

**Submission of Tharpuntoo Cape York Legal Service
Aboriginal Corporation**

to

**The Senate Select Committee on the Administration of
Indigenous Affairs**

July 2004

PROFILE OF THARPUNTOO CAPE YORK LEGAL SERVICE ABORIGINAL CORPORATION

Introduction

The Aboriginal communities of Cape York Peninsula officially formed Tharpuntoo Legal Service at a meeting in Cooktown on the 30th of June 1988. The Legal Service was then incorporated in 1989 under the Aboriginal Councils and Associations Act 1976.

The name “Tharpuntoo” is from the Wik Munkan language of the Aurukun region, and simply means “one who settles a fight, an argument”.

The office is located in Cairns, which is the administrative centre of Cape York and central to the Cape York Peninsula air travel network. All Government Departments (State & Federal), ATSIC, Indigenous Organisations and other service providers are based in Cairns. The office in Cairns is also better placed to service the courts, police watch-house, Correctional Centres and Juvenile Detention Centres, in Cairns, Cooktown, Mareeba and Townsville.

Tharpuntoo is the only legal service dedicated specifically to the Cape York Region. To better reflect the reality of the Legal Service as an organisation managed and operating exclusively for the indigenous people in the Cape York region, the Board of Directors has resolved to change the name of the corporation to “Tharpuntoo Cape York Legal Service Aboriginal Corporation”.

Service Region

Tharpuntoo Cape York Legal Service Aboriginal Corporation delivers its services within an area of approximately 146,292 square kilometers, which is the same geographical size as the State of Victoria. Within this area there are 16 indigenous communities.

The Legal Service provides its services to the indigenous people of Cape York Peninsula. In providing those services, Tharpuntoo makes representations on behalf of its clients in the Magistrates Courts of Kowanyama, Pormpuraaw, Aurukun, Weipa, Bamaga, Lockhart River, Coen and Cooktown.

Delivery of Services

Tharpuntoo provides many services on behalf of the indigenous people of our service region. These include;

- Cape York Magistrates Court Circuits
- Cooktown Magistrates Court Sitings
- Cairns and Mareeba Magistrates Court Sitings
- Cape York District Court Circuits
- Cairns District Court Sitings
- Legal Awareness Programs (educational)
- Systemic Programs

Cape York Magistrates Court Circuits;

The Cape York Magistrates Court sittings are convened for one week every month, throughout Cape York Peninsula. There are 7 communities in which the court sits, which also takes into account other communities within that region, i.e.

Weipa Magistrates Court includes the communities of Old Mapoon and Napranum.

Bamaga Magistrates Court includes the communities of Injinoo, Umagico, Seisia and New Mapoon.

Aurukun Magistrates Court

Pormpuraaw Magistrates Court

Kowanyama Magistrates Court

Lockhart River Magistrates Court

Coen Magistrates Court

To undertake this court circuit the Justice Department conducts the court sittings simultaneously. This requires Tharpuntoo to provide two solicitors and four field officers for each court sitting.

The current Magistrates Court calendar is as follows;

Day 1 Coen Magistrates Court and Aurukun Magistrates Court

Day 2 Weipa Magistrates Court and Bamaga Magistrates Court

Day 3 Lockhart River Magistrates Court and Aurukun Magistrates Court

Day 4 Pormpuraaw Magistrates Court and Kowanyama Magistrates Court

Cooktown Magistrates Court Sittings;

The Cooktown Magistrates Court Sittings are conducted during a different week to the Cape York Magistrates Court Circuits. The Cooktown sittings include the communities of Laura, Hopevale and Wujal Wujal. These sittings are convened over 3 to 4 days depending on the number of matters to be dealt with.

With just these two Magistrates Court sittings Tharpuntoo Solicitors and Field Officers are absent from the office 2 weeks every month. This is the core service of the Tharpuntoo.

Cairns and Mareeba Magistrates Courts

These areas are not in the service region of Tharpuntoo, although to ensure our clients who are incarcerated have their outstanding matters dealt with as expediently as possible, Solicitors from Tharpuntoo appear for our clients in both of these centres.

It is also the case that when indigenous people from the Cape are detained by police, those people are transported to Cairns in custody. The Legal Service will represent those detainees in the Cairns Magistrates Court.

Cape York District Court Circuit

This is a new initiative brought about by the lobbying of Tharpuntoo and the support and foresight of Her Honor Judge Sarah Bradley. These sittings are conducted 6 times a year and are separated into three different District Court sittings. i.e.

