

21 May 2004

Indigenous Law and Justice Enquiry
Joint Committee of Public Accounts and Audit
Parliament House
CANBERRA ACT 2600

Dear Committee Members,

INDIGENOUS LAW AND JUSTICE ENQUIRY SUBMISSION

Warndu Watlhilli-Carri Ngura Aboriginal Family Violence Legal Service Inc (Warndu) is located in the South Australian mid north town of Port Augusta, which is situated at the northern tip of Spencer Gulf. Because of its geographical location Port Augusta is the gateway to the north and western regions of the State. As a crossroad for road and rail transport to these regions, Port Augusta has developed into a regional centre providing facilities and specialist services to those people living in, not only Port Augusta and surroundings areas, but also the north of the State. As a result a significant number of people enter or leave Port Augusta each day. In addition Port Augusta has become a hub for indigenous Australians living in the northern part of South Australia. A recent survey has shown that about twenty-three (23) indigenous language groups reside in Port Augusta although the majority identify with either the Adnyamathanha, Arabana, Bungala, Deiri, Kokotha, Pitjantjatjara and Yankantjatjara traditional people. The vast majority of indigenous Australians living in Port Augusta retain a close connection to their traditional homelands and heritage choosing to spend significant time in both their homelands as well as in Port Augusta for reasons of employment, education or other available services.

The object of Warndu's operation is to provide of legal services to indigenous Australians affected by the consequences of domestic or family violence. Our assistance may include legal advice, representation or referral to appropriate persons, organisations or authorities in circumstances when particular legal or non-legal issues arise from family violence. Mostly the issues involve steps to protect the immediate safety of victims, children, family member or others. To provide advocacy in relation

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to other support services in emergency situations then follow up with actions required to provide the victim with long-term security and stability for themselves and any children of the family. Community education about the effects of family violence on the individual the family and the community is also an important part of the object and charter of the service. On occasion it is necessary for Warndu to operate in the Family Court of Australia, Federal Magistrate Court of Australia or local Magistrate Court for the purpose of seeking orders for protection, care welfare and development of victims and family members. Warndu also works with Police, the Crown Solicitor's Office, Women Shelters, Aboriginal Families Projects, Family And Youth Services, Centrelink, the South Australian Housing Trust, the Aboriginal Housing Authority, various statutory authorities and private organisations as well as the Legal Services Commission in order to achieve these and other objects. Numerous additional undertakings or actions are carried out in order assist victims deal with the consequences or aftermath of frequently long periods of violence within the family or household. In some cases victims choose to leave these difficult circumstances as a matter of urgency and in so doing leave behind essential personal items as well as important documentation required to carry on daily life. Warndu tries to encourage victims to sort through issues facing them in the most efficient or pragmatic manner. Unfortunate personal safety does not always allow that to happen.

Warndu employs one Solicitor, one Para Legal Officer and one Administrative Officer to carry out this function. Two private law firms operate in Port Augusta, employing a total of 3 private practitioners. Very few clients of this service could even contemplate engaging the services of a private solicitor. A recent survey has shown that only 8% percent of Warndu clients, or their partners, are employed in some capacity. Of those 8% employed nearly half are employed on a part time basis. Legal aid through the Legal Service Commission of South Australia is available only to those clients that satisfy the necessary means, merit and guideline requirements. In effect only about 25% of our clients being those involved in disputes over children in the Family Court or Federal Magistrate Court can expect to obtain legal aid. Most legal aid applications are assigned to family law solicitors operating in Adelaide, about 300km south of Port Augusta. As a consequence significant communication difficulties often arises, as most of our clients are disadvantaged, more often than not living without a permanent place of address or telephone. Many have poor literacy or language skills. As such private solicitors funded by legal aid often find it difficult dealing with the client. It is not uncommon for private solicitors funded by legal aid to cease acting for the client because they are unable to obtain instruction from their clients within time frames that satisfy private practitioners. Clients have disclosed that private solicitors are rarely available on those occasions that clients are able to return the private solicitors telephone call. Availability, literacy, the complexity of legal correspondence, process, time and even intimidation are reason that clients referred to legal aid return to Warndu either by choice or because private solicitors are no longer prepared to act for these clients. On one occasion an Adelaide private practitioner funded by legal aid ceased acting for a client because she was unable to contact the client for a period approaching 4 weeks. Our service knew that the client was attending a "sorry camp" after the death of her son. Warndu was able to contact the client within 24 hours. On a separate occasion and involving a different client another Adelaide private practitioner funded by legal aid ceased acting for the client due to the frustration of communication. The private practitioner contacted this office

to say that she could no longer contact the client. Our service knew the client's whereabouts making contact with the client within 10 minutes.

