

Introduction

Legal Services Available to Indigenous Australians

- 1.1 Indigenous Australians receive legal services through an array of publicly funded mainstream and Indigenous specific organisations.

Mainstream Service Providers

Legal Aid Commissions

- 1.2 Legal Aid Commissions (LACs) provide legal representation and advice to disadvantaged groups within the community and as such the vast majority of Indigenous Australians qualify as their potential client base.
- 1.3 LACs are funded primarily by state or territory governments to provide legal services to all Australians subject to a means test. Since 1997 Commonwealth funds received by LACs have been tied to provision of legal services on Commonwealth law matters, primarily in the area of family law.

Community Legal Centres

- 1.4 Community Legal Centres (CLCs) provide legal services primarily in the form of advice, but on occasion as representation, and are of two types. Generalist CLCs provide legal services to all Australians. Specialist CLCs provide legal services to targeted groups such as women or Indigenous women or on specific issues such as tenancy rights, family law or employment and industrial matters.
- 1.5 Different CLCs have different funding arrangements. Some are funded solely by state or territory governments, some solely by the Commonwealth Government and some receive both state and Commonwealth funds.
- 1.6 Some CLC programs such as Indigenous Women's Projects are particularly pertinent to promoting the access of Indigenous women to mainstream legal services.¹

Indigenous Specific Service Providers

- 1.7 Indigenous specific providers of legal services are owned by and based in the communities they service. The community character of Indigenous specific providers involves more than exhibiting an awareness of local Indigenous cultures, it refers to Indigenous ownership of these services.² Indigenous legal services are community owned organisations in that their boards of directors are elected by Indigenous people within the service area.
- 1.8 Community ownership is reflected in the embeddedness of Indigenous specific legal services in the communities they service. They have increased the access of Indigenous people to legal services through networks of field and court workers who live in the target communities.
- 1.9 Field and court workers provide on the ground knowledge of what is happening within communities and are often more approachable as a first point of contact because of their familiarity with clients and their situations. As well as establishing a first point of contact, these workers provide a continuing line of communication between legal service solicitors and their clients, for instance, ensuring court attendance by accused offenders who have been granted bail or by parties who have laid charges.

1 For Commonwealth funding details see AGD, *Exhibit No. 21*.

2 ALRM, *Transcript*, 19 August 2004, pp. 36-7.

- 1.10 Indigenous specific providers of legal services are primarily of two types : Aboriginal and Torres Strait Islander Legal Services (ATSILSs) and Family Violence Prevention Legal Services (FVPLSs)

Aboriginal and Torres Strait Islander Legal Services

- 1.11 In the early 1970s Aboriginal Legal Services began to be established in response to the lack of representation of Indigenous Australians in the criminal justice system. The Commonwealth commenced funding for Aboriginal Legal Aid at \$748 000 in 1972-73 which rose to \$3 746 000 by 1975-76.³
- 1.12 Following the report of the Royal Commission into Aboriginal Deaths in Custody funding for Indigenous Law and Justice was increased dramatically from approximately \$18 million in 1990-91 to \$36 million in 1991-92.⁴
- 1.13 In 2002-03 there were 25 ATSILSs with 96 sub-offices across Australia.⁵ The Aboriginal and Torres Strait Islanders Services (ATSIS) Law and Justice Program funding for Legal Aid was \$42.622 million.⁶

Family Violence Prevention Legal Services

- 1.14 In 1998 the Aboriginal and Torres Strait Islander Commission (ATSIC) piloted a Family Violence Prevention Legal Units program.⁷ At the time of the review of the ATSIS Indigenous Law and Justice Program by the Australian National Audit Office (ANAO) there were 13 Commonwealth funded FVPLSs.
- 1.15 FVPLSs provide a holistic response to family violence:
- If the woman is a victim, they may represent her and then they may also play a role through their other activities by providing counselling services or other referral services...⁸
- 1.16 FVPLSs are Indigenous specific providers of legal services that are often auspiced out of extant incorporated legal service providers such as ATSILSs or CLCs.

