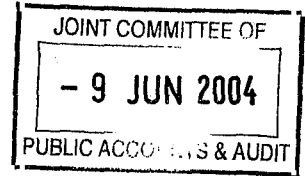


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SOUTH EASTERN ABORIGINAL LEGAL SERVICE

Please reply to: Nowra
8 JUNE 2004.



The Secretary,
Joint Committee of Public Accounts and Audit,
Parliament House,
CANBERRA 2600.

**Supplementary
Submission No. 21**

Re: Indigenous Law and Justice Inquiry.

Further to our submissions of 19 May 2004 we attach the following material. Please excuse the delay and the disjointed nature of the material, but it is very difficult to prepare quality material and run a under resourced effective legal service. But we also appreciate the importance of the inquiry and the critical role that we hope it will play in the protection and development of specialist Aboriginal Legal Services.

We attach :- 1. Examples from SEALS – two very recent examples of what an ALS can achieve that would not be provided by a main stream organization or duty solicitor scheme.

2. Brief Points re A.L.S. issues in the A.C.T. - a brief discussion of the difficulties that are created for SEALS because we cover N.S.W. and the A.C.T. Please note that we also cover Jervis Bay Territory.

3. A brief discussion of COALS.

4. A brief discussion of Circle Sentencing.

Yours faithfully,

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EXAMPLES FROM SEALS

1. We are presently representing a young woman on serious charges. She had never been in trouble until last year, and now has been arrested on two sets of charges, one being very serious. She is a young person who has grown up in a very troubled, alcohol ridden, violent household. It has been to her credit that she kept out of police trouble.

She now has a serious alcohol problem that has been the cause of her offending.

When she was arrested the second time she was bail refused and spent two nights at the Police Station.

When she appeared in Court on the Monday SEALS were trying to get her bailed into a rehabilitation program. The difficulty is that there is a major lack of rehabilitation beds for females – it would be two to four weeks before she could be placed.

The problem then was to find accommodation for her until she was able to gain a bed at a rehabilitation place. The Court would not have granted her bail to go home until a bed was available. The alternatives were to spend two to four (or more) weeks in custody until a bed was available or seek alternative accommodation. An ex-solicitor from our Service had contacted a family who had been involved with our client from sport. They would agree for our client to stay with them.

The next difficulty was that the Magistrate placed a cash surety of \$500 on the bail. That meant that somebody had to deposit their own \$500 to obtain her release on bail. Our client's family did not have the money. SEALS had to put some pressure on the family friend to see if she would put up the money. They are not a wealthy family and were concerned about putting money down, especially as both parents work and our client would be left to her own devices during the day.

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SEALS then arranged for the client to spend her days doing voluntary work at a local Aboriginal retirement village.

SEALS had to undertake to drive the client to the village and back each day for the number of weeks that it would take for a bed to become available.

It was only at this stage that the family agreed to go surety and our client was finally released.

The process took most of the day as a solicitor and field officer made enormous efforts to find accommodation, surety and a workable plan of action.

The client had never been in a jail before and had said that if she was sent to a jail she would not come out alive.

SEALS staff have been transporting the client now for over two weeks and there is no rehabilitation bed on the horizon. Last weekend the family said that they needed a break and our field officer took the client into her home for the weekend- treating her as a family member and feeding and accommodating the client.

IF IT WAS NOT FOR THE EXTENSIVE EFFORTS OF THE SEALS STAFF THEN THE CLIENT WOULD BE IN CUSTODY FOR THE FIRST TIME, AND UNABLE TO OBTAIN REHABILITATION OR TRY AND SORT OUT HER LIFE.

If she completes rehabilitation then she may not be sentenced to imprisonment on these charges.

This story may not have a happy ending, as it is often takes numerous, extensive efforts to turn a persons life around, but we believe that the exceptional efforts of the SEALS staff at least provides this client with an opportunity for changing and becoming a valuable member of the community.

SEALS feels that the efforts and resources used to keep this client from custody would not be provided by a main stream organisation nor by a duty solicitor scheme.

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2. SEALS appeared for a female person charged with a serious assault on her partner. The client would have been bailed by the Police but she had no accommodation. She could not go back to the house where the offence occurred as the victim was residing there. She had no other place to go and was refused bail and appeared before the Magistrate.

