

## **Submission to the Public Accounts and Audit Committee for the Indigenous Law and Justice Inquiry**

### **Introduction and Background**

The Top End Women's Legal Service Inc (TEWLS) is a community legal centre (and a member of the National Association of Community Legal Centres, the National Network of Women's Legal Services and the National Network of Indigenous Women's Legal Services).

TEWLS provides:

- free and confidential legal advice and community legal education to all women and organisations working with women in the Top End; and
- legal services (in the areas of family violence) specifically to Indigenous women in a number of remote communities of the Top End under the Aboriginal Women's Outreach Unit (AWOU).

The AWOU is one of the thirteen Family Violence Prevention Legal Services (FVPLS) which were originally funded by ATSIC. As of the new financial year, all TEWLS funding will be received from the Commonwealth Attorney General's Department.

#### TEWLS Services in Remote Communities

Under the AWOU, TEWLS provides services in the following communities:

- Angurugu (Groote Eylandt) although this often includes working with women who live in Alyangula, Umbakumba and on Bickerton Island;
- Wadeye (also known as Port Keats) although this often includes working with women from Palumpa; and
- Jabiru and Kunbarlanjnja (also known as Oenpelli).

In the Northern Territory the local court sits in a number of remote communities each month for between two to three days, including Alyangula, Wadeye, Jabiru and Kunbarllanjja. When the court sits in remote communities it is often referred to as “bush court”.

On the days when the court is sitting in the above communities, a solicitor and Aboriginal community development worker from TEWLS will arrive in the community the day before court begins, and usually remain in the community once the court has finished sitting. Generally, the work undertaken by TEWLS includes provision of legal advice, community legal education, court support and representation in court for matters concerning family violence and related issues. TEWLS also works closely with other service providers in the community and is involved in projects such as setting up safe houses.

TEWLS employs two or three local Indigenous women in each of these communities as community legal workers (CLWs) on a casual or part time basis for five hours work a week. The CLWs can best be described as TEWLS “eyes and ears” in the communities. Our CLWs provide a link between the women in the communities and TEWLS.

It must be noted that TEWLS does not have the funding to attend all of the remote communities where the local court sits.

TEWLS has a free call number to assist women in remote communities contacting us.

## **Submissions**

### **1. Distribution of Aboriginal and Torres Strait Islander Legal Services (ATSILS) resources among criminal, family and civil cases.**

It is the experience of TEWLS workers that the majority of ATSILS resources are channelled towards criminal law.

#### Family violence

All remote communities in the Northern Territory are in need of visitation services for family violence, as well as access to legal workers who live in the community. More women die from family violence than any figure of Aboriginal deaths in custody (Suave, M *Indigenous Law Bulletin*, 1996, Vol 11).

TEWLS is the only FVPLS in the northern part of the Northern Territory. The communities where bush court sits where we do not provide services due to a lack of funding include Maningrida, Daly River, Nhulunbuy (Gove), Elcho Island, Numbulwar and the Tiwi Islands. There are of course other communities where the bush court does not sit and where there are no such services.

The North Australian Aboriginal Legal Aid Service (NAALAS) are not adequately funded to provide both a criminal service (which is currently very extensive) and also represent women who are victims of family violence. There is also a conflict of interest. NAALAS cannot represent a client in criminal proceedings, as well as the victim.

Currently, Aboriginal legal aid services do not generally become involved in matters of family violence – they do not work with women in obtaining restraining orders and from TEWLS experience, they do not assist defendants who are served with restraining orders. Furthermore, in TEWLS experience, the Aboriginal legal aid services do not provide remote communities with any community legal education to assist in the prevention of family violence.

It is TEWLS submission that the current Aboriginal legal aid services do not necessarily have the knowledge and understanding required to provide services for, and work with, indigenous women who are victims of family violence. For example, at a recent conference in Sydney attended by TEWLS, two workers from two different Aboriginal legal aid services expressed the following opinions:

- it is appropriate behaviour (and therefore there should be no police or legal intervention) for a man to hit his wife if she is “nagging him” or “chewing his ear”;
- when a man and woman are arguing and violence is involved in a public place it is inappropriate for there to be police or legal intervention;
- men in many remote communities are disempowered because women groups have (finally) gained some power and say in how funds may be distributed within those communities;
- there are as many male victims of family violence as there are female victims; and
- family violence is the fault of women and it is women taking out restraining orders which causes family violence.

