO attended the police station soon after the incident. The presence of the CSO meant that the incident could not be swept under the carpet. VALS has written to Police and the Department of Justice seeking policy and training improvements. ***VALS 2004.***

Access for Indigenous women to Indigenous Specific Legal Services.
(Indigenous Law and Justice Inquiry term of reference c)

Q. Do you feel your organisation is able to provide adequate legal services to Indigenous Women?
A. Yes given existing resources and policies.
Q. What are the main obstacles which prevent your organisation from helping Indigenous women?

A. Lack of ATSILS funding, Lack of Legal Aid funding more generally Commonwealth Government practice of funding mainstream or non ATSILS Indigenous providers to reach Indigenous women has made an integrated community approach to some problems more difficult, belief by some members of the community that ATSILS won't assist women.
Q. What do you think are the most pressing legal issues confronting Indigenous women?
A. Knowledge about how the legal system works and how to utilize it, better access to education and employment, access to criminal, civil and family law advice, referral and case work
Q. What would enable your organisation to help Indigenous women more effectively?
A. More money. Policy that aimed to increase the capacity of ATSILS to do prevention work and civil and family law.

This term of reference is closely linked to the issue of what mix of work ATSILS do. ATSILS across Australia vary in some respects in the exact number and type of case undertaken. The common fact is that the majority of cases are criminal and the proportion of criminal matters for males is around 75%. However the number of female offenders has been increasing as has the number of women in prison. The one strike and you are out proposal in relation to repeat violence offenders in the draft tender would not dramatically change the percentage of male to female offenders dealt with. VALS figures indicate that it would effect similar percentages of male and female offenders. The reality is that unless you radically cut back the amount of criminal cases conducted and do family and civil the percentage of male clients will be considerably higher than female. Criminal cases on average take much less time than civil and family cases and there is a much larger number of these cases than civil and family cases. As long as ATSILS have a significant proportion of criminal cases their case numbers are going to be skewed to servicing male clients.

However the number of cases is not the only indicator that should be considered in relation to male female balance. The average time per civil and family case is considerably higher than that spent on criminal matters. Women are more likely to seek assistance in these matters than in criminal matters. A break down of lawyer time across all case matters will indicate a higher proportion of time provided to women than will the less sophisticated indicator of percentage of all cases. The figures below highlight this.

26% of VALS criminal law matters are for female clients. Over 50% of the civil and family clients are female. As criminal matters are far more common than civil and family cases this means 27% of all cases are for women. However due to the higher time required to do civil and family matters over 37% of lawyer time is allocated to female clients.

VALS recognizes the need to improve access to services by Indigenous women. After initiating a quarterly Indigenous Women's Justice Forum VALS was successful in obtaining funds for an Indigenous Women's Forum Project Support worker. VALS for several years sought funds to establish a Women's Annex with a separate legal practice and premises but infrastructure support from VALS. This was based on the model used in Kempsey. These submissions were unsuccessful. Subsequently a stand alone service to cover the whole state was established. No other Indigenous Family Violence Prevention Service uses this model. There was no consultation with VALS about the development of the Indigenous Family Violence Prevention Service.

It is interesting that ATSIS are convinced that there are significant savings in forcing ATSILS services to amalgamate particularly in Queensland whilst at the same time refusing to

consider the potential for any collaboration or infrastructure savings between Family violence prevention services or between those services and ATSILS.

The Commonwealth Government over the last eight years has opted to meet Indigenous women's legal needs by providing:
a) new funds to mainstream services eg Women's Community Legal Centres were funded to provide Indigenous Women's services and
b) Indigenous Family Violence Prevention Services were funded.

There are clear arguments for a stand alone service to meet the needs of women as some women will see ATSILS as mens services and in some cases there will be conflicts of interest. If the Commonwealth were serious about Indigenous community legal needs they would have also increased funds to ATSILS to expand their civil law and family law capacity. Family law matters can often involve child protection and family violence issues but they are not labelled that way on a statistics sheet.

The Office of Evaluation and Audit report (Pg 111,OEA, 2003) stated that there was more unmet need for civil and family law than family violence services but this was rejected by ATSIS with no explanation in their response to the report.

In the last budget the Government announced that the Indigenous family Violence Prevention Services program would receive a 100% increase eg there would be double the number of services. We are not aware of whether this is the best way to expand the program or whether there has been any discussion with existing services about how best to utilize new money.

When the Indigenous Women's Legal Service ceased operation some years ago. Victoria Legal Aid invited VALS to apply but later informed us that the Commonwealth Government would not allow VALS to receive the funds as the funds were to provide an alternative to Aboriginal Legal services.

