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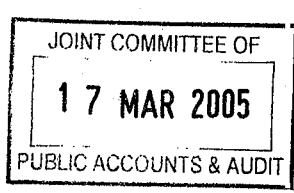
ABN: 28 830 050 437

Submission No. 41

17 March 2005

By facsimile 02 6277 2220

The Secretary
 The Joint Committee of Public Accounts and Audit
 House of Representatives
 Parliament House
 Canberra ACT 2601



RE: Indigenous Law and Justice Inquiry

Please find enclosed our submission in relation to the above inquiry. I apologise for the fact that our submission was not completed until today however I hope that it is still of some assistance to the committee members.

I have also enclosed Hansard witness forms for the people we propose as witnesses.

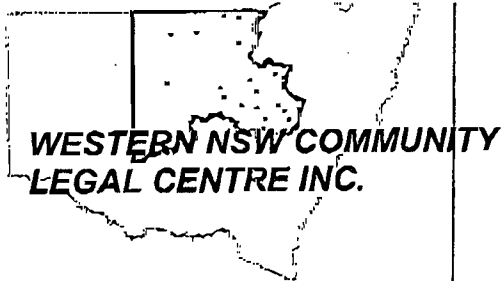
Thank you for assistance with is matter and if you have any questions please call me on (02) 6884 9422

Yours Faithfully
 Western NSW Community Legal Centre Inc.
 Per:


 Kate Wandmaker
 Principal Solicitor

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The Secretary
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RE: Indigenous Law and Justice Inquiry

These are our written submissions in relation to the above inquiry. We are also prepared to give further evidence and answer questions about the matters raised when the Joint Committee holds a public hearing at Dubbo on 30 March 2005.

Background

The Centre was established in the financial year 1995/1996, under the then Government's Justice Statement. The Centre was given specific funding to set up a Women's Outreach Service along with the Generalist Legal Service. We were initially required to provide assistance to people from Mudgee to the South Australian border. That is 42% of the State. The regional area we cover was thankfully reduced in 2000 when the Far West CLC based in Broken Hill commenced operations and services Broken Hill and Wilcannia. As no legal centre is funded to service Orange, Forbes & Parkes we also provide telephone advice services to them. The Centre commenced to receive funding from the Office of Employment Advocate under its Community Partnership Program in 1998. This funding enables the Centre to employ an additional part-time solicitor to provide assistance to disadvantaged workers.

The Community Legal Centre aims to meet the legal needs of our far-reaching community by providing community legal education, law reform activities and media comment on issues of importance to that community. The provision of a professional casework service in areas of law where there is a wider community need, the client is disadvantaged and legal resources from other

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sources are inaccessible or inadequate is also an important part of our work. The most common, but by no means the only areas of law in which the service assists are Family Law, Domestic Violence, Child Support, Child Protection, Credit and Debt, Discrimination, Victims' Compensation, Social Security and Employment.

Response to Terms of Reference

The distribution of Aboriginal and Torres Strait Islander Legal Services resources among criminal, family and civil cases.

Without adequate levels of funding there can never be a fair distribution of funds between criminal, family and civil cases represented by Aboriginal and Torres Strait Islander Legal Services (ATSILS).

There is no doubt that ATSILS are not able to distribute their resources equally between criminal, civil and family law cases. This is not as a result of them not wanting to do civil or family law cases it is simply as a result of the extremely pressing and immediate need of people charged with criminal offences and the fact that ATSILS are grossly under funded. The vast numbers of aboriginal people who are charged with criminal offences necessitate that resources are channelled to that area.

Aboriginal people are grossly over-represented in the justice system, a previous NSW Aboriginal Justice Advisory Council (AJAC) report "Policing public order, offensive language and behaviour, the impact on Aboriginal people" showed that on average Aboriginal people are 15 times more likely than the rest of the NSW population to be arrested for offensive language and behaviour charges, more than 80 times more likely in some local government areas. Further the report showed a clear linkage between these charges and charges of resist arrest and assault police¹.

