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

Dear Secretary

### **Indigenous Law and Justice Inquiry**

We wish to make this submission to the Indigenous Law and Justice Inquiry of the Joint Committee of Public Accounts and Audit.

Freehills is a large multi-national, commercial law firm. Our national practice group structure consists of Banking & Finance; Corporate; Employee Relations; Litigation; and Projects groups.

For many years Freehills has provided legal services on a pro bono basis for matters that are in the public interest.

Over a decade ago the firm established a pro bono program, guided by Pro Bono Committees. In 2001, the first National Pro Bono Coordinator was appointed, a lawyer and teacher from the community legal centre sector, with experience in working with disadvantaged women and children with little access to justice, for example because they were from a rural or remote area, had a disability, were from a non-English speaking background, were indigenous, or were experiencing domestic violence.

For the past 11 years, Freehills has also run the Shopfront Youth Legal Centre in Sydney in conjunction with the Salvation Army and Mission Australia. It provides essential legal services to homeless and disadvantaged young people.

The Shopfront has five full-time positions, all of them employed by Freehills. Last year, the Shopfront directly assisted more than 500 young people, and its solicitors provided legal education to others working with young people.

We estimate that about 10% of the Shopfront's clients are Aboriginal people or Torres Strait Islanders.

Solicitors and other staff at the Shopfront also maintain close contact with Aboriginal Legal Services and other organisations working with indigenous communities in New South Wales.

Our first-hand knowledge of the problems faced by young indigenous people who come into contact with the legal system has prompted Freehills to make this submission to the Senate Inquiry.

We note that the Inquiry will also take into account the 2004 tender for indigenous legal aid services.

### **Special needs of young indigenous people**

Our experience shows that young indigenous people have special needs when it comes to understanding and navigating the legal system. For the most part, their contact is with the criminal stream of the legal system. Cultural differences and, in many cases, a lack of basic education, serve to compound the anxieties and fears that most people experience when they come into contact with the law.

Our experience at the Shopfront has shown that most young indigenous people have special needs which are not met by large mainstream legal services. They prefer to deal with solicitors and other staff who are sensitive to their culture and to the needs of the local community.

Although the Shopfront is not an indigenous legal service, it shares some characteristics of indigenous legal services. For example, it is targeted to the needs of a particular group of disadvantaged people, it has close ties to local community organisations and it provides flexibility and continuity of service.

Our experience shows that outreach programs and culturally-sensitive services are essential components of any successful legal service for Aboriginal people and Torres Strait Islanders.

The recruitment and retention of indigenous staff in legal services is therefore an important element in any strategy to improve access to justice for indigenous people.

The Inquiry's terms of reference includes "the ability of Law and Justice program components to recruit and retain expert staff." The ANAO's *Audit Report No 13, 2003-2004, ATSI Law and Justice Program*, suggested (at page 15, paragraph 16) that a move to multi-year funding for service providers would allow them to "develop strategies, including longer-term planning, that will allow them to target their services and better utilise resources."

The proposed tendering process for the provision of legal aid services to indigenous people incorporates three-year funding contracts for the express purpose of allowing better planning and offering greater security to staff.

Such planning should include the development of career paths for indigenous staff who deliver legal services to Aboriginal people and Torres Strait Islanders.

This includes field officers who provide a crucial link between lawyers and their clients, especially in remote and rural areas. They play a wide variety of roles – from interpreter to social worker – and are a unique feature of existing services for Aboriginal people.

In this regard, it is unfortunate that the proposed tendering process will not require successful service providers to hire indigenous staff or to incorporate representation of Aboriginal people and Torres Strait Islanders into their management structures.

This represents a wasted opportunity to shape long-term structural outcomes – in this case, the opportunity to develop career paths for indigenous lawyers and other personnel that will in turn help service providers to meet the special needs of indigenous clients.

The principles of good corporate governance – with their focus on the social, as well as the financial, aspects of corporate accountability – suggest that any move towards competitive tendering for indigenous legal aid services should be accompanied by a commitment to deliver long-term structural changes that will benefit Aboriginal people and Torres Strait Islanders.

### **Policy directions – denial of legal representation**

The ‘Policy directions’ that accompany the Exposure Draft of the proposed request to tender for the provision of legal services places limits on representation in certain circumstances. These are listed at pages 63 and 64 of the Exposure Draft and include the following statements:

*3.9 Although judgements should be made in the circumstances of the individual applicant and the particular case, it would be the exception rather than the rule that criminal representation and casework assistance should be provided to persons charged with offences such as minor traffic offences or public drunkenness.*

*3.10 Where a Provider has previously represented an applicant charged with a criminal offence involving violence, assault or the breach of a restraining order, and the circumstances of the two cases are the same or similar, the Provider may refuse to represent the applicant and refer the applicant instead to a service providing appropriate counselling and support (where such a service is available and reasonably accessible).*

Such proposals are troublesome. Our experience at the Shopfront is that many young people’s first encounter with the law involves a minor offence, particularly public order offences such as using offensive language. This is frequently the case for young indigenous people.

Although such offences are relatively minor in character, they represent a potential ‘gateway’ to the criminal system.

Indigenous people who face such minor charges will often require representation in a court system that they may otherwise find bewildering. Providing legal representation in only exceptional circumstances, as the policy direction suggests, fails to take account of the role of minor offences as a point of entry to the criminal system for Indigenous people, who are already incarcerated at far higher rates than non-indigenous people.

Similarly, to refuse representation to a client facing charges on a criminal offence, simply on the grounds that they had earlier representation in a matter involving similar circumstances, will in effect leave indigenous clients without any form of legal representation.

### **Distribution of resources**

The Inquiry's terms of reference include investigating "the distribution of the resources of Indigenous legal aid services between criminal, family and civil cases".

We are aware of the criticism that existing services for Aboriginal people and Torres Strait Islanders are focused on criminal matters, especially in the context of limited funding. Such a focus on criminal matters is to the detriment of services in family law and civil law.

Our experience in dealing with young indigenous people at the Shopfront has demonstrated to us that indigenous communities often face problems that are best dealt with in the specialist areas of family law and civil law. The allocation of resources to indigenous legal aid services should take account of that reality.

If you would like to discuss the contents of this submission, please contact Annette Bain on (02) 9225 5634; email [Annette.Bain@Freehills.com](mailto:Annette.Bain@Freehills.com); or Jane Sanders on (02) 9360 1847, email [Jane.Sanders@Freehills.com](mailto:Jane.Sanders@Freehills.com).

Yours faithfully

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National Pro Bono Coordinator