

ABN: 60 382 206 441

11, August 2004

The Committee Secretary
Joint Committee of Public Accounts and Audit
S1.61 Parliament House
Canberra ACT 2600

Dear Committee,

Re: Indigenous Law and Justice Inquiry

We refer to the above and wish to make the following submissions in relation to this inquiry.

Questions about alcohol, victims' compensation and promiscuity are regularly asked in relation to the credit of Aboriginal women. Myths and stereotypes of Aboriginal women as unsophisticated, vengeful and morally corrupt are also evident in the courtroom...language barriers and the use of jargon present particular difficulties for Aboriginal women.

Gender Bias and the Law Project 1996, Heroines of Fortitude: The experience of Women in court as victims of sexual assault, Department of Women, Sydney page 95

Wirringa Baiya Aboriginal Women's Legal Centre

Wirringa Baiya commenced operating in 1997. **We were established in response to the denial of Access to Justice for Aboriginal women.** Wirringa Baiya is a non-profit organisation managed by Aboriginal women. It is a community legal centre for Aboriginal women, children and youth living in NSW. The focus of the centre is to assist Aboriginal women, children and youth who are, or have been victims (survivors) of violence.

In 1988 a group of Aboriginal women came together with the aim of addressing the issue of violence perpetrated against women in their communities. This began the long battle of lobbying ATSIC, State and Federal Ministers. Wirringa Baiya was officially opened in 1997 and was known as the NSW Aboriginal Women's Legal Resource Centre. In 1998 members changed the name to a more culturally appropriate one - Wirringa Baiya meaning Black Women Speak.

Before the establishment of Wirringa Baiya Aboriginal women had no culturally appropriate legal organisations of which to seek legal assistance. Aboriginal Legal Service's (ALS) were established to keep Aboriginal people (predominately males) out of the criminal justice system. They have a policy of not representing one Aboriginal person against another Aboriginal person. This policy in fact discriminated against Aboriginal women. ALS argues that the Aboriginal women have access to the Police Prosecutor who takes up the case for women. Whilst that is the case Aboriginal women still need additional advice in relation to the associated issues such as victims compensation, family law, property settlement etc.

Wirringa Baiya is leading the way in addressing Aboriginal women's, children and youth's issues and self-determination. We offer **free legal advice** four days a week. Advice can be accessed face to face at the centre at Marrickville or on the toll free advice line. As we are a statewide service and employ only one (1) full-time solicitor at times we struggle to meet the needs of the community, we have not had an increase of funds to employ more solicitors since we commenced operating.

Wirringa Baiya has given the opportunity for Aboriginal women who are or have been victims (survivors) of crime to tell their story whilst seeking justice for the crimes that have been inflicted on them through domestic violence and sexual assault.

Funding

The NSW Attorney-General's Department funds Wirringa Baiya. The NSW Legal Aid Commission administers the funds. Surviving

Staffing

Wirringa Baiya is staffed by the following

- Coordinator Trish Frail-Gibbs
- Principal Solicitor Rachael Martin
- Part-time Solicitor Madeleine Heath

Clients per year

Last year Wirringa Baiya provided legal advice to over a hundred of Aboriginal women, children and youth in NSW. We consider this to be a great achievement, however **our solicitor is overworked.**

Community Legal Education

Wirringa Baiya provides face to face community legal education to over 100 women within NSW we also provide mailouts to communities regarding legal issues.

Services that are offered by Wirringa Baiya

- Free legal advice and information to Aboriginal women, children and youth living in NSW
- Limited casework
- Community legal education workshops in urban, rural and remote communities of NSW
- Cultural awareness training for people in the legal field whom have contact with Aboriginal women, children and youth
- Law reform activities
- Media contact to facilitate accurate reporting of Aboriginal women's legal issues

A) The distribution of Aboriginal and Torres Strait Islander legal Services resources among criminal, family and civil cases

How can you compare the distribution of resources when we do not know what service receives of what funds are allocated to what area of law for example there are a few Aboriginal Legal Services who assist Aboriginal women who are or have been a victim of crime, this of course falls under civil law yet the majority of their funds are for criminal law.