In addition, there is the issue of discriminatory treatment of Indigenous people within the criminal justice system. For example, research on the treatment of Aboriginal children at various stages of the criminal justice process found that compared with non-Aboriginal children Aboriginal children²:

- were less likely to receive a caution from police (even first offenders)
- were more likely to be charged rather than given a diversionary option
- had a higher likelihood of being refused bail
- were more likely to receive a sentence at the more severe end of the scale
- were more likely to be sent to an institution³.

There are significant differences between Indigenous and non-Indigenous people in relation to court appearances for public order offences. In New South Wales, Indigenous young people

¹ Available at: http://www.lawlink.nsw.gov.au/cpd.nsf/pages/alr_chap2

³ Ibid

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appeared in court at more than *ten times* the rate of non-Indigenous youth for these offences (Luke and Cunneen 1995:11)⁴.

Another important issue in relation to how ATSILS distribute their resources between criminal, family and civil cases is the professional obligations imposed on lawyers. That is that all prospective clients must be screened by the service before given advice to ensure that there is no conflict of interest. All lawyers but particularly those in regional areas are often unable to assist prospective clients as a result of these obligations.

By way of example, the Legal Aid office in Dubbo has only been open for approximately 2 years and yet regularly has to refuse prospective clients assistance. These prospective clients are often seeking assistance with family and civil cases and are turned away because their former partners have been assisted in criminal matters.

It is our view that the only way that ATSILS could distribute their resources fairly is if there were properly funded, well resourced independent, regionally based separate services, run by Aboriginal people for Aboriginal women.

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

In 2004 we negotiated and will shortly sign a memorandum of understanding with the Western Aboriginal Legal Service in relation to the provision of legal assistance to indigenous victims of domestic violence in our region.

This memorandum ensures that Aboriginal women who are victims of domestic violence and want legal advice will be given an immediate appointment with a female solicitor of our service. The Western Aboriginal Legal Service will assist the woman to make contact with us. However many Aboriginal women may still not be able to avail themselves of this service as it is foreign and unknown and therefore they will feel it is easier to put up with the way things are than to seek our assistance.

We are also currently participating in a pilot of the Co-Operative Legal Services Delivery Model (CLSDM) This has been developed by the Legal Aid Commission of New South Wales and has joined together all the legal service providers in the region including the Western Aboriginal Legal Service so that we all meet regularly and discuss ways of acting Co-Operatively to provide legal services in the region. Of course this type of discuss was happening previously but in a more informal and ad hoc fashion.

However, obviously none of these measures can replace properly funded and resourced regionally based ATSILS as it is impossible to provide effective legal services to indigenous people without indigenous staff and community ownership.

⁴ Cunneen, C. and McDonald, D. (1997) *Keeping Aboriginal and Torres Strait Islander People Out of Custody*, ATSIC, Canberra

c) The access for indigenous women to indigenous-specific legal services

In our region the only legal service specifically for indigenous women that operates is Wirringa Baiya Aboriginal Women's Legal Centre. However that service is severely under resourced and operates a state-wide service. Therefore it can only offer a limited service. They regularly refer clients to our service and we also contact them for support and advice on particular matters but they are not able to act in many matters and cannot not provide a criminal case service at all.

There is currently one Family Violence Prevention Legal Service Unit in our region and we understand that there may be two new ones shortly. However whilst they are to have 'a particular emphasis'⁵ on women they are in fact funded to provide services to 'aboriginal adults and children'⁶. They also provide a very limited range of services to clients and as we understand it focus their attention on assisting in domestic violence matters and victim's compensation. They certainly do not have the resources to provide the whole range of legal services that Aboriginal people require.

