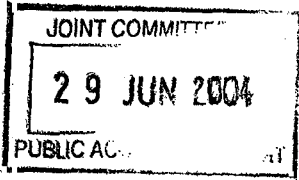


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Submission No. 28

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

29 June 2004

Dear Sir/Madam,

RE: Submission to Indigenous Law and Justice Inquiry

We thank you for the opportunity to address the committee in Sydney on 13 July.

Discussion Issues

(A) Distribution of resources among criminal, family and civil cases

Our service covers the north coast of NSW, from the Hawkesbury River to the Tweed River. The region has the second largest Aboriginal population after the Sydney metropolitan area with an estimated total in 2001 of 36,260 people.

There are 30 Local Courts and 8 District Courts in the region. There are two existing large regional gaols and a new gaol due to open in Kempsey later in 2004. We are funded to employ eight solicitors. We do only criminal work as the resources available negate any other activity and we are stretched to cover all the criminal law needs.

Given the continuing trend of increasing numbers of Aboriginal people coming before the criminal courts and going to gaol we regard criminal defence work as the first priority, in line with the recommendations of the Royal Commission into Aboriginal Deaths in Custody (1991). Without specialised, empathetic and experienced advocates the imprisonment rates would be even worse and the future would be critical in light of the demographic statistic that 40% of the Aboriginal population is under the age of 15. The indigenous population of the region grew by 29.8% between 1996 and 2001 making it the fastest growing Atsic region in the nation. Our funding has not increased over that time.

We do assist people with both family and civil law matters to appropriate services (see below in subsequent discussion points) and we would welcome sufficient resources to provide such services ourselves.

(B) Coordination with Legal Aid Commission

The NSW Coalition of Aboriginal Legal Services (COALS) has signed a memorandum of understanding with the NSW Legal Aid Commission setting out the principles of co-operation and mutual assistance that operate between the ATSIL's and the LAC. Similarly, each of the

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six members of COALS has a written agreement with the NSW Public Defenders office covering the provision of expert barristers for higher court work and appeals, on a negotiated fee basis.

In our region, our organization is a joint partner in one of two pilot programs of the Cooperative Legal Service Delivery Model (CLSD). The pilot is based in Lismore and covers the northern rivers area of the state. Other partners are the LAC, Community Legal Centres, Chamber Magistrates, Community Justice Centres, the Regional Law Society, Tenants Advice Services and Financial Counsellors. The model applies a coordinated, regional planning approach to the provision of legal services. By facilitating collaboration and cooperation between legal service providers on a regional basis, and providing tools to identify and address issues specific to the communities they serve, the result should be improved access to justice for disadvantaged communities in regional and rural areas. The other CLSD pilot is running in Dubbo and the Western Aboriginal Legal Service is a partner there.

(C) Access for Indigenous Women

Even though we deliver only criminal defence services, our female clientele continues to increase as the number of Aboriginal women coming before the criminal courts rises annually. A recent study by the Australian Bureau of Statistics ("Australian Social Trends, 2004") recorded that the number of women in gaol soared by 78% between 1995 and 2002. A major contributor to the rise is the increase in convictions of women for serious offences such as Robbery (up 172%), Homicide (up 70%) and Assault (up 79%).

The same study also documents that between 1995 and 2002 the number of Indigenous women prisoners increased by 124% and that by 2002, one in four women in prison was Indigenous. Based on population figures, this means that indigenous women are almost 20 times more likely to be imprisoned than are non-Indigenous women. We assist and represent all Aboriginal women appearing in criminal cases in the courts of our region.

In addition, most of our juvenile male clients and many of our adult male clients are supported at court by women, whether family or other relationships. The process and outcome of the cases is highly important to the female supporters.

It is the case that many women need family law services and civil law assistance in matters such as tenancy. Whilst we do not provide such services ourselves, we have a number of arrangements with other agencies to provide those services. Ideally, we would like to be resourced to provide them ourselves but that would require a large increase in our funding and is unlikely to happen.

Through our membership of the CLSD model pilot, we arrange for family and civil law services to be delivered to any Aboriginal person who approaches us in the Lismore office area. We provide a field officer to accompany a LAC civil solicitor to remote communities to act as cultural liaison person. Our Lismore office has the ability to refer any person requiring services other than criminal work to an appropriate local agency that does provide such services without charge to the Aboriginal person. Sometimes, of course, Aboriginal people are not comfortable dealing with a non-Aboriginal organization and they choose not to take the referral opportunity. For that reason, there does need to be an Indigenous service in family and civil law.

We have a cooperative arrangement with the University of Newcastle Community Legal Centre, with which our Newcastle office is co-located. They have civil and family lawyers, as well as two LAC lawyers placed there. We can refer any non-criminal matter there and make an appointment for the client to see the appropriate lawyer. That leaves people in the middle of our region without a local provider of family and civil services other than by grant of aid from the LAC through a local private solicitor or the LAC office in Coffs Harbour.

(D) Ability to Recruit and Retain Expert Staff.

On average, our lawyers are paid 15-20% less than the LAC lawyers who perform similar roles. We are not funded to back-fill any positions (for leave, illness and special projects), we lost a significant benefit when the salary sacrifice component was halved and we have not even received cost of living adjustments for over six years. Accordingly, our ability to recruit and retain good staff is seriously compromised.

We do not have a career structure for lawyers wishing to specialise in advocacy and we lose many of our best to the LAC and private firms. If we could offer experienced lawyers a career progression so that they could aspire to Solicitor-Advocate positions we could reduce our outlay on private barristers and public defenders.

Similarly, our field officers have no progression even if they complete relevant educational qualifications such as the training course at Tranby College. They are paid significantly less than equivalent para-legals at the LAC.

Conclusion

We strongly believe that a regionalised structure for Atsil's is the best model for service delivery. It allows the decision makers to consult personally with community members. An example is the series of ten community consultations held up and down our region in February and March of this year. Our Manager and Principal Solicitor attended each day-long meeting, noting and responding to concerns expressed by local community members. Contacts made at the meetings have led to ongoing relationships whereby spokespeople for small isolated settlements pass on information that assists in planning and resource distribution.

Often in Aboriginal communities a personal relationship between decision makers and community members and leaders produces a meaningful exchange of information and views and a confidence that any concerns that are raised will not get lost in a bureaucratic jungle of a large state based organization. A regionalised format better suits involvement in programs such as the CLSD model referred to above. It also allows the Atsils to respond more efficiently to localised issues, such as the harassment of the homeless in burgeoning tourist centres.

By coming together in the peak body, COALS, the six regionalised Atsils can deal with state-wide issues whilst retaining a localised knowledge to better inform examples of what happens on the ground. We believe that COALS should be separately funded to continue its role as the peak body of Atsils in New South Wales, rather than be financially supported by the Atsils who are themselves under-funded for the task at hand.


John McKenzie/Julie Perkins.

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