Almost without exception Warndu clients have expressed, for a number of reasons, a preference to deal with indigenous services or organisations. Our clients say that when dealing with indigenous organisations the organisation has a greater understanding of the particular issues facing the indigenous person. Clients say they do not feel a need to justify certain family circumstances or issues. That clients have a greater connection with the organisation and that there is a better chance of meaningful communication between the members of the indigenous organisation and the client. At non-indigenous organisation our clients say they feel constantly "watched" or considered themselves to be "second class" citizens, feel "intimidated" or feel the "shame" of a long established guilt instilled into individuals through generations of institutional control and social problems. Moreover many clients consider that non-indigenous organisations have difficulty with certain terms or language used by indigenous people and that non-indigenous organisations are often "disrespectful" or intolerant of clients with particular issues in difficult circumstances. In short our clients have experienced a loss of faith or trust in most non-indigenous organisations, statutory bodies and government.

As previously mentioned legal aid funding is available to persons that meet certain merit, means and guideline requirements. If legal aid is available for that issue, and if the case has merit and the client does not have the means to engage a private solicitor then funding is approved. Most of our clients meet the means test however much of the work, about 75% of work undertaken by Warndu, does not meet the guidelines test for legal aid. Immediate protection, shelter, housing, crisis care or debt related issues are not matters that legal aid will fund. It is worthwhile to note that a sufficient number of clients seeking and obtaining restraining orders through Warndu state that Police were not prepared to seek a restraining order for various reasons, including that the client did not have sufficient grounds to seek an order. A NSW Police domestic violence indigenous communities report conducted in 1996 disclosed that less than a quarter of the indigenous women that responded to report were satisfied with Police help received in times of need. Although Police in our region operate tirelessly and earnestly in support of victims of domestic violence there remains occasions when victims need to seek assistance from this service to obtain urgent orders for protection.

Certainly there exists a number of issues that prevent indigenous Australians from seeking or obtaining reasonable access to legal services in the north and western parts of the State of South Australia. Indigenous South Australians live in communities sometimes as much as 1000 kms from Port Augusta with a limited access to a telephone. Anecdotally many public telephones are damaged or in a state of disrepair, and community services do not encourage the use of community telephones for "personal" reasons. That aside there remains a degree of cooperation between indigenous community services and statutory organisations albeit at times that not always fit the requirements of the Courts or other statutory authorities. It is also worthwhile to note that although it is very uncommon for a client to have a telephone connected to their home there is an increasing trend that individuals have prepaid mobile telephones where they can be reached. Clearly the trend is good for the purpose of better communication however it puts pressure on the limited resources of

this service. It is necessary to place time limits on calls to mobile phones, which in turn places pressure on the quality of the advice given or service provided particularly in circumstances when the client is unable to attend our office. In regard to language, a significant proportion of our clients speak English as a second or even third language. Some clients from particularly remote regions speak five different indigenous languages using English infrequently. English expression and apprehension is sometimes poor, not to mention esoteric legal principles or the formal idioms of Courts that might be dealing with the matter at hand. Add to that an evident want of literacy skills that seems endemic in the indigenous community particularly in rural and remote regions.

It should be noted at this point that Warndu's charter does not extend to providing legal services beyond Port Augusta and its surrounding areas and although "surrounding areas" is not defined it was never the intention of founders to cover remote regions of the State. The service has a 1800 telephone number which has been used by people in the far north of the State, up to 1000km from the geographical location of the service. On these occasions the service has always attempted to provide legal advice to such callers although limitations exist in relation to the extent of advice given or representations that can be made. Currently practicalities interfere with all manner of elements involved in providing a satisfactory legal service to these clients. However some opportunity exists for community centres to become involved or establish an "agency" type facility if a local person on the ground can be found with the willingness and some basic training to assist. It is useful if the "agent" is closely connected to the community and is reasonably fluent in the language of the traditional people of that region as well as English. In this way the local community centre or "agent" can act as a focal point or gateway for potential clients to the service.