These opinions clearly indicate that:

- many persons working within Aboriginal legal aid services do not have the knowledge and understanding required to provide services to Indigenous women who are victims of family violence;

- it would be inappropriate for these persons to be providing services to Indigenous women in remote communities who are victims of family violence; and
- it does not necessarily follow that because an organisation provides one type of legal service to Indigenous people (such as criminal legal services), that the organisation is equipped to provide other types of legal services (for example in the area of family violence).

### Civil Cases

There is little opportunity for indigenous people living in remote communities to pursue civil remedies, including victim compensation claims. Since the reduction of compensation amounts and the amount of recoverable costs in victim compensation claims in the Northern Territory, a significant number of private practitioners have ceased acting in victim compensation matters.

In the past TEWLS has undertaken a number of victim compensation cases however our funding limitations prevent us from continuing to do so. TEWLS was too overwhelmed to continue to take on new victim compensation matters. TEWLS now refers women to private practitioners however there are many difficulties in the women and the practitioners making and maintaining contact. This is demonstrated in our case example below entitled “Crimes Victim Assistance”.

TEWLS has also referred other potential civil claims to private practitioners. However, there are inherent difficulties in persons from outside the community providing legal services within the community, as outlined below. It must be noted that private practitioners are under no obligation to accept referrals from TEWLS.

### Difficulties and costs for TEWLS accessing and moving within communities

The majority of the Northern Territory’s indigenous population live on remote communities. Many of the communities are difficult to access and to move around within. Therefore, the cost of visiting and providing services within these communities is higher than providing services in an average rural or city setting. We have set out below an overview of the costs involved in visiting the communities. Please note that this does not include travel allowances paid to workers or incidental costs.

When we arrive in a community, our CLWs provide us with information as to which women in the community may need our services. We then need to have

the ability to travel around and between communities to locate these women as need be. We also assist women to attend court who, without our assistance, may not be able to otherwise attend.

Generally, TEWLS workers spend between three and four nights in a community.

### *Wadeye*

During the wet season, Wadeye is only accessible via plane. The cost of a return flight to Wadeye is approximately \$330. Very basic accommodation at Wadeye, if available, costs approximately \$66 a night per person, which does not include any food. If accommodation is unavailable, workers are required to fly in and out on a daily basis.

During the dry season, once the roads are graded, Wadeye is approximately a six hour drive from Darwin, usually by four wheel drive only. The cost of hiring a four wheel drive is approximately \$160 a day. The cost of the car alone on our last visit the was \$868 including fuel.

During the wet season, our ability to provide services in Wadeye is limited because we do not have access to a car to use to travel within the community and out to Palumpa (approximately 40 minutes drive by four wheel drive).

### *Groote Eylandt*

Groote Eylandt is only accessible via plane. The cost of a return flight to Groote Eylandt is approximately \$660. Car hire on Groote Eylandt usually amounts to approximately between \$520 and \$850 for the duration of our visit. Accommodation is approximately \$80 to \$90 a night per person. It is essential to hire a car on Groote Eylandt because the bush court sits in Alyangula and the majority of our clients live in Angurugu, a 20 to 30 minute drive away.

### *Jabiru and Kunbarllanjja*

Jabiru is accessible by car throughout the year, however, during the wet season Kunbarllanjja is only accessible via plane. The cost of a return flight between Jabiru and Kunbarllanjja is approximately \$400 return. The cost of accommodation in Kunbarllanjja is \$80 a night per person.

TEWLS does not have a car and therefore we hire a car for the trip.

## **2. Coordination between ATSILS and Legal Aid Commissions**

### TEWLS and Northern Territory Legal Aid Commission Domestic Violence Unit

TEWLS has developed a close working relationship with the Northern Territory Legal Aid Commission (NTLAC) Domestic Violence Unit (the **DV Unit**) in making referrals and providing assistance. If an urgent need for a restraining order arises and TEWLS are not scheduled to visit a community for another month, if the police are not able to assist, we have worked with the DV Unit to obtain appropriate restraining orders in the Darwin courts.

TEWLS will also act on behalf of a DV Unit client who is living in one of the remote communities we visit. However, it must be noted that TEWLS does not visit all remote Indigenous communities in the Top End and our ability to assist the DV unit is limited to the communities we visit.