Family violence is a serious problem but it is not always a problem that women wish to use the criminal justice system to remedy. In relation to Family Violence matters VALS believes there is a tension between getting tough on Family Violence matters and getting smart. This tension is particularly difficult for Indigenous communities. The Victorian Indigenous Family Violence Strategy advocates a community strengthening approach rather than one based primarily on a criminal justice approach. Another direction in Victoria and some other areas is to emphasise police being more pro prosecution and pro arrest. In the first instance obtaining interim orders to stop Family Violence is not technically difficult. However as the process involves dealing with police and courts for many Indigenous people this is a difficulty.

Many women who want an intervention order are seeking short term safety not punishment and conviction of a partner. The more the system moves to a more punitive approach the less likely many Indigenous women will be to seek help. A balance needs to be made between ensuring support and assistance for women who want to see prosecution for an assault and those women who want police assistance to deal with family violence as a safety issue. A policy approach that relies solely on legal casework provision will ignore prevention and community strengthening approaches. ATSILS, Family Violence Prevention Units and other Indigenous services need to work more closely on the development of community awareness,

support services and community strengthening as well as more accessible legislation, policing and court processes.

The Department of Human Services Child Protection staff are often reported to advise Indigenous women who are subject to investigation where family violence is an issue that they should take out an Intervention order against their partner if they want to avoid further action by Child Protection. This is not necessarily an optimal form of intervention and may simply create unnecessary demand for criminal law and family law case work

Coordination of Aboriginal and Torres Strait Islander Legal Services with Legal Aid Commissions through measures such as memoranda of understanding. (Indigenous Law and Justice Inquiry term of reference b)

Summary

Q. How can mainstream legal aid services better help Indigenous people?

A. By continuing to respect and support the primary role that Indigenous organisations have in providing legal aid services to Indigenous people; continuing to communicate and where possible collaborate on policy, prevention and funding issues and by developing cultural awareness training for staff who play a complementary role in service provision.

Q. What kinds of measures have Indigenous legal aid services undertaken to improve cooperation with mainstream providers?

A. There are different arrangements in place in different states. In Victoria VALS has a Memorandum of Understanding with Victoria Legal Aid, legal aid is provided for barristers in higher court cases, assistance is provided with community legal education projects, secondment of a family law solicitor is continuing, Legal Aid regional office staff meetings with VALS staff as an in service and support to advocate against the proposed tender. VALS is a member of the Federation of Community Legal centres and works collaboratively with other centres.

Q. How have the mainstream services responded?

A. See above

Q. What prevents Indigenous people from seeking the services of mainstream Legal Aid Commissions.

A. Most Indigenous people prefer to use an Indigenous service provider.

Q. What prevents Legal Aid Commissions from helping Indigenous Australians?

A. Legal Aid Commissions do help Indigenous Australians both directly and via assisting ATSILS. ATSIS appears to have the view that if a Legal Aid Commission in a particular state provides some additional level of assistance greater than in another state this is a basis for concluding the state Commonwealth can reduce their contribution. This ATSIS assumption is not only a disincentive to Legal Aid Commissions to fund any new initiatives it is a threat to the continuation of existing initiatives.

Q. How do community groups and Indigenous Legal Aid providers work together? How can they better help each other?

A. There is a range of ways that this occurs. If the narrowing of role and function proposed in the ATSILS tender goes ahead the scope for cooperative action will be reduced to almost nothing.

The Distribution of ATSILS resources among criminal, civil and family cases. (Indigenous Law and Justice Inquiry term of reference a)

Summary

Q. What needs to be done to ensure a fair distribution of Indigenous Legal Services
A. In geographic terms ATSIS should release for discussion the study which was done almost a year ago to provide a new funding formula; acknowledge that redistributing the existing funds is counter productive; acknowledge the primary role of ATSILS and oppose the restrictive and secondary role proposed in the tender document. Don't penalise States which receive assistance from Legal Aid Commissions as this is a disincentive for Commissions to provide assistance.

In terms of types of cases there should be sufficient funding to ensure that criminal civil and family law capacity exists in each state and that cooperation between ATSILS and Indigenous Family violence protection services is encouraged.
Q. Do you feel that certain types of cases are not receiving the attention they deserve?
A. All cases suffer from the level of funding available. Although there are some major problems with the OEA analysis of this issue there is some basis for arguing that civil and family law matters should receive increased funding.
Q .Do you feel that changes to funding priorities are needed?
A. No. The proposed tender priorities were a strait jacket. ATSILS Boards should have flexibility to ensure that an appropriate balance of all three cases is achieved. In the case of some smaller ATSILS this will be difficult to achieve and cooperative arrangements with other providers will be necessary.