It is a feature of indigenous custom that grandparents provide significant care of children throughout early development of the child. As a consequence it is not uncommon that the service needs to obtain information from or even act on behalf of grandparents of children. If the grandparent has spent long periods in traditional communities on traditional lands then frequently their grasp of English is very poor. Translators are required to provide a working dialog although I should add that the translators are rarely trained or qualified so the translation service is often not up to an accepted standard. In many cases clients may understand English however find it difficult to express thoughts properly. Sometime the very concept that needs to be expressed is so particular to indigenous culture that there is no real equivalent in non-indigenous society so clients find it difficult to explain without referring to terms or even lengthy explanations in their traditional language. Furthermore sensitive cultural issues require translators to tread slowly and carefully.

Although Warndu attempts to provide legal assistance or advice to any person that telephones the service it is simply not possible to adequately service or represent clients in the remote north and west of South Australia for practical reasons including client access, delays in delivery and return of documentation or even the effect of Court orders. For example this service has obtained recovery orders for children who were unilaterally removed from the care of our client. Police on several occasions were unable to act on the Court orders obtained, as the children were resident in a remote part of the State, sometimes up to 300km from the nearest Police Station.

Police advised that Police Officers camp out when on patrol in the region and that Police attend the communities in four-wheel drive tray tops with an open cage on the back, mainly for the purpose of securing persons taken into custody. As such circumstances are not appropriate for the recovery of children and so Court orders cannot be effected. Moreover unexpected issues arise when dealing with indigenous Australians living in remote regions, such as periods of traditional ceremony, grants to enter land, closures due to severe weather conditions or temporary closure of services. Sometimes these issues run parallel to the fundamentals of simply seeking and obtaining legal services in the first place. Certainly Warndu is able to provide legal services to indigenous Australians in these regions however further assistance is required. In particular telephone access plus easily reached indigenous “agents” within each community would be helpful. In this regard it would most likely be beyond the operating ambit or scope of mainstream legal services providers. To operate effectively a legal service provider to indigenous Australians living in remote regions would need to have a unique connection to the people within each different indigenous community.

The legal aid needs of indigenous men and women exposed to family or domestic violence are distinct, even when a male is the victim of domestic violence. Generally male victims are less inclined to speak out or seek assistance when involved in family violence. Generally but not exclusively, the victim is elderly and the perpetrator is a child or grandchild. It could be that Indigenous Australian males are reluctant to seek assistance in order to restrain the conduct of others or that indigenous Australian males are more able to seek assistance from family members or friends to meet their needs in times of crisis.

Subject to the above it is the experience of this service, supported by studies and reports, that about 90% of family or domestic violence victims of physical violence and property damage are female. A 2002 report by Gordon Hallahan and Henry prepare for the Department of the Premier and Cabinet Western Australia reported that Aboriginal People in rural areas are 63 times more likely to be victims of reported domestic violence than Non-Aboriginal rural people. The Aboriginal Justice Advisory Committee report in 1999 states that, whereas a spouse killed 21 percent of all homicide victims in the country, the report found that the rate of female Aboriginal homicide victims killed by their spouse was 51 percent. Added to this are complex cultural and social structures that exist for indigenous women of Australia, which make it economically and socially impractical for Aboriginal women living in remote areas to simply leave the community and start afresh some place distant from their homeland, traditional people and the perpetrator of domestic violence. Numerous reports and studies undertaken by authorities establish that victims in remote Australia are the most in need of assistance to avoid these unsatisfactory circumstances yet are the least likely to be able to seek or obtain the assistance of mainstream legal service in this country. It is for this reason that Warndu was established. Although it should be noted, as is often the case, the service operates in a regional centre and finances, not to mention human resources, limit the capacity of the service to provide legal assistance to those in remote regions. Furthermore the type of work undertaken by the service, its geographical location and requirements of legal skills equate to considerable difficulty in finding and keeping qualified people willing to provide some form of continuous service provision. Regional centres such as Port Augusta find it difficult to compete with the draw of larger cities.