However what we do know is that more and more Aboriginal women who are the victims of domestic violence, family violence or community violence are seeking justice through the legal system.

Please note in the Senate Committee Report to Legal Aid and Access to Justice page 95 shows clearly the funds allocated to the Family Violence Prevention Services and if you broke down those figures again by the States you would come to:

State	Different communities within the State/Territories
New South Wales	Three
South Australia	One
Queensland	Two
Victoria	One
Western Australia	Three
Northern Territory	Three

As we can see from the above scale the distribution of funds is inadequate.

One can only assume that the women from Tasmania and Canberra do not suffer from domestic violence, family violence nor sexual assault. Victoria and South Australia also do not have much of a problem.

The above scale indicates the Family Violence Prevention Services what about Women's Legal Services such as Wirringa Baiya and the Indigenous Women's Programs.

Is the Government asking us to compete against each other for the little funds allocated for the Aboriginal and Torres Strait Islander communities.

B) The coordination of Aboriginal and Torres Strait Islander legal services with legal Aid Commission through measures such as memoranda of understanding

Some points I would like to talk about regarding the tender process.

Funding for the three year contract will be down \$2.39 million per annual

Any organisation can apply for the tender regardless if they have any Aboriginal or Torres Strait Islander workers or experience in dealing with the Aboriginal and Torres Strait Islander community.

It assumes that the Legal Aid Commissioner will be able to absorb the overflow for clients not able to access Aboriginal Legal Services.

Aboriginal Legal Services are the same as Wirringa Baiya and are based on;

- The empowerment of the client and community,
- Community based, flexible,
- Works with the Aboriginal culture
- Addresses law reform when appropriate,
- Seeks Test Cases,
- Provides education for the community,
- Undertakes research and gathers information on Aboriginal people within the legal justice system.

All of the above are absent from the tender.

Within the tender there is four new proprieties, which are

- Safety or welfare of a child at risk
- Personal safety or a person in their care is at risk
- Person is at risk of being detained
- Representation of family members in death in custody

Wirringa Baiya believes that the first two priorities are long overdue.

However, there is and will continue to be a high risk of men and women who face criminal charges, yet there will no increase in funds.

With the new tender process people who are charged with committing violent crimes or continuously offend will not be able to seek legal representation. Is this against the Australian constitution in that everybody is innocent until proven otherwise?

C) The access for Indigenous women to Indigenous specific legal services

The domestic violence and sexual assault level directed at Aboriginal women, children and youth shows that there is a need for specific Aboriginal women's legal services it is the same argument that non-Aboriginal women put forward to having their own specific legal services.

It has been well documented and brought to the attention of Senate Committee last year for Legal Aid Law and Justice Inquiry of the need for Aboriginal and Torres Strait Islander specific legal centres. Nothing has changed.

Why is it that domestic violence is still not accepted as reaching a crucial stage within the Aboriginal community.

In July 2003 the Prime Minister called an urgent National Summit with representatives from the Aboriginal communities to discuss why there is an increase in family and domestic violence within the Aboriginal community. Leaders working within the field were not invited to attend, therefore we believe that the Prime Minister did not get the proper answers.

Recently the Prime Ministers department have taken to advertising against violence against women. Yet to date there are no advertisements that Aboriginal and Torres Strait Islander women can relate to. This is a good

example of the lack of consultation with Aboriginal and Torres Strait Islander women.

Why is it that the words **Family Violence** are being used within the Aboriginal community and not **domestic violence**?

Sexual assault against our children is at a crisis stage with some families believing that sex within the family unit (eg father-daughter/son, mother-son/daughter, brothers –sisters) is normal and acceptable.

D) The ability of law and justice program components to recruit and retain expert staff

As a previous Employment and Training Officer within a mainstream Employment and Training service this question was continuously being brought up, with the onus being placed on the Aboriginal and Torres Strait Islander community not on the organisation itself.

Organisations think nothing about re-advertising a positions as large turnover employees leave within a 12month period. Then they will have an Aboriginal or Torres Strait Islander identified position and they might go through two-three staff within twelve months and it becomes an issue.

Below is some of the points I recommended for the NNIWLS to submit into their report

This is the same old argument of professional training as opposed to on the job training and work skills being recognized. Do organisations expect to much out of their Aboriginal and Torres Strait Islander staff?