3 Department of Aboriginal Affairs, *Annual Report 1988-89*, Appendix 15, p. 214.

4 ANAO, *ATSIS Law and Justice Program, Audit Report No. 13, 2003-04*, Para. 1.2, p. 23.

5 The tendering out of ATSILS particularly in Queensland, the Northern Territory and New South Wales may alter this figure.

6 AGD, *Submission No. 44*, p. 2.

7 NNIWLS, *Policy and Budget Submission, 2004*, p. 7.

8 ATSIS, *Transcript*, 9 June 2004, p. 8.

- 1.17 The 2004-05 Commonwealth Budget announced a doubling of funding for FVPLSs from \$3.2 million in 2004-05 to \$6.5 million in each of the following three years to double the number of FVPLSs from 13 to 26.⁹
- 1.18 The Attorney-General's Department (AGD) informed the Committee that:
On 25 February 2005, the Attorney-General announced arrangements for seven of these [FVPLS] units, and on 2 May [the Attorney-General] announced a further four successful applicants.¹⁰
- 1.19 On 20 May 2005 the Attorney-General announced the twelfth FVPLS and stated in the House of Representatives that:
most of these new units, if not all, will be ready to open their doors from 1 July this year.¹¹

Changes in Commonwealth Administrative Arrangements

- 1.20 From 1 July 2003 ATSIIS took over responsibility for administering the Law and Justice Program from ATSIIC. Under the new arrangement ATSIIC provided policy direction while ATSIIS administered funding as an independent Executive Agency within the Immigration and Multicultural Affairs and Indigenous Affairs Portfolio.
- 1.21 On 1 July 2004 responsibility for administering the functions of the ATSIIS Law and Justice Program was transferred to the newly established Indigenous Law and Justice Branch in AGD.
- 1.22 At a public hearing on 9 June 2004, ATSIIS took several questions on notice to which it failed to respond until over eight months later at a private briefing on 17 March 2005. The Committee acknowledges that this eight month period includes the dissolution of the House of Representatives on 31 August 2004, which resulted in the lapse of this inquiry until its re-adoption by the Committee on 8 December 2004. nevertheless an eight month delay in responding to questions on notice is unacceptable.
- 1.23 The initial failure to respond to the Committee's questions on notice by the requested date of 7 July 2004 or to advise why responses were not forthcoming occurred despite adequate continuity in terms of personnel

9 The Hon Peter Costello MP and Senator the Hon Nick Minchin, *2004-05 Budget Paper No. 2*, p. 225.

10 AGD, *Submission No. 44*, p. 2.

11 The Hon Philip Ruddock MP, *New Release 096/2005*, 20 May 2005 and Hansard, 25 May 2005, p. 52.

who moved from administering the Law and Justice Program at AT SIS to AGD.

- 1.24 The movement of responsibility for a program from one portfolio to another does not abrogate the responsibility of responding to this Committee's questions.
- 1.25 The failure to meet a requested deadline for delivery of responses to questions taken on notice by AGD was repeated following the 17 March briefing when the Department provided its response to questions taken on notice on 11 May 2005 instead of the 30 April 2005 deadline as agreed. On this occasion the Committee had to seek advice as to why the responses were late and when they would be received after the deadline had passed.
- 1.26 The Committee takes its responsibility of providing Parliamentary scrutiny of Government very seriously and expects that questions taken on notice by Commonwealth agencies and departments will be responded to promptly and in full and will not require the Committee to invite witnesses back before it in order to gain satisfaction.

Recommendation 1

- 1.27 **That the Attorney-General's Department put in place measures to ensure that questions taken on notice to the Joint Committee of Public Accounts and Audit are either responded to within requested timeframes or that reasons are provided showing why responses will be delayed together with a proposed alternative date by which responses will be received by the Committee.**

Context of the Inquiry

- 1.28 The Committee's inquiry arose out of its review of the ANAO, *AT SIS Law and Justice Program: Aboriginal and Torres Strait Islander Services, Audit Report No. 13, 2003-2004*.
- 1.29 ANAO focused on the adequacy of funding and administrative arrangements of:
- the National Office with Regional Offices of AT SIS; and
 - the National and Regional Offices of AT SIS with AT SILSs.