Warndu's activity performance measures show that 90 percent of our clients are indigenous Australian women, the reasons of which were touched on above. Crime statistics and research show that Aboriginal women are four times more likely than non-Aboriginal women to be the victim of an assault, domestic violence or otherwise (Fitzgerald and Weatherburn 2001). At the same time studies have shown that Aboriginal women tend not to report domestic violence due to cultural and family pressures, fear of retribution and the fear of losing children as a consequence of violent episodes. (Bate, Hancock and Peter Kin, 2001; Irwin, Waugh and Wilkinson, 2002; Peake 2001).

Warndu should and does acknowledge the support and commitment of ATSIC and ATSIIS to not only fund but also encourage wholeheartedly the work being undertaken by this legal service to address the many issues surrounding domestic violence within the indigenous community of Port Augusta and surrounding regions. Members of Board of Management of Warndu sit on the State Aboriginal Justice Committee as well as provide, in the past, input to an indigenous panel of the Family Court of Australia. Clearly the ongoing support of ATSIC and ATSIIS is essential. Following the Prime Ministers July 2003 national summit on family and domestic violence within the Aboriginal communities the ATSIIS family violence policy and action plan was produced in August 2003. Cooperation was sought from all ATSIC funded organisations to address their concerns of family and domestic violence within the indigenous communities. As a consequence Warndu has a cooperative program with Umeewarra Media, a popular indigenous radio network in the north of South Australia, producing a regular radio segment that deals the cause and effect of family violence including legal remedies available to victims. Community education to Indigenous and Non-Indigenous organisations, health services and education facilities is being undertaken or planned. Community education is an essential part of the role of our service. At the same time we should recognise that in the past perpetrators of domestic violence were never considered and that some provisions need to be made in order to understand the perpetrators' background and whether there are predictable and preventable cause and effect elements of a perpetrator's conduct. Currently this information is lacking.

A recent State Government inquiry explains that the colonisation of Australia has resulted in the dispossession of land and marginalisation of indigenous Australians from social and employment opportunities and traditional culture has led to 'ongoing trauma within Aboriginal Communities'. These factors combined with the disadvantage of poverty and social dislocation has severely damaged Aboriginal Culture, kinship systems and law to the extent that Aboriginal communities 'are extremely vulnerable to domestic violence and child abuse.' (Gordon, Hallahan and Henry 2002) clearly issues facing Indigenous Australian's are profound and deep-seated, more so for those with connections traditional homelands far from industrial centres that provide employment opportunities and services expected by Australians living in the 21st Century.

As far as priorities are concerned there is no doubt that many or most indigenous Australians have a multitude of issues to deal with everyday. It is really a matter of priority when it comes to facing particular problems. Individuals and bodies such as Warndu also give different priorities to different problems. In my view the most

significant issues facing indigenous Australians, in which law and justice is a component, includes violence and sexual assaults against children as well as institutional discrimination against individuals. Again, anecdotally, it is the experience of this service that a significant number of adult victims and perpetrators of family violence were themselves victims of sexual assault as children or suffered from the consequences of family or domestic violence as children. Given the knowledge of this service about existing family relationships, contemporary social principles and values it is difficult for the service to be sanguine about the future state of indigenous families and family violence.

Through the support of ATSIC and ATSI Warndu was recently funded to auspice a sexual assault support service following disclosure by a significant number of clients that were victims of sexual assault during childhood, adolescence and even adulthood. Certainly the extent of such disclosures appear to be so significant that our service believes that sexual assault of indigenous children is an undisclosed, unreported, unmet social crisis. An Aboriginal Justice Advisory Council report released in August 2003 cited 70% of Aboriginal female prisoners survey said they were sexual assault as children, 78% stated they were victims of violence as adults.

Aboriginal legal services in a number of different states also report that a significant number of clients seeking assistance report a history of childhood violence or sexual abuse. Indeed many clients do not report childhood sexual assault for all sorts of reasons only to reveal details later in life. Usually the victim knows the perpetrator. This service has a number of clients that on different occasions and for different legal matters reveal a history of childhood sexual assault in which there is a common perpetrator. The findings of this service support a general view throughout indigenous legal services that sexual assault is an issue that needs further attention.