Do they understand the culture of our people? Do they provide support mechanisms for their staff? Do they understand that the majority of Aboriginal and Torres Strait Islander people learn through oral not literacy? Is this another form of discrimination against suitable applicants who do not have a university ‘degree’?

Why is an Aboriginal and Torres Strait Islander person suppose to be an ‘expert staff’

Why do organisations automatically give their Aboriginal and Torres Strait Islander clients to their Aboriginal or Torres Strait Islander workers. This is added pressure on workers.

One needs to ask is this the same argument women had when they fought to enter the workforce in the 30-40’s? What did the Australia government do to help women what have the Australian government done to assist with the Aboriginal and Torres Strait Islander community.

I’m not just talking about making jobs I’m also talking about the bigger picture and that is changing the communities perspective towards Aboriginal and Torres Strait Islander people.

Community infrastructure

Some sections of Aboriginal communities are very defensive regarding their community and what is happening within the community. They can be hostile to outside services that want to provide a service in their community. Consequently victims of violence wont access services for fear of upsetting the community and in some cases being victimised by the community.

Women services are perceived by some members of the community as anti-male, anti-family and anti-community.

Lack of resources is made worse by a lack of discussion regarding domestic violence in many communities this is due to the confrontational nature of the issues.

Racism is a huge issue for Aboriginal people within Australia. In some communities it is especially bad. Racism affects all Aboriginal people in our daily life and even more so for Aboriginal people seeking justice.

Laws are introduced that have a **direct effect against** Aboriginal people especially youth, **laws such as Mandatory Sentencing and Curfews.**

Domestic Violence

Wirringa Baiya is a specialist legal centre with its main focus in assisting Aboriginal women escaping domestic violence.

Some Ministers, Government agencies and people think that alcohol and substance abuse cause domestic violence, sexual assault and child sexual assault. **This is not true.** Domestic violence, sexual assault and child sexual assault are **premeditated and deliberate** and the victims are most often women and children.

Less than a quarter of the Indigenous women who responded to the NSW police's *Domestic Violence in Indigenous Communities* reported they received the help they needed. Despite the fact that, if called to a domestic dispute, police are instructed to take out an Apprehended Violence Order (AVO) on the woman's behalf. Only seven out of ten women reported that they managed to get one. These women had to ask for the AVO.

Domestic Violence in Indigenous Communities NSW Police Report, 1996

NSW Bureau of Crime Statistics and Research¹

NB: these figures are taken from police reports. Evidence suggests that Aboriginal people are less likely than non-Aboriginal people to report crime, so the true rates are probably much higher than these figures suggest.

- Aboriginal females are more than twice as likely as the average NSW woman to be a victim of sexual assault or sexual assault specifically against children.
- Aboriginal people are 3 times more likely than the NSW average to be a victim of murder, sexual assault, sexual assault specifically against children, and assault.
- Aboriginal women are between 2.2 and 6.6 times more likely to become victims of violent offenders than NSW women as a whole.
- Aboriginal females are four times more likely than the average NSW woman to be a victim of an assault, domestic violence related or otherwise.

Aboriginal victimisation and offending: the picture from police records J Fitzgerald and D Wetherburn, *NSW Bureau of Crime Statistics and Research, December 2001*

Barriers to Access to Justice for Aboriginal women in Rural, Regional and Remote (RRR) areas

- The Road system is never taken into factor. If the roads are dirt are they accessible? What is the wildlife on the roads like at a particular time of the year? Are the roads corrugated? Is there too much bulldust? What is the sun like during certain times of the day?
- Weather in RRR is not taken into account. Traveling in weather over 45degree heat is time consuming, both on the car and the traveler. Although most cars now days have air conditions, the air condition does not work very well in that heat especially if your traveling into the sun
- Lack of privacy (other people knowing your business when your seen visiting a Solicitor)
- Lack of culturally appropriate legal practitioners / organisations. Most Solicitors do not understand the culture of the Aboriginal community
- Absence of co-coordinated legal aid and related services
- Insufficient numbers of private solicitors who undertake Legal Aid work
- A monopoly of legal service provision by particular private practitioners
- People unable to access legal help because of isolation, disability and/or lack of funds
- The complete lack of public transport services which could provide a means for clients to access face to face services
- Inadequate number or complete lack of specialist solicitors in areas such as discrimination, employment and social security

Issues that specifically relate to the Legal Aid Commission ('LAC')

The LAC means test has not increased substantially for many years. The cut off income limit is low for net disposable income, which generally means that legal aid is not available for the most financially disadvantaged client.