Despite the high need in our Aboriginal community - our region covers a substantial part of the Murdi Paaki ATSIC region which 'is among the more disadvantaged ATSIC regions nationally, and ranks the lowest of all the New South Wales ATSIC regions'⁷, in which the most disadvantaged indigenous people in NSW live - until last year less than 9 % of our clients each year were indigenous. Last year the Centre employed an indigenous trainee in our reception area. Since then the percentage of our clients who are indigenous women has increased to 10% and all indigenous people now make up 15% of our clients. Clearly, to provide legal services to indigenous people services need visible and effective indigenous workers. Our Centre would be able to much better access and service our indigenous communities if we had the resources to employ an indigenous field officer to travel with the solicitors, especially on outreach visits.

It is our view that the indigenous women in our region will only be able to effectively access legal assistance if there is a regionally based community run ATSILS specifically for indigenous women that is adequately funded and resourced. The service would need to be able to offer the full range of criminal, family and civil case work to its clients. In that way indigenous women would be able to access legal services which are provided in a culturally appropriate way. Having a separate service would also ensure that there was much less chance of a conflict of interest arising for that service, the Western Aboriginal Legal Service (WALS), our Centre and Legal Aid.

Such a service should be based on the same model as WALS. They have provided extensive legal services to a very high standard in this region for over 20 years. That service is based in Dubbo, the largest Centre in the region but has solicitors based in other offices in smaller towns in the region and solicitors from Dubbo also travel to court so that they can service every court in the region from Broken Hill to Mudgee. The service has been so successful, at least in part because it was started by the community who knew there was a need and because it has always been operated by a board of Aboriginal directors who reside in most of the different towns in which it operates. That is, it is operated by the community for the benefit of the community.

There has already been trialled in the region a similar approach to dealing domestic violence. Many years ago the Aboriginal women of the region set up an organisation called 'Mygunya' which networked communities such as Bourke, Brewarrina and Walgett with Dubbo so that women who wanted to leave their partners could be assisted. Each town had a worker and the central administration of the project was in Dubbo. The project was managed by a board of directors made up of Aboriginal women selected by their town to represent them and the meetings were held in a

⁵ Information provided at <http://www.ag.gov.au/agd/WWW/agdHome.nsf/Page/Tenders>

⁶ *ibid*

⁷ (ABS 2000:73)

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different town each time to ensure that each community had an equal role to play. Unfortunately, Mygunya did not continue as it became plagued by internal politics. When asked why that has not happened to the WALs Mrs Mary Ann Hausia who was a founding member of Mygunya and a long term employee of WALs said 'because of the strong lawyers around'.

A specific service for indigenous women run along those lines would be able to provide the same high level of legal service which could respond to the communities needs.

d) The ability of Law and Justice Program components to recruit and retain expert staff.

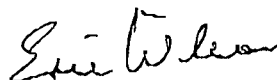
As a result of our low level of funding we have great difficulty in attracting professional staff and when we are finally able to employ good and effective staff, they usually leave within the year because of the low level of remuneration and difficult working conditions. Our Women's Outreach solicitor is required to travel in excess of 29 500 kilometres per year, even the most enthusiastic and committed person finds another, higher paying job offer impossible to refuse.

In fact the only reason that the Women's Outreach Service has not run at a substantial loss in the last few years is because we have had extended periods when there is no incumbent in the position. The savings that we make in wages actually cover the costs of providing the outreach.

In conclusion, addressing particularly the issue of tending for providers of Aboriginal Legal Services, we are unable to see how this process could improve the provision of legal services to indigenous Australians. The provision of legal services is what it says; a **service provided** it can never be a commercial undertaking. ATSILS have always been chronically under-funded to provide the service that they do and there is simply no margin in which to make a profit without diminishing the level of service provided to the most disadvantaged members of our community.

Further, the suggestion that one ATSILS for the whole of New South Wales could provide a better level of service than the present system is simply preposterous. That has been tried in this state before and over 20 years ago the Aboriginal people of this region stood up and said it was not a suitable solution. That is why they began WALs so that the service could be regionally based, directed and responsive to the needs of the people in this region.

Yours faithfully
Western NSW Community Legal Centre Inc.
Per:



Eric Wilson
Chairperson