Western District Court Circuit

Day 1 Weipa, (Old Mapoon and Napranum)

Day 2 Aurukun

Day 3 Pormpuraaw

Day 4 Kowanyama

Northern District Court Circuit

Day 1 Thursday Island (Torres Strait & Northern Peninsula)

Day 2 Thursday Island (Torres Strait & Northern Peninsula)

Day 3 Bamaga (Seisia, Injinoo, Umagico and New Mapoon)

Day 4 Bamaga (Seisia, Injinoo, Umagico and New Mapoon)

Eastern District Court Circuit

Day 1 Lockhart River

Day 2 Cooktown (Laura, Hopevale, Wujal Wujal)

Day 3 Cooktown (Laura, Hopevale, Wujal Wujal)

Cairns District Court Sittings

The Cape York District Court Circuits only hear matters listed for sentence. At this time all District Court Trials still have to be heard in Cairns to ensure a cross section of society is a part of any jury.

The majority of higher court matters that Tharpuntoo represent clients on are sentences, therefore these matters can be finalised during the Cape District Court Circuits. The Legal Service merit tests all matters of a not guilty plea from our clients before sending those matters to trial in the District Court. The majority of those matters do meet the merit testing criteria and Tharpuntoo are required to have instructing Solicitors and Field Officers at the Cairns District Court for those trials.

Legal Awareness Programs and Systemic Programs

As the only legal entity that services all the Cape York communities on a regular and consistent basis Tharpuntoo is approached by the indigenous people and the funding body to deliver other programs that are not part of the core services of Tharpuntoo.

Tharpuntoo provides legal education programs to the Cape communities. These programs are targeted at high risk groups within the community. Accordingly, if there is a high rate of juvenile offending in one particular community then a specific program for that community is developed and delivered by Tharpuntoo Solicitors and Field Officers.

The legal service also provides publications to the community people designed and developed to ensure they are easily understood. These publications are requested by many services throughout Queensland and other States for use and distribution to their constituents.

The systemic programs that have been developed by Tharpuntoo targets areas where the legal service has identified service gaps. Funding is being sought for;

Community Based Field Officers

The identification, training, ongoing support and development of local indigenous people to provide legal assistance to the people of their community.

Weipa Regional Office

This will assist Tharpuntoo in delivering the services of the Corporation as well as provide a center for the Legal Service to develop Community Based Field Officers.

Third Person Program

Assistance for community people detained and questioned by police in the first instance.

Assisting Justice Groups

A program to assist communities without Justice Groups in the developing and implementing of their own Justice Group.

Educational Workshops

Development and delivery of specific programs for targeted groups within the community.

Train the Trainer

Educate and train local indigenous people in the delivery of the educational workshops to ensure cultural appropriateness.

Return Home Scheme

To ensure this program continues to be funded thus enabling people who are remanded in custody from their community to return home upon a successful bail application in Cairns by Tharpuntoo.

Breakdown of Travel times & Distances;

Communities	Distance	Time by road	Time by air
Bamaga, Seisia, Injinoo			
Umagico, New Mapoon	941km	16hrs	3hrs
Weipa, Old Mapoon			
Napranum	836km	12hrs	2hrs
Aurukun	799km	10hrs	1hr 50mins
Lockhart River	723km	17hrs	1hr 55mins
Coen	551km	8hrs	1hr 30mins
Pormpuraaw	649km	11hrs	2hrs
Kowanyama via Cairns	782km	14hrs	1hr 50min
Kowanyama via Pormpuraaw	761km	13hrs	
Laura	314km	5hrs	
Wujal Wujal via Lakelands	349km	4hrs 30mins	
Wujal Wujal via Mossman	167km	3hrs 30mins	
Cooktown	330km	4hrs	30mins
Hopevale	378km	4hrs 45mins	

The road conditions dictate the amount of time it takes to reach the communities. Most of the year the roads are heavily corrugated with dust holes, although during the wet season there are three months when we can't travel overland.

Rational

This submission will outline the issues of concern that confront Tharpuntoo Cape York Legal Service, whilst the administration of the Indigenous Legal Aid Program is undertaken through the Federal Attorney-Generals Department.

It is relevant to note that within Cape York Peninsula access to Federal and State Government Departments and programs is inadequate and sporadic at best. It is no reflection on the people who attempt to deliver these programs or who are at the coal face, but, on the cumbersome bureaucratic processes implemented by those Departments policy makers.

The most significant issue at the moment is the ineffective and inefficient practices of those Departments in delivering their services throughout remote regions and in our view the Cape York Peninsula Region.

The question to be asked is, how can a Federal Government Department whose practices are unaccountable and ineffective purport to administer an indigenous specific program that has been developed around, and to assist and support, indigenous people through the complex legal environment?