SEALS staff then spent a large amount of time trying to find accommodation for the client. All the options such as refuges, emergency accommodation were full. As a result of numerous phone calls accommodation was obtained with an Aboriginal family. The client was finally granted bail at about 6.00pm and the solicitor drove her to the accommodation about 7.00pm.

Without the efforts of SEALS staff and their understanding and connection with the local Aboriginal community this client may have spend days or weeks in custody until the matter was determined.

It is also a matter that may not result in the client spending time in custody – she has not been in custody before.

THESE ARE TWO RECENT EXAMPLES OF WHY THERE SHOULD BE A SPECIALIST ABORIGINAL SERVICE. BOTH CLIENTS HAVE UNDERLYING SOCIAL ISSUES AND PROBLEMS THAT HAVE LED TO THEIR OFFENDING, BUT WITHOUT SEALS THE ALREADY HIGH IMPRISONMENT RATE WOULD BE HIGHER.

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BRIEF POINTS re A.L.S. issues in the A.C.T.

These are besides the general issues about the need for a culturally appropriate, high quality legal defence service for the most disadvantaged, over represented in all stages of Criminal justice System. The critical need for the employment of Aboriginal staff etc.

1. In the ACT there is only the Supreme Court and Magistrates Court levels. There is no District Court.

In N.S.W. appeals and sentence matters at District Court level are frequent and dealt with generally by solicitors. In trials or more complex sentence or appeal matters at District court level a barrister is briefed. For all Supreme Court and Court of Criminal Appeal matters a barrister is briefed. At that level a huge amount of effort is required – including extensive Appeal books.

Yet at the District Court level appeals do not require Appeal books and are generally an uncomplicated process before the District Court judge on circuit.

Yet in the A.C.T. appeals from a Magistrates decision require far more work, including the preparation of Appeal books.

2. There are no Public Defenders in the A.C.T. In N.S.W. there are barristers employed by the State Government who undertake criminal defence work on behalf of legally aided and A.L.S. clients. The Public Defenders have built up a huge expertise in criminal law and have a special arrangement with N.S.W. A.L.S's whereby we provide funds and they undertake all our higher court work they can. This involves :-committal hearings at Local Court, District Court trials and complex matters, Supreme Court trials and C.C.A. matters.

A.L.Ss can ensure that all their clients receive a high quality barrister for all higher court matters. We also work closely with the Public Defenders to receive informal advice and assistance.

Yet in the A.C.T. there are no Public Defenders and when S.E.AL.S. has a Supreme Court matter or C.C.A matter we have to brief out to the private bar in the A.C.T. SEALS has to pay the barristers at the legal aid rate. The alternative would be to direct our clients to the A.C.T. Legal Aid Office who would then pay for the barristers. That however is not an option for SEALS because it both goes against the critical need for specialist Aboriginal Legal Services and the chance for our Service to provide a complete service to our

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clients and allow our staff to develop expertise in the more difficult and complex matters.

3. Even if our client does not appeal to the full Supreme Court we can end up having to provide quality representation in matters wher the D.P.P. appeal from a Supreme Court decision. SEALS must answer the appeal with an appropriate level of representation. For example, in 2003 we had to instruct Senior Counsel from Melbourne in reply to a Crown appeal. That was expensive but necessary. In the same situation in N.S.W. the Public Defenders would have supplied Senior Counsel at no cost to SEALS.
4. In N.S.W. most courts have 1 or 2 list days per week, 1 day per week or fortnight or month for Childrens Court and a number of days for hearings. All matters are listed at 10.00am and solicitors have some control over when their matters are dealt with. In the A.C.T. list days are every day and matters can be mentioned before a number of Magistrates. Matters are also listed for different times of the day. It can make it difficult to manage matters.

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COALITION OF ABORIGINAL LEGAL SERVICES (COALS).

In 1997 when ATSIC commenced the reform process in N.S.W. for ATSILS they called in staff from the six A.L.S.s in N.S.W. to be part of the process. Over the next 3 years the working group met many times and produced policies and procedures for ALSs. N.S.W. was to lead the reform process and the other states were to follow.

When the reform process was under way and the result was six effective, efficient ALSs in N.S.W. ATSIC continued to provide support to enable the six N.S.W. ALSs to meet together and continue the process.