### TEWLS and NAALAS

TEWLS, NAALAS and the NTLAC are currently in a process of setting up a family violence liaison network to arrange how we can best work together in the area of family violence.

However, again it must be noted that TEWLS does not have adequate funding to visit all the remote communities that NAALAS visit. As noted above, NAALAS are faced with a conflict of interest when working with victims of family violence and the perpetrators of that violence who are clients in criminal law proceedings.

### Use of mainstream legal services by Indigenous people

In order to work effectively within a remote community an organisation needs to develop a relationship with the people in that community. Most mainstream legal services do not visit remote communities and do not employ people within those communities.

TEWLS is a mainstream women's legal service. TEWLS provides free legal advice to all women in and around Darwin. However, as outlined above, TEWLS receives funding as a FVPLS specifically to run the AWOU.

Outlined below are the steps taken by TEWLS to ensure that, even though we are a mainstream legal service, we are able to provide Indigenous women living in remote communities with appropriate services. These steps should be taken into account when considering the use of mainstream services by Indigenous people.

TEWLS Constitution specifies that 50% of our management committee must be comprised of Indigenous women and we also have an Indigenous subcommittee to advise our service. The majority of persons employed by TEWLS are Indigenous women. TEWLS employs women as CLWs who are members of and live in the remote communities we visit.

TEWLS is a mainstream service which has measures in place to ensure that:

- Indigenous women's voices are heard; and
- our service is culturally appropriate.

TEWLS ensures that all workers undertake cultural awareness training. The CLWs ensure that TEWLS workers are made aware of cultural issues in each of their communities and provide invaluable assistance in this area.

Mainstream services do not account for the fact that traditional laws and values are very important and relevant in remote communities. TEWLS takes such traditional laws and values into account when providing services. Our case example outlined below entitled "The Impact of Traditional Law" provides a good example of this.

TEWLS workers demonstrate an understanding of issues facing Indigenous women living in remote communities. This understanding is gained by staying and working in the communities on a regular basis and developing close relationships with the CLWs and other persons in the communities. Indigenous cultures and societies are complex. By visiting these communities TEWLS has developed an understanding of the dynamics of the community. Such knowledge is essential in order to provide services that are appropriate, effective and address the problems facing that community. A client will often present with one problem but will in fact have several issues that need to be resolved before the problem can be solved.

Family violence is a delicate issue which is still not openly discussed. Family violence is still accepted and considered appropriate in most remote Indigenous communities. Due to this sensitivity, assisting Indigenous women who are victims of family violence can only be done when you have developed the trust and respect of the women in the community and your client.

Earning this trust can only be done by having an insight into the lifestyle of the women in that community. Earning this trust requires an understanding on the part of the worker of the experiences of your client. However, this knowledge



must be balanced with the circumstances of each client. TEWLS treats each client individually, taking into account their unique experiences, without making generalisations. The CLWs are a major part of TEWLS ability to do this when working with women in remote communities.

### **3. Access for Indigenous women to Indigenous-specific legal services.**

Indigenous women living in remote communities have many barriers to accessing any legal services.

Many of the issues outlined above in relation to mainstream services are also relevant for Indigenous-specific services. Furthermore, as we have outlined above under the heading “Family Violence”, existing Indigenous-specific legal services are not necessarily adequately equipped to provide services for, and work with, Indigenous women.

Our case example entitled “Restraining Orders and Safe Houses” which is outlined below provides an insight into the problems faced by Indigenous women in remote communities.

TEWLS does not have the funding to provide solicitors in the communities on a permanent basis and we rely on our CLWs to provide services in our absence. As indicated above, our CLWs are only employed for five hours each week and cannot draft affidavits. Therefore the services that can be provided by TEWLS in the absence of the solicitor are limited. However, in the communities we visit, it is clear from the number of clients we have in each community that TEWLS has greatly improved the ability of the women in those communities to access legal services.

Please again note that TEWLS are only funded to provide legal services and CLWs in a small number of remote communities, as indicated above.

TEWLS spends a considerable amount of time in the remote communities we visit undertaking legal education. It is also important to develop a close relationships with the women in the remote communities in a hope that they will feel comfortable approaching us for assistance in matters which are not openly discussed, such as family violence.