Family Law

Aboriginal women in most cases are intimidated by attending any form of legal system, with family law it is more intimidating. Disclosing personal information in most cases brings up issues of children being removed known as the Stolen Generation. Therefore Aboriginal women will not disclose important information.

- When an Aboriginal woman is separating from a non-Aboriginal partner her culture is used against her and the stereotypes of Aboriginal women are used for the advantage the non-Aboriginal partner
- The introduction of drop-in Family Law clinics by Legal Aid Offices is a short-term answer. While it may address the 'immediate' question a client may have, it cannot address the more complex and ongoing issues that arise in Family Law matters, particularly with respect to the law regarding Superannuation etc and questions regarding litigation for clients who are forced to represent themselves. It does not provide a system for which clients can receive on going, complete and consistent service
- Any changes to the Family Law Act to include a **"Presumption of shared residence"** will have huge implications on the current resources available with more parents forced to make an application to the Court to have the 'presumption' considered

Conflict of Interest

To date, the Legal Aid Commission has not sufficiently addressed its Conflict of Interest Policy. The fact remains that in many of the matters we deal with, the female client is refused access to a Legal Aid office for example, family law matters, because her partner has already received advice from the LAC in a totally unrelated matter such as ‘Theft’. This is due in part to the appointment methods used by the LAC where the receptionist often makes appointments and accordingly no evaluation of the potential conflict or lack thereof is made.

Our Solicitors are spending approximately 10-20% of their time searching for Solicitors when Legal Aid cannot be accessed in RRR. A few reasons why:

- A lot of local Solicitors will not do certain areas of the law eg family law financial return do not meet the outlay and can be very time consuming
- Partners of the Aboriginal women have previously used the law firm therefore a conflict of interest has arisen regardless of how long ago the partner used the firm or what it was in relation to

Aboriginal Legal Services (ALS) funded by ATSIC have a policy of which they cannot represent one Aboriginal against another Aboriginal they mainly do criminal law. Some ALS's are brilliant and have a policy of who ever seeks assistance first is the one who will get the assistance regardless if it is the perpetrator or the victim (survivor).

Pro Bono Services

Whilst we have an extremely good relationship with Private legal firms that offer Pro Bono services however this service is only for Aboriginal women living in the metropolitan region of Sydney.

We are in the process of organising a Community Legal Education trip to rural and remote community of which we will be taking some Solicitors with us that provide Pro Bono and it will be an educational trip for them seeing first hand what it is like living in rural and remote communities and the lack of infrastructure, available to assist Aboriginal women to seek help.

Aboriginal women in prison

The majority of Aboriginal women in custody are there due to abuse that has made them into perpetrators.

It is well recognised and documented that Aboriginal women are over represented in the NSW prison system. Aboriginal women make up 1.9% of the NSW population and yet they represent 31% of the NSW Women prison population (Speak Out Speak Strong 2003 (AJAC report)). It is noted in the AJAC report that many of the women are survivors of sexual assault and domestic violence, 61% have been abused as children, 78% as adults. This abuse often led to women forming drug and alcohol addictions, 50% of the women interviewed turned to Heroin. This then led to crime to support their drug habit. It is part of a vicious cycle where the women are abused over and over, initially by the abuser and then by a system which can only punish rather than support them.

Many of the Aboriginal women in custody suffer from a mental illness. Whilst it is not known what proportion of Aboriginal women in custody specifically have a mental illness, it is known that half of the prison population at Mulawa has a mental illness. It is clear that some of the possible side issues of the illness, such as homelessness, self-medication, vagrancy and psychotic behaviour are the cause of some of these women ending up in prison.

Again, the result of a system that does not have adequate resources to support the women and therefore punishes them.