This was the commencement of COALS. Both ATSIC and the six ALSs all saw the value in having a N.S.W. secretariat to co-ordinate the NSW ALSs, to continue the reform process and to provide a voice to the N.S.W. Government about issues which effect Aboriginal people in N.S.W.

COALS consisted of the six C.E.O.s, the six Principal Solicitors, and a Board member from each Service. They met ever 2 – 3 months in ATSIC premises in Sydney. ATSIC supplied the secretarial staff.

At the meetings invited speakers relevant to the delivery of an Aboriginal Legal Service in N.S.W. attended. The guests included the N.S.W. Attorney General, the Chief Magistrate, the Chief Children's Court Magistrate, the Senior Public Defender, senior staff from the N.S.W. Legal Aid Commission, Royal Commissioner Hal Wooten and senior ATSIC staff.

This was a valuable forum to discuss policy and procedures that effected ALSs and our clients. It was an excellent opportunity to co-ordinate our Services and for the ALSs to have a say in the wider political process.

COALS at this time commenced an annual solicitors conference. This was an opportunity for all solicitors employed in N.S.W by ALSs to meet for three days in Sydney and achieve two goals. Firstly, guest lecturers attended and spoke on relevant areas of criminal law. As a result all the solicitors were able to obtain their compulsory Continuing Legal Education points at a reduced rate. Secondly, the conference provided an excellent opportunity for all solicitors to get together and discuss anything and everything in relation

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to working for an ALS and being a criminal lawyer. It was a tremendous morale boosting exercise.

ATSIC then ceased the secretarial support for COALS and the funding of the annual conference. We feel that there were no good reasons to cease the funding. COALS had been brought together by ATSIC to initiate the reform process and was a critical vehicle to continue the reform process and the development of ALSs in N.S.W.

As a consequence COALS had to set up and fund our own secretariat and to pay for the annual conference. The annual conference now includes all field staff.

We were fortunate to have John Boersig as the co-ordinator for COALS and to continue to arrange the meetings and conferences. It was during this period that the M.O.U. with the N.S.W. Legal Aid Commission was signed off on and submissions to Governments on many issues relevant to our clients were prepared and sent. The N.S.W Government Departments were all able to seek information or comments on areas related to Aboriginal people and the criminal justice system to one peak body.

Due to the lack of ATSIC funding, the loss of John Boersig and the tendering process being thrust upon us, COALS at this present time is in a state of flux. The work of COALS is being undertaken by individuals in the Sydney ALS, with assistance from other ALS staff.

Yet there is a clear need for a strong, well funded COALS to assist each Service, our clients and to be involved in the bigger picture areas that so much effect Aboriginal people in N.S.W.

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CIRCLE SENTENCING.

In response to the appalling over representation of Aboriginal persons in Australian jails, state governments are all looking at diversionary or alternative methods to reduce the incarceration rate.

In N.S.W. for the past two years, and in A.C.T. this year, pilots of Aboriginal circle sentencing courts are being trialled. The pilot involves a number (usually 4) of Aboriginal elders and community representatives sitting in the sentencing process with the defendant and their support person, the victim and their support person, the Magistrate, defence lawyer and prosecutor.

The aim is to allow the Aboriginal community to take responsibility for the offender and become actively involved in attempts to stop the offending behaviour. The Aboriginal representatives decide on the sentence. An additional positive of the process is that the victim attends and is allowed to have their say and tell the offender how the offending behaviour as affected them.

The N.S.W. pilot commenced in Nowra and SEALS has been involved in every circle. SEALS has been involved in the two circle courts that have been held in the A.C.T.

Each circle is very emotional and very different. The circle process can take 2 to 3 hours and the defendant has to talk to everyone present. They have to be prepared for the circle, both legally and emotionally.

We believe that the solicitors from SEALS who have been involved in the pilots have been able to be of great assistance to their success. The defendants need to have faith in their legal representative and the solicitor must have an excellent understanding and knowledge of their client, the client's family and the local Aboriginal community before a circle commences.

The Nowra pilot has produced excellent results and we feel that part of the credit for the success is due to the role played by SEALS before, during and after each circle. It would be difficult for solicitors without a close connection and understanding of the Aboriginal community to participate successfully.