Q. Have you been prevented from reaching and adequately serving clients by time and cost involved in travelling long distances.
A. The service budgets to ensure the clients can be assisted across the state. As mentioned previously the amount of time per client and the turnover of staff are factors which affect the adequacy of service. The priority given to criminal matters in ATSILS means that males will out number females in terms of number of cases conducted.. Resources devoted to civil and family matters are more likely to be utilised by women. However as the average time per case is higher with these cases there will still be significantly more male clients than female unless the number of criminal cases was cut dramatically. It is worth reflecting that in the area of mainstream Legal Aid the Commonwealth Government has resolved this question of civil versus criminal or family law by stating that Commonwealth Legal Aid dollars can only be spent on Commonwealth legal matters. This effectively means that the Commonwealth funds family law but not civil or criminal or family violence. This narrow approach by the Commonwealth Government has been and continues to be strongly criticised by other Legal Aid providers as inflexible and inequitable. The Commonwealth has not extended this unfortunate practice to Community Legal centres or ATSILS so far. It is problematic that the Commonwealth Government can achieve any real benefit from this level of intervention in priority setting.

ATSILS in Action

Teenager accused of stealing a mobile phone was assaulted by several police officers. The Ombudsman (Police Complaints) and the Victoria Police Ethical Standards Department dismissed the young man's complaint. After four years, VALS won a civil case against Police, the young man was awarded $66500. ***VALS May 2004. (If the tender goes ahead, this sort of case would not be undertaken)***

The only attempt to analyse the balance of different cases that we have seen is in the Evaluation of the Legal and Preventative Services Program OEA report (Pg 46-49, OEA 2003). It does an analysis of need based on a 1994 ABS Survey of Indigenous People. The OEA report argues that there is too little family and civil law, too much crime and about the right level of Family Violence work. The OEA report acknowledges that Family violence may be underreported. On the other hand that assessment was prior to the recent doubling of funds for Indigenous Family Violence Prevention. It is also not the case that all people reporting an incident of family violence would seek a criminal justice service to deal with it.

In relation to criminal matters there is also likely to be an under reporting of crime to the people doing the survey. The OEA analysis also neglects to distinguish between number of people requiring criminal law assistance and the number of separate matters that they require assistance with. Research published by VALS in 1998 indicated that although there were only approximately 2000 individuals assisted but there were over 3000 matters dealt with. The under reporting and the individuals who have been arrested on multiple occasions are likely to result in criminal law demand which is double that estimated by OEA.

It is likely that lack of familiarity with civil law and lack of confidence utilising the law will mean that surveys would also underestimate the need for this assistance. VALS believes for the reasons above that the OEA analysis almost certainly underestimates the level of need and the demand for criminal law however the analysis is probably also right about the need for higher levels of civil and family law assistance. Whether this need is expressed as demand in all jurisdictions is another matter. People being unaware or unconfident of the law and the process may result in needs not being expressed as demand.

The issue of an appropriate balance of cases is a complex issue. The smaller an ATSIL is, the more difficult it will be to cover all these bases all the time. That is not an argument against smaller services but a recognition that how to achieve a balance of cases is going to require some flexibility and some time to develop and will take effect differently in different states. A one size fits all approach will be costly and ineffective.

If the guidelines are too prescriptive state and regional differences in resources and services, and differences in supply and demand will not be accommodated and the move to providing a balance of services will be handicapped. There also needs to be some scope for the Board of an ATSILS to fine tune the balance between various priorities. Once again the issue of adequate and appropriate funding is a key factor.

Other Issues

Indigenous Population Increase

Over the last twelve years while funding has been shrinking in real terms the Indigenous population has been growing at a faster rate than the mainstream population. Between 1991 and 1996 the Indigenous Population grew by 33% while the Australian population grew by 6%..The Indigenous Victorian population has increased by 16.8% between the 1996 and 2001 Census. (From 21,465 to 25,061.)

"There were significant overall increases in Indigenous population in much of Victoria between 1996 and 2001. Most of the major increases were recorded in the large regional

Victorian population and employment centres. These gains were matched by outer and fringe metropolitan municipalities."(I.D. Consultants 2003)

The population increase in itself is an argument for increased funding of ATSILS. The youth of the population means there is a large number of young people (57% of the Victorian Indigenous population is under 25 compared to 34.3% of the total population). at an age when criminal offending is at it it's highest

Defunding the National Aboriginal and Torres Strait Islander Legal Services Secretariat, the peak ATSILS body

Defunding National Aboriginal and Torres Strait Islander Legal Service Secretariat, the peak ATSILS body, has several unfortunate consequences. It reducers the capacity of ATSILS to coordinate, consolidate and articulate the issues they have to deal with, it deprives Australia of a Non-Government National and International voice, it makes cooperation on policy, training and system development matters much more difficult. It also makes it very difficult to achieve cost savings by for example purchasing things such as Professional Indemnity Insurance. The ANAO report stated that purchasing group insurance was a possible way for services to save money. A tender approach to funding undermines the capacity to achieve savings from cooperative approaches. The approach taken by ATSIS to ATSILS is arrogant and dismissive and wasteful when compared to the Commonwealth Attorney-General's Department approach to Community Legal Centres. While it is far from perfect the Attorney General's department consults the Community Legal Centres peak body regularly in relation to policy development and policy implementation.