Aboriginal youth

There is also a chronic lack of youth services in many rural and remote areas, especially services that are appropriate to Aboriginal children and youth. There are two youth refuges in NSW far west, one in Dubbo, the other in Broken Hill, and none that are Aboriginal specific. This lack of services is reflected by a lack of statistics on the violence affecting young people, both as witnesses to domestic violence and victims of it, and the lack of resources for Aboriginal children and young people.

In the Orana region of NSW, in 2003, a 15-year-old Aboriginal girl was killed by her 17-year-old boyfriend. Previous to her murder she had twice been to the local police to get an AVO, twice her request was refused.

The impact of her death does not end with those directly involved: due to the complex nature of kinship and loyalty in Aboriginal communities, domestic violence such as this affects entire communities. The community affected by this girl's murder is now divided, with half supporting the family of the victim, and the other half supporting the family of the perpetrator.

Aboriginal children and youth are the highest users of the Kids Help Line, with rates of use compared to Anglo children and youth varying from 55% more to more than double the numbers of Anglo children and youth contacting the Help Line, according to 10 categories of types of calls made.

The NSW Kids Help Line reported that 77% of calls made by Aboriginal children came from girls. The major problems facing these callers were family relationships (17% of calls from Aboriginal children and young people), child abuse (9.7%), intimate relationship calls (8%), and violence (7%).

This report states that "The high proportion of calls concerning violence, child abuse, bullying and conflict within personal relationships suggests that, for many children and young people from Aboriginal backgrounds, violence is a familiar part of their daily experience."

Callers from Aboriginal Backgrounds, Kids Help Line info sheet 23, September 2001

Over the years Wirringa Baiya have produced some brilliant resources for Aboriginal youth, we work tirelessly with the youth on what they want as a resource, the design, wordings, artwork etc. Yet with all of this hard work we still have not seen an increase of Aboriginal youth accessing our Centre so we need to look at why.

The main reason youth have indicated to us is that there is no Aboriginal Youth Solicitor and no place within Wirringa Baiya that the youth can call as their own.

The above, needs to be taken into account when assessing the legal needs of Aboriginal youth.

Aboriginal Children

Child abuse and child sexual assault are at horrendous levels in the Aboriginal community. The extent and effect of child sexual assault is hidden, and in some communities it has become "normalised" due to the extent of its impact.

The issue is drastically under addressed by agencies and, due in part to extended family structures and familial obligations, under reported by victims. Past government policies of removing children from their homes also creates fear in the Aboriginal community that if child sexual assault is reported, children will be taken.

To our knowledge there has never been a big push by any Attorney General within Australia, Community Legal Centres, Private firms etc to advertise the legal rights of Aboriginal children.

Their legal rights are largely ignored (too hard basket).

Wirringa Baiya has worked hard in this field developing resources and working with mothers and service providers explaining to them the legal rights of the child. However how can we be expected to continue to carry this load with 1.5 Solicitors?

Aboriginal mothers do not know enough about their own legal rights so how are they expected to help their children.

Children agencies do not work together with CLC's we need to address this issue together.

Some Solicitors are not providing the proper advice

It is well known within the Aboriginal community that some Solicitors do not want to put in the work required to keep a person out of jail. People are commonly advised "plead guilty you will get a lesser sentence" regardless of the innocence of the person concerned.

Since this submission was submitted we have dealt with such a case and have made a complaint to the Chairperson of the organisation.

Aboriginal culture

Aboriginal women accessing mainstream domestic violence services often receive culturally inappropriate support. This is often the result of a lack of Aboriginal workers, cultural awareness and racism. Mainstream services must be better funded to enable them to provide designated Aboriginal positions, and cultural training. The recruitment process of domestic violence services must be examined to ensure that Aboriginal workers have an equal chance at all positions.

Aboriginal women have one of the lowest rates of access to formal education, especially at a degree or tertiary level. By closing positions to degree holders only, Aboriginal women are effectively blocked from working in many women's services.

Difficulties in basic communication between Aboriginal and non-Aboriginal workers also stop many Aboriginal women from accessing services. Aboriginal English is a language in Australia that must be recognised as equal to English, and non-Aboriginal workers need training in this language and its nuances to better engage with Aboriginal women and children escaping domestic violence and all forms of sexual assault.