- 1.30 The Committee's inquiry took place amid the implementation of a major policy development in funding arrangements for ATSILSs. AGD was proceeding with a state by state tendering out of contracts for the provision of legal services to Indigenous Australians.
- 1.31 Preliminary preparations for the tendering process were begun under ATSiS in accordance with the ATSIC Decision of June 2003 and Ministerial Directions provided to the Chief Executive Officer of ATSiS.¹²
- 1.32 The tendering process constitutes one of the response mechanisms to the seven recommendations made by ANAO that were unanimously agreed to by ATSiS:
- The ANAO recommendations are being implemented at an administrative level through targeted policy development and the proposal to *Tender For The Delivery of Indigenous Legal Aid Services*.¹³
- 1.33 The Committee's inquiry built upon ANAO's findings by focusing on the adequacy of legal services delivered to Indigenous Australians particularly from the perspective of the service providers.

Structure of the Report

- 1.34 Chapters Two and Three of this report relate some of the difficulties confronting providers of legal services to Indigenous people, particularly in regards to the provision of family and civil law services (Chapter Two) and how this impacts on the access of legal services by victims of crime, particularly Indigenous women and children. (Chapter Three)
- 1.35 The disproportionate amount of ATSILSs resources devoted to criminal law cases when compared with civil and family law matters lies at the heart of many of the concerns that were raised by service providers and their peak bodies, law societies, community groups and state and territory government agencies throughout the inquiry.
- 1.36 The focus of ATSILSs on criminal law matters has meant that access to Indigenous legal service providers by Indigenous victims of family violence and sexual assault, who are usually women and children, has been dramatically restricted. A number of responses by service providers and the Commonwealth have attempted, with varying degrees of success

12 ATSiC, *Commission Decision, Meeting No. 81, Paper No. 3487*, 16-17 June 2003 and ATSiS, *Exhibit No. 14*.

13 ATSiS, *Submission No. 18*, p. 6.

to address the restricted character of access by Indigenous people to family and civil law services.

- 1.37 Chapters Four and Five relate some directions that may increase the access of Indigenous people to legal services. Two major directions consist in:
- increasing the stability of legal services; (Chapter Four) and
 - requiring better coordination of available legal services between Indigenous specific and mainstream providers. (Chapter Five)
- 1.38 The Committee was cognisant that its inquiry was held while the tendering out of ATSILSs proceeded on a state by state basis. It received considerable amounts of evidence in relation to this matter and has considered this process in the context of the future provision of legal services to Indigenous Australians at Chapter Six.
- 1.39 The Committee also received considerable evidence relating to community based law and justice programs such as the circle sentencing programs in New South Wales, the community law and justice committees in the Northern Territory and community policing programs in Western Australia, which is considered at Chapter Seven as an additional future direction that may profitably be explored in the provision of law and justice services to Indigenous Australians.

Conduct of the Inquiry

- 1.40 On 24 March 2004 the Committee adopted the terms of reference for its inquiry into the provision of Indigenous law and justice services. The inquiry lapsed with the dissolution of the House of Representatives on 31 August 2004.
- 1.41 On Wednesday 8 December 2004, the Committee resolved to adopt an inquiry with the same terms of reference as the inquiry into Indigenous Law and Justice established by the Joint Committee of Public Accounts and Audit in the previous Parliament.
- 1.42 The Committee's terms of reference were advertised in the Indigenous and mainstream press on 31 March 2004.
- 1.43 The Committee received 44 submissions¹⁴, as well as 51 exhibits¹⁵ and other correspondence.

14 Listed at Appendix A.

15 Listed at Appendix B.

- 1.44 The Committee held public hearings in Canberra, Sydney, Darwin, Alice Springs, Adelaide, Dubbo and Perth and an inspection at Yuendumu.¹⁶

¹⁶ Details listed at Appendix C.

