



Kurduju is a Walpiri word meaning to shield, block, protect or ward off

Submission to the Review on Indigenous Law and Justice.

1 Preamble.

The Kurduju Regional Crime Prevention Committee welcomes the opportunity to provide a submission to Federal Parliament's Public Accounts and Audit Committee that is reviewing the provision of legal services to Indigenous Australians.

The Kurduju Committee represents the predominately Warlpiri communities of Lajamanu, Ali-Curung, Yuendumu and Willowra. These communities are located on or near the Warlpiri language group homelands. The homelands cover an extensive area of land to the North West of Alice Springs of around several thousand square kilometres. The communities of Lajamanu and Yuendumu for example are 900km apart on unsealed roads.

2 Kurduju Regional Crime Prevention Committee.

The Northern Territory Government established the Aboriginal Law and Justice Strategy (ALJS) in 1996 to give effect to some of the recommendations arising from the Royal Commission into Aboriginal Deaths in Custody as well as supporting law and justice initiatives that were being developed by some communities.

Each community established their own community law and justice committees and developed community safety and justice plans. These plans involve eight Commonwealth and Territory Government agencies with a responsibility for law and justice and a number of community organisations.

In 1998 the communities formed an over-arching committee called the Kurduju Committee with representation from the community law and justice committees. The Kurduju Committee became the first Indigenous Regional Crime Prevention Committee in 2000. The committee meets about four times a year.

The committee is used extensively by government and non government agencies in a policy development role and as a means for providing advice and obtaining information. Committee members have participated in and presented at numerous national and territory conferences on safety, justice and family violence issues and have appeared before the Northern Territory Government's Standing Committees on both Alcohol and Substance Abuse and Constitutional Development. The Kurduju Committee has membership on the committee appointed by the NT Government to inquire into Aboriginal Customary Law and has representation on the Northern Territory Parole Board. The committee hosted a major combined communities workshop on law and justice at Ali-Curung in 2003 as part of Government's Inquiry into Aboriginal Customary Law, and hosted a session of the the Australiasion Institute of Criminology Conference at Ali-Curung in 1998.

In documenting and developing the mechanisms and processes that enable Indigenous remote communities to assume a greater role in the justice system and to operate effectively across two laws the Kurduju Committee is the only Indigenous committee of its type in Australia. As such the Kurduju Committee and the individual community law and justice committees have considerable experience in working with the justice system and with Aboriginal Legal Aid Services.

The role, purpose and functions of the committee are described in the report "The Kurduju Committee Report". The report is at attachment A

3 The establishment role and purpose of Community Law and Justice Committees

The communities of Ali-Curung, Lajamanu and Yuendumu all have community law and justice committees that work closely with the justice system and with their local communities. The committees were established by their respective communities as a result of a law and justice planning process which occurred on each community.

Law and justice plans were implemented at Ali-Curung in 1997, Lajamanu 1998, and Yuendumu 2000. Community law and justice committees have the primary role in the implementation of strategies arising from the planning process and they act as the interface between the community and the myriad of government agencies involved in the provision of law and justice services.

The Kurduju Committee has examined the role, purpose and functions of each of the law and justice committees. The attached paper called "Indigenous Community Engagement in Safety and Justice" describes the functions of community law and justice committees and their relationship to the law and justice system and to Aboriginal Customary Law.

This paper is at attachment B

4 Provision of Indigenous Legal Aid Services in Remote Communities.

As part of the process of community law and justice planning over 30 workshops on safety and justice were conducted with the communities. The workshops showed a significant lack of understanding of the justice system on remote area communities represented a major impediment to the successful participation of the communities in the justice system.

“There is an abysmal lack of understanding of how the justice system works on many remote area communities, and the role and functions of agencies and staff. Often the workshop participants were unaware of the role and functions of Magistrates, police, correctional service officers, lawyers and court staff. On one community an astute and well respected Council President admitted in a workshop that she always thought the Magistrate was a clerk and his job was simply to write down (record) what the police and others were saying but ultimately it was the police who made the decision”.

(Law and Justice Planning Workshop, Port Keats: 1997)

The fundamental differences between an adversarial and inquisitorial system of law perplex many remote area indigenous people.