The peak body should be refunded as the work it can do will benefit the Indigenous Community, ATSILS other legal aid providers and the Government.

An Opportunity to build a better system of Legal Aid provision

ATSILS are the primary provider of Legal Aid services to Indigenous people. They are a vital part of the existing mixed system of legal aid provision which consists of four suppliers-the private profession, legal aid commissions, community legal centres and ATSILS. Changes to one part of the system often have flow on effects to the other providers. All Legal Aid providers are experiencing difficulty but ATSILS with static funding, increased and rapidly increasing population to serve and a widely dispersed and disadvantaged clientele face special challenges.

The existing ATSILS can and do leverage considerable resources and support via their links agreements and networks with main stream and Indigenous organisations. They have the capacity to aid crime prevention and crime prevention programs; they can and do assist the establishment of restorative justice approaches and alternatives to adversarial problem solving, they provide valuable links to drug and alcohol services and family violence services where they exist.; they help keep other parts of the legal aid system, the legal system and State and Commonwealth government departments in touch with the needs and views of Indigenous people. It is ironic that governments will spend large sums of money on consultants to write reports for them on the other hand they are willing to abolish ATSILS who have wide ranging knowledge about the law and legal system impact on Indigenous people. ATSILS in many cases provide this expertise in the course of a years work at a fraction of the cost.

The existing relationships between legal aid providers are professional, pragmatic and collaborative. ATSILS are a cost effective service. There is some level of shared commitment to delivering services and building a better system. The Commonwealth Government since 1996 has withdrawn from the partnership it had with the states in providing Legal Aid. If the Commonwealth proceeds to mainstream and privatise ATSILS this will have a negative effect on Indigenous people and create new pressures on other legal aid providers. It will be seen for many years as removing a valuable pillar in the Legal Aid structure. It is fanciful to imagine that privatising ATSILS will not have a range of damaging effects on the effectiveness of these services and the communities they serve.

If there are weaknesses or problems with ATSILS then these should be analysed with ATSILS and strategies for improvement developed and implemented. There is no basis for the radical scepticism that presently exists about the value and effectiveness of Aboriginal organisations. There is a huge resource in terms of the social capital that ATSILS enjoy; there is enormous capacity to do more if funding was improved to a sensible level and Government policy was long term and based on capacity building not capacity shedding.

References

Aboriginal and Torres Strait Islander Commissioner, 2002 *ATSIC Commissioner Report 2002* Human rights and Equal Opportunity Commission.

Allen Consulting, 1999, Tendering NSW Aboriginal Legal Services report (NSW report).

Australian National Audit Office, 2003 Report Number 13; Review of the Law and Justice program.

ATSIS, 2004, EDPA document: Purchasing Arrangements for Aboriginal and Torres Strait Legal Services.

Behrendt, Larissa 'Achieving Social Justice: Indigenous Rights and Australia's Future' (2003).

Commonwealth Grants Commission, 2001, Inquiry into Indigenous Funding.

Criminal Justice Commission: Research and Prevention Division (March 2000) 'Prisoner Numbers in Queensland: An examination of population trends in Queensland's Correctional Institutions', p. xi

Erosion of Legal Representation in the Australian Justice System (February 2004)

Fleming, D, 2001 *Australian Legal Aid Under the First Howard Government British* Columbia Law Review.

Frieberg, A, 1999 Explaining Increases in Imprisonment Rates. Paper delivered at Third National Outlook Symposium on Crime, Australian Institute of Criminology

Frieberg, A, 2002, Pathways to Justice Sentencing Review, Department of Justice, Victoria

Human Rights and Equal Opportunity Commission ,Submission to ATSIS, 2004.

Johnston, E 1991. National Report 5 Vols, Royal Commission into Aboriginal Deaths in Custody, AGPS.

Keys Young Consultants 'Improved Targeting of ATSILS' (1999)

Moorhouse, R, The Rise of Non Lawyers: Experience from England and Wales Lawyers, Non Lawyers and Professional Service in a Contested Domain

Office of Evaluation and Audit OEA (ATSIC)., 2003, Evaluation of the Legal and Preventative Services Program.

Ranald,P and Thorogood, 2001, Public Interest Advocacy Centre

Victorian Aboriginal Legal Service, 1998, Justice Gone Walkabout