

COUNTRY WOMEN'S ASSOCIATION OF NEW SOUTH WALES



**SUBMISSION TO THE
JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT
INQUIRY
ON
INDIGENOUS LAW AND JUSTICE**

TO: The Committee Secretary,
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21 May, 2004

INDIGENOUS LAW AND JUSTICE INQUIRY

Our response to this Inquiry is as laymen, with only limited personal knowledge of the actual workings of the Aboriginal and Torres Strait Islander Service's Law and Justice Program. As a result, there may well be generalizations and misconceptions expressed herein. We apologise for such at the outset.

INTRODUCTION

In 1991, the principal finding of the Federal Government's Royal Commission into Aboriginal Deaths in Custody was the over-representation of Indigenous Australians at every stage of the Justice System. Every Government in the country undertook to address this issue. A range of programs was to be put in place – from community based initiatives for improved educational, employment, health and general awareness outcomes to diversionary and/or cautionary alternatives to sentencing if young offenders in particular found themselves facing court. The figures quoted by the Audit Report that has led to this Inquiry demonstrate that as a nation we have been abysmal failures in dealing with Indigenous/Justice issues.

Bursts of government fervour to effect real change are not sustained; the general, non-Indigenous population sees itself as equally deserving of assistance, as evidenced by the initial success of the One Nation philosophy; the very real differences among Indigenous leaders as to solutions to the problems leave many people (including those they purport to represent) confused and often angry; and on the whole, the funding that has been channeled into programs has simply not produced the improvements expected.

Whatever the reasons for failure, we have to admit that solutions have not been found. In 1992 the proportion of Indigenous PRISONERS IN Australia's gaols was 14%; by 2003 it had grown to 21%, yet Indigenous are only about 3% of the general population. One has to wonder about Government commitment to the Royal Commissions Recommendations, though, as funding for Legal Aid has increased by less than \$2 million over the past five years. The rate of Aboriginal deaths in custody also continues to be unacceptably high. There are other telling figures, including those that show Aboriginal and Torres Strait Islander Legal Services (ATSILS) dealt with 113 698 "case and duty matters" in 2002/3 compared to 68 066 in 1997/8.

- a) the distribution of the resources of Indigenous legal aid services between criminal, family and civil cases:

The Audit Report tells us that the Law and Justice Program administered by the Aboriginal and Torres Strait Islander Services (ATSIS), established in July 2003, has four "output elements" – Legal Aid, Law and Justice Advocacy, family Violence Prevention and Prevention, Diversion and Rehabilitation. All told, a total of more than \$57million was spent in 2002/3 over these four areas and of this total legal aid services received about 75%.

Where has the money gone? There are 25 community-based ATSILS with sub-offices in 96 rural and remote facilities, so infrastructure and wages obviously take a large slice of the funding. As in all bureaucratic structures, there is undoubtedly waste, occasional mismanagement and duplication of services. The report points out that "around 90% of ATSILS' work is in criminal law"; the numbers of Indigenous people facing the Justice system would support this conclusion. Yet there have been some successes, in community justice programs, especially in programs targeting youth – the "circle sentencing court" in New South Wales, for example, and the employment of diversionary programs, at least for a time, in the Northern Territory.

Is the money largely being wasted then? A general understanding of the problems faced by the majority of our Indigenous population demonstrates that their standards of living, levels of employment, housing, education and health are all way below those of the rest of the population. Youth especially is disadvantaged. In May last year, the Dusseldorp Skills Forum and Curtin Consulting reported that 23% of people aged between 20 and 24 were not studying or in full-time work; among non-Indigenous young people in the same age groups, the percentage was almost 70%. The proportion of Indigenous teenagers aged 15 to 19 not studying full-time was three times that of their non-Indigenous peers.

Many Indigenous people live in less than Third World circumstances. Their relative death and disease rates are much higher than their mainstream counterparts. Their leaders tell us constantly that their people feel powerless, victimized, disenfranchised, alienated. Some of the results are violence, against each other and themselves as well as the community in general; harmful petrol and paint thinners sniffing; petrol sniffing; alcohol abuse – all destructive of life, well-being, relationships, self-esteem and communities. Any wonder criminal activity is a part of the lives of so many? And we have not even considered the attitudes of the wider community towards them.

Under the Law and Justice Advocacy arm of ATSI, there is again a duplication of services – dealing here with lobbying, advocacy and research and technical support; two deaths in Custody Watch Committee organizations and five State-based Aboriginal Justice Advocacy Committees. Infrastructure and wages must use much of the \$4million budget allocated last year. And again, one has to wonder what real value their constituency receives. We are not claiming the funds are necessarily being wasted, but there is a concern that there is not value for money in light of the ills facing the Aboriginal people.