“One of the big problems we are having is understanding how your law works and how it finds out how people are guilty of breaking the law.

In our culture we have an inquisitorial process for establishing guilt. This means there is a consensus approach by the community in laying blame and for punishment. This might involve all the victims’ family and extended family as well as the offender’s family. It might mean bringing in people from other communities like Elders from the right skin groups. (classificatory kin members) It might involve Traditional Land owners if the families and Elders cannot agree. If things are really serious the decisions might have to go the ceremony grounds. Often the persons who caused the trouble are not involved in these decisions.

In our culture all these things are worked out (negotiated and arbitrated). In things like customary marriage and ceremony and funerals the right people make the decisions, not by the individuals. Same with punishment. Some people are guilty in our law but they are not guilty in your law”

(Jinta marni jaku-Ali Curung Community Protocols, 2004)

The ALJS attempted to overcome these concerns by involving the Aboriginal Legal Aid Services in community education and awareness about law and justice. Whilst the legal aid services were receptive to the concept and workshops were trialed on several communities they could not be sustained because legal aid providers lacked resources to undertake additional resource- intensive and time-consuming functions.

A lack of understanding of the justice system remains a significant issue for remote area communities. The Kurduju Committee is of the view that a fundamental and significant part of providing legal services in remote communities should be through participating in community education and awareness programs. The Committee makes these comments on three main issues.

(A) Community Education and Awareness Raising about Law and Justice.

In addition to providing legal advice and representing indigenous clients in the Courts there is a need to achieve longer-term outcomes.

To be fully effective community education and awareness raising should occur at different levels within the community,

- with community organisations that are already involved with law and order and community dispute resolution, including law and justice committees, Elders, night patrol staff, safe house staff and Council members,
- with individual clan and family groups that are often involved in family feuds and uncontrolled violence,
- as part of the school program.

Community education could be organised to coincide with court visits but it will add additional time to the length of the community visits undertaken by legal service providers.

(B) Supporting Community Law and Justice Committees and Alternative Dispute Resolution.

The Kurduju Committee has reported extensively on the role of Community Law and Justice Committees and their work with Alternative Dispute Resolution. (see attachments A and B) External intervention by agencies has not always been successful and in any case it does little to prevent situations becoming critical in the first place. Most agencies, expertise and resources are located in regional centres that are often hundreds of kilometres away from the communities and agencies only become aware of situations that are already critical. There is little preventative or early intervention work occurring.

The inappropriate use of external intervention also significantly adds to the disempowerment of indigenous people in law and justice by perpetuating a reliance on external agencies and inappropriate intervention techniques. It was clear there needed to be a system that could allow for low level intervention in disputes to occur by community organisations or individuals that was endorsed by the community, was controlled and managed by Indigenous people and was responsible to the community.

Whilst these systems are now in place on these communities they are largely of an informal nature and depend on the goodwill and support of the agencies to support the community initiatives.

Currently the process that applies is that community law and justice committees meet the day before court to discuss the court list for the following day and to make relevant recommendations for the Courts. The recommendations are recorded and presented to the Magistrate before court.

The Aboriginal Legal Aid Services are familiar with these processes and have contributed positively to the development of the current system. They have an excellent capacity to work with the concepts of a community contribution and participation in the justice process and this represents a significant departure from working within the normal justice system.

The Kurduju Committee is of the view that this cooperation and support from legal aid service providers should continue and be expanded. There needs to be recognition that simply providing a law and justice service for remote area communities is not sufficient. Legal services are working in a cross-cultural situation and with developing communities. Mainstream service provision should not be considered the only business of the provider.

There is recognition by government that longer-term community development and capacity building are key factors in achieving better outcomes for indigenous remote area people. Many government agencies are now providing services and programs that are structured within a community development framework and the provision of legal services should be no exception. Working with community engagement and empowerment processes in achieving better and more relevant law and justice outcomes for the community are equally important to the provision of legal services.

Critical to supporting these processes is the need for legal aid providers to be adequately resourced for the task. The Kurduju Committee is of the view that this is currently not the case. There appear insufficient resources to enable legal aid staff to spend the additional time on the communities to work more effectively with community engagement structures. Because of the limited time staff are able to spend on communities their work is essentially of a court- related nature. Working with community organisations on law and justice issues, participating as a member in the broader community law and justice planning processes and taking an active role in community education and awareness raising has become a low priority. For example legal service providers should have representation at the various government agency and community law and justice meetings and workshops that are held on each community on a regular basis, and they should be signatories to community law and justice plans. Currently they are unable to participate in these important activities.