The role of ATSILS is not just a duty lawyer service. All ATSILS have developed service delivery formats that reflect the needs of their client base and service region. We continue to highlight the uniqueness of each ATSILS and the way in which we deliver our services throughout our regions. This unique quality has developed through the ATSILS identifying service gaps and deficiencies, then developing and implementing strategies that overcome the identified deficiencies.

These innovative strategies have, for most parts, been implemented within existing funding levels which have been static for approximately ten (10) years. In light of this, and as evidenced by the Effectiveness Reviews and Quality Assurance Checks, the majority of ATSILS are accountable and effective. However, minor administrative and/or Governance compliance issues were the main areas of reform highlighted in these reviews.

The issues of reform, accountability, efficiency and effectiveness have been a priority of all ATSILS since 1996. These rolling reforms were implemented during the 1996/1997 financial year and have continued to date. Throughout the rolling reforms to ATSILS we have been required to focus on and implement efficient and effective work practices that improve the quality of service provision to the indigenous people.

These rolling reforms have added a new and improved dimension to the ATSILS, and in hindsight, were required to assist ATSILS in reviewing and/or updating their operating procedures from Governance to delivery.

However, these reforms have not improved access to Tharpuntoo by our clients. In fact, these reforms have caused a major concern for Tharpuntoo on accessibility, as all recommendations highlighted throughout the reform processes were implemented within existing grant allocations.

It is evident that the majority of ATSILS are struggling to meet the needs of their client base within existing grant allocations. To implement the recommendations from any review requires an injection of funds to ensure the change process is not window dressing, but provides for improved services to the clients of the ATSILS. Accordingly, the implementation of the recommendations from any review required the diverting of funds from programs to ensure compliance. Essentially this process detracts from accessibility to focus on compliance.

The concerns of Tharpuntoo relate to the ability of the Federal Attorney-Generals Department in identifying and understanding the cultural and logistical challenges confronted by ATSILS and more specifically rural and remote ATSILS in delivering their services throughout their service region.

Currently, as stated earlier in this document, the delivery of services by Government Departments is sporadic and inadequate. Our point is, if the better resourced Public Service Departments are unable to provide consistent, quality services that meet the needs of the people, how can the Federal Government expect Tharpuntoo or other ATSILS to further improve their delivery of services and accountability (when insufficiently funded), whilst continuing to operate within the guidelines of this “one size fits all” mentality developed by Government.

Tharpuntoo has always embraced the concepts of compliance, cost effectiveness and efficiency and has implemented processes that will continue to ensure compliance with the requirements of the Program Funding Agreements. But, will the Federal Government and its Departments be flexible in their determinations when evaluating Tharpuntoo and the needs of the clients within the remote Cape York Peninsula region?

The tendering of indigenous legal aid services across Australia has placed all ATSILS, more specifically Queensland ATSILS on the back foot in an attempt to ensure that their service is not taken over by another ATSILS or lose its service to a private law firm.

This process alone has, and will continue to undermine the trust and collaboration that we, as Queensland ATSILS have been cultivating and promoting, in the pursuit of providing all indigenous people within Queensland, a best practice model in the delivery of legal and law related services to our people.

The foundation of an operational structure that has flexible delivery needs which are based on client/region requirements is not a part of Departmental policy or, is not implemented into State and Federal Government Departments policies.

The current process of the Federal Attorney-Generals Office administering the indigenous legal aid program will require that office to evaluate the work undertaken by Tharpuntoo with a set formula or model developed by Government.

Is this formula or model based on per capita, service region size, remoteness, available resources/infrastructure, services provided to clients or actual need? These are the concerns of Tharpuntoo, as currently we have no information on what, when or how the Federal Attorney-Generals Office will administer the funds of the indigenous legal aid program.

These concerns also affect staff and clients as the Governing Committee and I are unable to provide the staff with any certainty of continued employment or provide our people with an assurance of the continued operation and delivery of services throughout Cape York Peninsula.

Government has ensured that all current services will continue to be funded under current grant procedures until 31 December 2004. Government has also provided for the lateral movement of ex-ATSI staff to be employed by relevant Federal Government Departments. These two decisions do not address the concerns of the people or the long term roles of the ATSI.

It has been stated by Government Ministers that the Government is purchasing indigenous legal aid services at a cost of \$120 Million dollars over the next three (3) years and have implemented the restructuring of the program to ensure that they receive the best value for money possible.

The Draft Exposure Document did not clarify whether the proposed Tender of the program will be a proper competitive tender or a selective tender. No information is forthcoming as probity provides for silence on these very important changes to the program.