To enable Indigenous women in remote communities to fully access Indigenous-specific legal services, each community would ideally need to have a full time lawyer available, as well as workers such as the CLWs, who can provide a link between the lawyer and the community. Currently our CLWs provide

interpreter services for us, however TEWLS does not receive specific funding for interpreters and nor do we have the ability to adequately compensate our CLWs for these services they provide.

Extra funding would be required to be able to attract appropriately qualified persons to work on a full time basis within the remote communities, to provide services in all remote communities (rather than just a few) and to employ persons who live in those communities on a full time basis, including funding for professional interpreter services.

In the absence of such funds, funding to enable TEWLS to provide our service in all remote communities would greatly increase the access of Indigenous women in those communities to legal services.

#### Accessing services in Darwin

Even though TEWLS has a free call telephone number, most of TEWLS clients do not have a telephone and it is often the case that the only telephone available in a remote community is damaged.

Even when a telephone is available, language is a barrier to accessing legal services over the telephone and there are limited interpreter services. Furthermore, although advice can be given over the telephone, any further action required needs to wait until the client comes to Darwin, or until our next visit to the community, if indeed the client lives in one of the communities TEWLS visits.

It must also be remembered that when a telephone is available, it is usually a public telephone making conversation easily overheard and not confidential.

Support services are also needed, such as safe houses and funding for emergency relief, for example, funding to assist in travel to Darwin for medical attention, to escape family violence and for safe accommodation.

#### **4. Ability to recruit and retain expert staff**

Organisations such as TEWLS experience a high turn-over of staff and have difficulties in attracting appropriately experienced staff. Salaries for staff in organisations such as TEWLS are notoriously less than the equivalent government agencies, let alone in private practice. For example, it has been an experience of one TEWLS worker that a solicitor employed by an Aboriginal legal aid service in country New South Wales, who was her junior, was receiving

\$10,000 net more than her per annum. Another TEWLS solicitor took a 40% pay reduction to take up employment at TEWLS.

Working in, and travelling to, remote communities is both rewarding and challenging. It is also highly stressful and most workers are underpaid, overworked and under resourced. The lack of resources results in limitations on the ability to provide training, education and opportunities for professional growth.

The lack of resources also leads to frustration in the field when workers do not have the funds required to provide a community with the services it needs. We have funding for our CLWs to work 5 hours a week. However, the level of need for legal services and support in their communities is such that every CLW could potentially work much longer hours to adequately fulfil that need.

The situations outlined above inevitably lead to a high turn-over of staff. With a high turn-over of staff, TEWLS is required to provide extensive training and support to new staff (who as indicated above may not have the experience needed to work in remote communities) to ensure the service continues to be effective and appropriate.

## **5. Recommendations**

- **Improve access to justice for indigenous people living in remote communities by providing adequate funding to:**
  - **organisations which have the experience and knowledge to enable them to provide culturally appropriate services (such as TEWLS) in the remote communities;**
  - **allow those organisations to employ solicitors who can spend a greater amount of time in the remote communities or be based in those communities on a full time basis; and**
  - **allow those organisations to employ indigenous persons who are members of the community to assist these solicitors and the organisation in providing the legal services.**
- **Provide funding to ensure that every remote community has a safe house where women can go to escape family violence.**
- **Ensure that all organisations which are mandated to provide services in Indigenous communities and to Indigenous people are adequately**

**funded to ensure that those services are effective, appropriate and responsive to the community needs.**

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## Case Examples

### Restraining Orders and Safe Houses

There are no safe houses for women who are victims of family violence in any of the communities we visit. This is a huge problem in itself. Often TEWLS assists women to leave their community when they have no where else safe to live.

The first port of call for a woman who is a victim of family violence is the local police. Under the *Domestic Violence Act* (the **DV Act**) the police can obtain an urgent interim restraining order over the telephone from a duty magistrate. Usually, this will occur immediately after the violent incident and the order obtained will not allow for any contact between the parties. There are however provisions for flexible orders which allow parties to live together, but prohibit violent conduct.

If there were a safe house for women to use, it is likely that the type of orders taken out would be more appropriate for the individual circumstances. Furthermore, police are not adequately trained and do not have the resources available to spend a large amount of time with women exploring the best type of order to obtain.

At the time of a violent incident, a woman will not wish to have any contact with her partner. However, often once a situation has “cooled” the woman may wish to reconcile with her partner. This is not to say TEWLS agrees with a woman returning to what is often an on-going violent situation. Why do women reconcile? There are numerous reasons why this may occur, including community and family pressure, access to children and lack of alternative accommodation.