(C) The Re-allocation of legal services funding to Regional and Remote Australia.

The Kurduju Committee is of the view that additional funding is required for legal aid service providers in the regional and remote areas of Australia to achieve improved legal service outcomes by providing an expanded service through engaging in community development with communities and through community education. It seems appropriate that the Public Accounts and Audit Committee should consider a redistribution of funds away from the major southern cities to regional and remote Australia in order to achieve these objectives.

The Kurduju Committee is sympathetic to the view that the distribution of funds for legal (and other) services for Indigenous Australians is not always targeted toward areas of need. There is a need for a holistic and comprehensive legal service for Indigenous peoples in regional and remote areas that is significantly different to, and more important than the needs of Indigenous people in the cities. There can be significant gains in Indigenous empowerment in law and justice through the implementation of constructive educative and preventative programs that are designed to link in with and support broader community aspirations and initiatives in law and justice.

The Kurduju Committee itself was established because it recognised the different requirements in policy and service delivery between regional and remote area Indigenous peoples and those in the major urban areas. Kurduju members believed that many of the policies and programs that were being developed through the Commonwealth Government's national consultation processes on Indigenous family violence and other issues were not relevant to, or even practical for, remote area communities. There was a belief by presenters and participants who were involved in many of the national forums that the remote area voice was not being heard and this often resulted in remote area communities becoming the recipients of inappropriate and ineffective programs and policy.

A key function of the committee is therefore to provide advice on practical, relevant and workable strategies for addressing safety and justice and these are substantially different to those that may operate in the cities. (see attachment A)

Some indicators of the different needs likely to be encountered in regional and remote communities, that point to the need for a holistic and skilled legal service include,

- The need to work within the constraints of two different systems of law. (See attachment A and B)
- The need to work as a community capacity builder with government agencies and community organisations in achieving safety and justice outcomes,
- English is a second language for a majority of clients,
- The low levels of literacy and numeracy of many clients,
- The lack of access to mainstream legal and other services. (Lajamanu is 550 km from the nearest regional centre, and without rail, bus or air transport)
- Financial disabilities such as the low levels of income of remote area clients. (most people are on a CDEP or other benefits)
- High cost of living,
- An abysmal lack of understanding of the justice system,

- The need to expand the provision of legal services to include them into a broader community development and community education framework.
- The need to work with and support community law and justice initiatives such as law and justice committees, Elders, local diversionary programs, community court recommendations, etc,
- To work effectively in a cross-cultural situation,
- To deal on a regular basis with families and communities on matters that have Aboriginal Customary Law implications,
- To bring matters relating to Aboriginal Customary Law before the Courts where necessary.

The Kurduju Committee is of the view that these issues are not relevant to many Indigenous people residing in the main cities most whom are no longer practising Aboriginal culture, and consequently are not impacted on by the implications of observing two systems of law. Whilst the identification of being an Indigenous Australian is recognised as important it should not be regarded as the main qualifier for obtaining resources to improve law and justice outcomes.

Summary

There is a range of special needs that legal service providers must be aware of and be able to deal with effectively when providing services to regional and remote communities. Many have cultural origins, and others relate to issues that can occur when staff are working in a cross-cultural situation and across two systems of law.

It is equally important for legal service providers to undertake a community education and awareness-raising role with community organisations and community groups. (clan/family groups, school children)

Legal services should be provided to communities within a community development framework that is consistent with the broader community and government agency objectives for assisting Indigenous people address safety and justice issues and to achieve greater participation in the process.

It is estimated this would require staff to allocate an additional two days per field visit to each community.

Whilst it has not been possible for the Kurduju Committee membership to come together and attend the public hearings in Alice Springs and Darwin, the committee would welcome the opportunity to meet with Federal Parliament's Committee should the committee undertake remote area community visits at a future date.

Peter Ryan

Project Officer
Aboriginal Law and Justice Strategy and Kurduju Committee,

15 June 04