Community Development research has shown that indigenous Australians will access services if they are aware that these services exist. The operation of indigenous culture means that community awareness is a vital part of the knowledge that such services exist. To often organisations development or offer sophisticated mechanisms or tools for providing information about services available such as Internet websites, telephone help line or self help facilities without appreciating that many indigenous Australians do not have the training, access or literacy skills to fully utilise the resources. Community awareness and availability through easy means, in person or by telephone appear to be the key factors to successful service provision for indigenous Australians. Community involvement appears to be the most effective means of obtaining community awareness. Indigenous organisation that provide service to aboriginal people and employ Aboriginal workers are more likely to be viewed as being sensitive to Aboriginal cultural needs less institutional or paternalistic. Services that fail to meet these needs generally struggle to obtain the trust of indigenous people (Mathews, 1997). At the same time it is necessary that services have the knowledge and skills to deal with complex legal issues and provide appropriate advice. The Aboriginal Justice Advisory Committee noted from reports studied that 'little more than half of the Aboriginal women surveyed were satisfied with legal help they received.

In summary the experience of Warndu Legal Service indicates that rural and remote regions of the north and north west of the state of South Australia has a need to access legal services in relation to matters involving domestic violence and consequent

issues in relation to children. More likely than not issues involving violence and sexual abuse against children, racial discrimination and debt related issues require unmet legal attention. Currently, for geographical and logistical reasons, Warndu is unavailable to adequately service indigenous Australians living in those regions. A lack of telephone facilities, language difficulties and literacy skills as well as points of focus where local community members can seek assistance complicates matters. In many cases legal aid will not fund private solicitors to deal with the particular circumstances of the client and in cases where legal aid funding is made available frequently indigenous clients discontinue with their legal aid funded solicitor for any number of reasons. It is our experience that mainstream legal service providers become frustrated by the circumstances of indigenous Australians and the difficulty dealing with indigenous Australians as clients. There is no doubt that Aboriginal clients have special needs, require more time to examine, investigate, explain and report the background, process and outcome of any given legal issue.

Clearly additional provision is necessary to facilitate the particular difficulties facing Aboriginal clients living in remote Australia. The alternative is to accept that Aboriginal People living in rural and remote regions of the country do not and will not have access to the same level of legal assistance available to indigenous Australians and non-indigenous Australians living in major Australian cities or regional centres.

Conclusion

Domestic violence, family law matters relating to children, sexual assault and discrimination face Aboriginal communities throughout rural and remote South Australia. Warndu is currently funded by ATSIC and ATSISS to provide legal assistance for indigenous people involved with difficult circumstance arising from domestic violence, although it can be said that there are other pressing legal issues confronting indigenous Australians including discrimination and sexual assault. These issues are not gender specific although indigenous women make up the bulk of domestic violence and sexual assault victims while indigenous males suffer other forms of family violence plus extreme discrimination particularly with regard to employment opportunity, which in the view of this service, is a principal factor in the cause of family and domestic violence. It is the view of this organisation that mainstream legal service providers are unlikely to provide suitable legal services to rural and remote indigenous people for the reasons given in the submission. The Legal Services Commission is located in Adelaide as well as Whyalla, a regional centre about 100km from Port Augusta. To obtain legal aid a person must apply to the legal aid commission in writing with a booklet containing about 50 questions plus proof of income, bank statements and prescriptive background of the legal issue. This prerequisite alone is a factor that limits the access of indigenous people to legal aid although the merit and guidelines test also places a limit on legal aid assistance. Indigenous communities operate very much by word of mouth; fundamental communication problems prevent many Aboriginal people from seeking mainstream services. The intimacy and kinship of Aboriginal networks plus extended families greatly influence victims of domestic violence and sexual assault. Indigenous people in general have good reason to be protective and wary of non-indigenous service providers. Negative interaction with outside agencies adds to the “shame” of the victim and the emotional pressure put on the victim or family members.

Recommendations

1. That on going Federal and State Government funding be provided to indigenous legal aid services to provide adequate legal services for legal issues related to family and domestic violence, family law matters relating to children and legal advice in relation to sexual assault to indigenous people living in rural and remote regions of the country.
2. That rural and remote indigenous communities are supported to provide “on the ground” links to indigenous legal services providers for the region.
3. That funding be provided to place “agents” of the indigenous legal service providers within larger rural and remote indigenous communities as a source of assistance in time of crisis as well as a means to communicate timely and effectively with indigenous legal services in that region.
4. That the principles of Domestic Violence Courts be considered as part of all Magistrates courts and that concomitant violence intervention programs, and domestic violence counselling for perpetrators be made available through existing counselling services in places where Magistrates courts operate.

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