Aboriginal kinship networks and extended families are very close knit, and women and children experiencing domestic violence are likely to either try and conceal it from everyone, or everyone will know about it. A woman may be greatly influenced by her community, and can be protective and be suspicious of outsiders, particularly non- Aboriginal service providers. Pressure may be put on Aboriginal women and girls not to report domestic violence or sexual assault, to protect a community against further negative interaction with outside agencies. **Emotional pressure can also be put on the victim, by the perpetrator threatening to kill himself if the police intervene and he is arrested.**

Aboriginal women do not access mainstream domestic violence services for a variety of reasons, including those listed above. Culturally appropriate advertising, resources and staffing can go a long way to overcoming a reluctance of Aboriginal women to seek justice.

Legal Network

Wirringa Baiya is a member of the National Association of Community Legal Centres, Combined Community Legal Centres Group (NSW) Inc and the Aboriginal Women's Legal Network. We continuously seek and provide advice on Aboriginal women, children and youth from within the above networks.

To close our submission I would like to point out:

- There has never been an Inquiry into the violence against Aboriginal women yet violence against Aboriginal women is the highest in the country.
- With the Black Deaths in Custody Inquiry of the 339 recommendations none of those recommendations related to Aboriginal women as victims of crime. Nor did it refer to the fact that some of the men who died in jails were in jail because of crimes committed against women.

SOME RECOMMENDATIONS

- An increase in the level of services to enable Wirringa Baiya Aboriginal Women's Legal Centre to enable Wirringa Baiya to meet the legal needs of Aboriginal women, children and youth. An additional amount of \$446,332 is required to employ additional staff in order to provide services required.
- Aboriginal women's legal centres and must projects be funding on a recurrent basis and the funds used to meet the needs of victims of crime
- A Inquiry into violence against Aboriginal women to be undertaken
- That significant increases in ongoing funding and support from Federal, State and Local government agencies must be made to address the issues surrounding Aboriginal communities and domestic violence.
- Programs addressing violence need to attack the problem on two levels: at home and in the community.

- That it be recognised that domestic violence primarily affects women and children, the majority of perpetrators are men, domestic violence is widespread in Aboriginal communities, affects women of all ages, young and old, and is an abuse of power and control.
- That the impact of colonisation on Aboriginal communities be recognised and the present government apologises for the negative impact of previous government policies such as assimilation and the Stolen Generation.
- That rural and remote communities be guaranteed access to culturally appropriate services by:

(a) Increasing funding levels to provide service providers with greater training and resources;

(b) Equipping isolated communities with better technologies to maintain stronger links with mainstream organisations for information exchange ;

(c) Increasing cultural training options for local agencies such as police, courts, legal services and health services.

(d) Increasing the number of Aboriginal women workers in remote and rural services through appropriate and culturally sensitive recruitment practices.

(e) Community consultation is undertaken as a high priority of all projects run in Aboriginal communities.

- That Aboriginal specific youth services be established in remote and rural areas to address the issues of Aboriginal youth and domestic violence and sexual assault.
- That funding bodies be more transparent, accountable and timely in their reporting practices.
- That there be a coordinated approach involving Legal Aid, Community Legal Centres, local solicitors Law Society branches, and health and community service providers to look at the legal needs of residents in rural areas. There should be systems put in place to allow the sharing of information and making appropriate referrals. There should be a *model* of connection and coordination between services.
- Legal Aid funding should be increased to cover more areas of civil law.
- The legal aid means test(s) should be increased to realistic levels to at least cover people on modest incomes.
- To increase Solicitors willingness to take on legal aid matters they should be paid a fee for lodging legal aid applications and appeals to the Legal Aid Review Committee.
- Legal aid rates to private solicitors should reflect what is generally regarded as a reasonable return for such matters.
- HECS is a deterrent for some Aboriginal people wishing to train as a Solicitor. Consideration should be given to what incentives should be available to continue to attract qualified and dedicated personnel into the legal sector.

Yours faithfully,
Wirringa Baiya Aboriginal Women's Legal Centre

Trish Frail-Gibbs
Coordinator