Funding, which was introduced in 2000, for Family Violence Prevention was worth nearly \$5million in 2002/3. This area is of increasing concern for Indigenous and non-Indigenous leaders and communities alike. In July last year, Prime Minister Howard called a summit of twenty leaders, mostly women, to consider ways to quell the violence and troubles affecting most Aboriginal communities. It appears that the rate of domestic violence was 45 times higher for Indigenous communities than for the rest of Australia. Reasons include alcohol and substance abuse, lack of employment, crowded housing and shortage of services most of us take for granted, lack of education. Women in remote areas have no safe houses or refuges; most girls and many boys suffer sexual abuse; women are often simply the target on which the men take out their frustrations. In those communities which have elected to go dry there has been a measurable improvement – school attendance, pride in community and less violence towards women. There is still a huge need for funding for education, employment, life skills, like anger management and negotiation, safe houses and a total change in attitude to women. Most leaders, especially the women, blame the breakdown in traditional family and community values among the Indigenous population for the violence and see education and employment as the key to change.

When Tania Major told the Prime Minister what it was like growing up in her Cape York community, her message was truly shocking to most of us: Of 15 students in her class at school, only three are not alcoholics, seven (boys) have been gaoled for murder, rape and assault and four classmates have committed suicide. She was the only one of the girls in her class not to have given birth by the time she turned 15. Such stories demand that funding has to go into preventative rather than reactive measures if the community is to survive.

Prevention, Diversion and Rehabilitation also receive funding. In some communities, Dubbo in Western NSW, for instance, Indigenous people have received funding for a bus and each night it checks the streets for young Aboriginal kids “looking for trouble”. They are taken home or to a safe house. In addition, there are nightly street patrols to ensure people and homes are safe. These are among a variety of strategies funded under this important area of work, which attracted more than \$5million 2002/3. Again, its level of success is difficult to judge on the large scale and is probably more effective when individual community and personal success stories are studied.

- b) the coordination of Indigenous legal aid services with Legal Aid Commissions through measures such as memoranda of understanding:

There are many services whose roles tend to duplicate each other's in the delivery of law and justice for Indigenous people. Legal Aid Commissions in each State or Territory come under the authority of those jurisdictions and have two sources of funding – Federal funding for assistance with federal legal matters such as Family Law and State / Territory funding for legal matters that fall under those jurisdictions. There are also Community Legal Centres which as the name implies, are community based and receive funding from the federal government.

ATSI handle the bulk of legal services to Indigenous peoples and if these services were to be cut back, the LACs would probably face funding difficulties. While there are examples of cooperation between the two bodies, there are differences, such as wage levels – ATSI staff appear to earn less than their LAC counterparts, so there is a one-way movement of staff.

There is though at least a perception of considerable duplication of services especially where ATSI, LAC and CLC have centers in reasonable distance of each other.

On the other hand, we have the Federal Government currently planning to dismantle the Aboriginal Legal Service (ALS) in general (April 2004). There has been released a draft form of a request for tenders to provide legal services to Indigenous Australians, services traditionally the responsibility of the ALS. The Government proposes a single state-wide entity to replace the regional services currently available and the draft contains no imperative for the tenderer to employ Indigenous staff or to be an Indigenous organization. Perhaps this whole inquiry will be taken over by such events.

- c) the access for indigenous women to Indigenous-specific legal services:

The difficulties faced by Indigenous women and girls have been touched upon already. Some Indigenous women wonder why a Royal Commission was held into Aboriginal Deaths in Custody yet none has been

held into domestic violence in their communities and which causes, they argue, more trauma. In Western Australia, for example, Aboriginal women are 45 times more likely to be victims of a serious assault from a family member than their counterparts in the broader community.

The establishment of Family Violence Prevention Units (FVPUs) has gone some way to helping and their being awarded separate funding in recent years has given greater access to services for women. In 2002/3, nearly 35 000 Indigenous women were assisted legally by ATSILS. Much though remains to be done, as any history of Indigenous communities makes clear. More assistance is needed especially in Family Law matters.

d) the ability of Law and Justice program components to recruit and retain expert staff:

The transfers of the National Office between Canberra and Sydney have impacted on retention of staff. One can only wonder why it has been considered necessary to move from Canberra in 2000 and back there in 2003. Such moves do dislocate staff as well as carry high financial costs.

The Audit found that staff in general were under trained in the Law and Justice Program. Only 11% admitted to any training in the Program. Positions also tend to have a fairly high turnover, with average length of employment only 13 months. It would appear that efforts need to be directed to offering courses, both face-to-face and in written guidelines, to staff to enhance their confidence and competence, leading hopefully to greater retention rates. It appears too from the Audit Report that there needs to be much clearer lines drawn on which body has which role and responsibility. While such demarcations are unclear, staff cannot develop well-founded confidence that their advice or actions are correct. Uncertainty about such issues also leads often to stress and seeking fresh fields of employment.

The transfer from Sydney to Canberra is a fait accompli, but it does appear a whole new staff will have to be recruited, trained and then, hopefully retained. A waste of experience, expertise and goodwill.

IN CONCLUSION AND SUMMARY, regardless of Government plans, we would expect to see funding better directed to meet the needs of Indigenous people at grass roots level, with less waste and more accountability; an emphasis on the "Big Picture", education, housing, employment, health as well as legal issues, as wellbeing is a vital factor in any community; programs directed to need and taking note of different approaches for different communities, urban and rural and remote; and, finally, programs whose aim is to empower those at whom they are supposedly directed.

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