To my knowledge Government has not disclosed how much they have used and intends to put aside to reinvent the wheel of administering the indigenous legal aid program. The previous processes of ATSI and ATSI had their flaws and required restructuring. It seems that Government has deemed the restructuring of ATSI as inadequate, for reasons known only to those decision makers. However, it seems Government does not read its reviews, as the recent review into ATSI highlighted a number of recommendations to Government for the restructure of ATSI, not the winding up of the Organisation.

With reference to the ATSI and tender process to be implemented by Government, this tender appears to be a cost shifting exercise from Federal to State Governments. If this is the case, then the States and relevant ATSI should be informed of this. If it is not the case, then what is the real reason for the upheaval and restructure of the program?

As the Executive Officer of Tharpuntoo my first concern is for the indigenous people who require our services and the continued operation of the Legal Service. Tharpuntoo has continually argued the inequitable division of funding between Queensland ATSILS with ATSIC and ATGIS. In raising these concerns Tharpuntoo has been one of the front runners for a restructured funding formula and a more transparent process of deliberation by ATSIC on grants to Queensland ATSILS.

Accordingly, Tharpuntoo has not been an avid supporter of ATSIC due to the inaction of ATSIC in rectifying the concerns of Tharpuntoo which are supported by the project performance indicators and the actual needs of the Legal Service in providing remote area services. It is with trepidation that we await the actions of the Federal Attorney Generals Department in addressing the same issues and concerns of Tharpuntoo.

The Governments competition policy of tendering is of little concern to Tharpuntoo. In fact, we embrace the concept, as it has been proven and documented, that we are able to provide a more comprehensive and quality service to our clients than other like organisations on similar funding.

At this time Tharpuntoo is unable to propose a framework or process to fill the void of the dismantled ATSIC/ATGIS. Even though ATSIC was found to be unable to deliver what was required of it, a restructure of the existing organisation would have provided for better outcomes with less cost involved in the restructure, when compared to dissolving one entity and transferring those objectives to other Departments.

A fully restructured ATSIC with transparent processes retains the voice of Indigenous Australians.

In conclusion, it seems the Federal Governments policies on Indigenous programs and services have been downsized to the extent that Aboriginal and Torres Strait Islander people (the nation's custodians) are relegated and indirectly deemed by Government as second class citizens of the country in which they are the traditional inhabitants.

To continue with the current divide and conquer process of indigenous specific programs and services, Government is imparting One Nation policies through the back door and utilising the "us and them" mentality to gain public support for its actions.

Tharpuntoo provides representation and advice in the Magistrates and District Courts of Cape York Peninsula. In providing those services we also act for non-indigenous people who are required to attend Court in those remote areas. State and Territory Legal Aid Commissions who also receive Commonwealth funding do not provide duty lawyer services in remote regions nor are they able to compete with ATSILS on a dollar for dollar basis.

If it is expected that the tendering of the indigenous legal aid services will provide for competition that will ensure quality and value for money within a quasi public service industry, then perhaps Local, State and Federal Governments should tender out all Public Service programs to obtain a best practice model for all services, not just indigenous services.

The framework for a facilitating organisation of indigenous specific programs has already been developed with the implementation of ATSIC. In my view ATSIC has failed the indigenous people, but the successive Governments since the implementation of ATSIC have also failed indigenous people. It has been stated that ATSIC has not delivered on health, education and employment, however, these are State and Federal Government responsibilities.

The current Federal Government is looking for a better process or organisation to meet the aims and needs of indigenous Australians as ATSIC failed in this role. The Federal Labor Party has also deemed ATSIC a failure, however, if either political party pursues its own agenda in determining which process will be implemented then they will fail.

It is the opinion of the writer that although the ATSIC program failed to assist indigenous people on the ground, ATSIC has played a major role in furthering and securing better outcomes for indigenous people in the domestic and international arenas. The concerns the writer had about ATSIC were issues of nepotism, decision making and budget deliberations at the Commission, State and Regional levels. These are concerns that can be addressed through providing the appropriate education to the people on the ground and the office bearers of the organisation.

The current processes bandied around by all political parties continue to provide no outcomes or future for indigenous people in determining their own future. It is the opinion of the writer that if both black and white Australians are serious about providing better outcomes and living standards to indigenous people then we need to look within ourselves to ascertain if we have done as much as we could have.

ATSIC should not have become a political football, it should have been provided the same resources and infrastructure as mainstream public service programs undertaking the same roles.

Thomas Corrie
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Tharpuntoo Cape York Legal Service