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The Secretary
Joint Committee of Public Accounts and Audit
Parliament House
Canberra ACT 2600

11th June '04

Dear Secretary,

Re: Submission to the Indigenous Law and Justice Inquiry

National Legal Aid (NLA) thanks the committee for the opportunity to make a submission to the Indigenous Law and Justice Inquiry.

NLA is constituted by the Directors of each of the 8 State and Territory Legal Aid Commissions. NLA's vision is "a just society in which people have equitable access to appropriate means of meeting their legal needs".

General

NLA considers it axiomatic that community- controlled Indigenous Legal Services are the best placed to deliver effective and efficient law and justice services to Indigenous Australians.

The recommendations of the Royal Commission into Aboriginal Deaths in Custody emphasise the importance of legal services for indigenous people being community based:

Rec. 106 provides, inter alia, "that Aboriginal Legal Services recognise the need for maintaining close contact with the Aboriginal communities which they serve.."

and

Rec. 107 provides "that in order that Aboriginal Legal Services may maintain close contact with, and efficiently serve Aboriginal communities, weight should be attached to community wishes for autonomous regional services..."

Usage by indigenous people of indigenous legal services reflects that indigenous people believe that indigenous providers best meet their needs. This belief ought to be respected rather than ignored. NLA believes that Indigenous people are reluctant

for justifiable historical and cultural reasons to receive legal aid services about white man's law from organisations controlled by white people.

Terms of Reference

Please find attached a copy of NLA's response to the request by ATSI for comment on its "Exposure Draft of the Purchasing Arrangements, Legal Services Contract 2005-2007 for Legal Aid Services For Indigenous Australians". That response addresses matters relevant to the Terms of Reference of this Inquiry. Further to that response NLA provides the following information:

b) The coordination of Aboriginal and Torres Strait Islander Legal Services with Legal Aid Commissions through measures such as memoranda of understanding

NLA and the ATSI

Both NLA and indigenous legal services providers, including the ATSI, are represented at the Australian Legal Assistance Forum (ALAF). ALAF's primary objective is "to promote cooperation between service providers in the interests of clients to ensure that the legal needs of those clients are met with the best and most effective service available to address these individual needs." NLA and indigenous legal service providers work together through ALAF to address national issues in the provision of legal aid services.

Commissions and the ATSI

Aboriginal and Torres Strait Islander Legal Services (ATSI) have been established to provide legal assistance to Aborigines and Torres Strait Islanders. Indigenous people are able to approach Commissions for assistance should they wish. Most indigenous people however use the ATSI. This is because only indigenous legal service providers have the cultural awareness and community connections sought by indigenous clients.

Many of the indigenous people represented by Commissions come to the Commission because the local ATSI is unable to act, eg, by reason of conflict. If the ATSI are unable to act then they refer people to Commissions, or to private practitioners to make application for a grant of legal assistance from a Legal Aid Commission. This referral arrangement is common across the country and is the main area in which Commissions and ATSI relate. Co-ordination between Commissions and ATSI otherwise occurs around the country as is most appropriate on the basis of local need. This varies depending on population, location, type of legal need, manner of service provision and service capacity.

The Senate's Legal and Constitutional References Committee has recently released its report on its Inquiry into Legal Aid and Access to Justice. Amongst the recommendations that the Committee has made, and the submissions that were

provided to the Inquiry, are the common themes that current information about the level of need is inadequate, that research into this should be supported and that funding to the ATSILS should be increased. NLA's principal concern is that there is significant unmet need in the indigenous population but that the real extent of this cannot be ascertained until a thorough and independent needs study is conducted and that as part of that needs study, consultation and reporting on the views of all principal service providers should be conducted.

Mainstream legal aid services are better able to help Indigenous people by recognising that indigenous legal service providers are best placed to provide legal services to indigenous people and by supporting them in their call for increased funding on the basis of need. Mainstream legal aid services can also help by providing supplementary services where there is a need, eg by reason of conflict, and by ensuring that services are culturally sensitive to the best of their ability.

We thank you once again for the opportunity to make this submission. Please do not hesitate to be in touch with us if you require any further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G Turnbull', written in a cursive style.

G Turnbull
Chairperson
National Legal Aid