There are no legal services in the community to allow a woman to amend an order to allow reconciliation. The police have the power under the DV Act to amend orders over the telephone. It has been the experience of TEWLS that the police will not do so, regardless of the circumstances.

TEWLS has contacted the NT Police Domestic Violence Unit and has been informed that there is no policy in place concerning this issue. Police in communities are given no guidance as to when an order should be amended and are merely instructed to follow the DV Act. The DV Act does not specify that the police must take such action, it merely allows them to.

TEWLS has received phone calls requesting assistance in amending orders in such situations between bush court dates. TEWLS is in a very difficult situation. Without seeing the client, the solicitors at TEWLS are unable to determine whether a woman is being forced to make such a request and our CLWs do not have the expertise to take instructions and draft affidavits to allow TEWLS to make applications in the courts in Darwin.

If the restraining order is not amended, the orders are being breached by the parties having contact. It is the experience of TEWLS that the parties will not delay reconciliation or contact just because a restraining order is in place. Therefore there is not only a risk of the defendant breaching the order, but also a risk that the woman could be charged with aiding and abetting that breach.

TEWLS was informed on one occasion that the police would merely not arrest the defendant for a breach unless he “flogged” our client.

It is clear that women in the community need access to face to face legal services.

#### Crimes Victim Assistance

TEWLS refers clients from remote communities to private solicitors for victim of crime matters. However, it is very difficult for private solicitors to act in such matters and TEWLS can be put in an awkward situation.

Most private solicitors are hesitant to pay the cost of attending the remote community to see their client. Furthermore, it is not clear whether the cost of such travel can be claimed in the private solicitors bill of costs at the conclusion of the matter.

The private solicitor will also have difficulty contacting the client – generally they will not have a telephone, language is a barrier and often the clients find it difficult to talk over the telephone. There are usually no facilities for faxing.

TEWLS can provide limited assistance to the private solicitors however there are risks involved. It is not appropriate for TEWLS to take instructions to pass on to the private solicitor when TEWLS does not have carriage of the matter. It is also very difficult for the private solicitor to confirm the instructions and there is the potential for misunderstandings and miscommunications.

If TEWLS does not have carriage of a matter, but is seen to be taking instructions, if a problem occurs between the private solicitor and the client, the client will see it as a TEWLS problem. Our reputation in the communities we visit is very

important and we cannot risk it by seemingly taking responsibility for the actions of private solicitors.

Furthermore, if an offer of settlement is made TEWLS may be asked to put that to the client with a recommendation from the private solicitor. TEWLS may be put in a situation where they do not agree with the private solicitors recommendation and when asked by the client what they think, the TEWLS worker will have to be honest. This will inevitably create difficulties.

### The Impact of Traditional Law

Traditional laws, including laws concerning kinship and marriage, have an on-going impact on TEWLS workers and clients. One TEWLS client is a young women whose husband regularly hits her, or in slang, “flogs her”. Her husband has been charged with assault on numerous occasions and the police obtained for our client a restraining order, under which they may live together but he is not be violent towards her.

Her husband continues to flog her – it is sometime reported to the police and her husband spends time in custody for these offences. However, she continues to live with him when he is not in custody.

The TEWLS worker has spent a considerable amount of time with the client talking to her about the violence and the options available to her. However, the TEWLS worker also understands that because this is a promised marriage under traditional law, our client is under extreme family and community pressure to remain with her husband.

Furthermore, our clients mother, who is generally a very strong women who takes a stand against family violence, has in the past attempted to keep the client from seeing TEWLS. Our client’s mother encourages (to the point of forcing) her daughter to stay in the marriage. The TEWLS worker understands that the mother is doing this because her son-in-law is also her “poison cousin”. As such, under traditional law, the mother’s first priority and loyalty is to her “poison cousin”.

TEWLS is in a very difficult situation. However we must respect the traditional law and work within it and around it. The TEWLS worker spends a considerable amount of time talking to the client about her mothers action.

On the face of it, the TEWLS clients behaviour in remaining in the relationship and the behaviour of her mother, is very frustrating. However, it must be

viewed in the context of the environment and taking into account the impact of traditional laws. In order to ever make a change in this situation, the TEWLS worker must take into account and address the issue of the traditional law, whilst at the same time advocating for the safety of the client.