

**National Network of  
Indigenous  
Women's Legal  
Services Inc**

[www.nwjc.org.au/awlsn](http://www.nwjc.org.au/awlsn)



Network Strengthening Committee

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Australian Senate  
Legal and Constitutional  
References Committee  
Parliament House  
CANBERRA ACT 2600

**Attention: Committee Secretary**

Dear Secretary

**Re: Inquiry into Current Legal Aid and Justice Arrangements**

In response to the Inquiry into Legal Aid and Justice Arrangements The National Network of Indigenous Women's Legal Services Inc (NNIWLS) writes to the Senate and Legal and Constitutional Committee to highlight the issues that the NNIWLS have raised in previous submissions to address the legal disadvantage of Indigenous women.

**Attachments**

1. About the Network
2. 2003 Federal Budget Submission
3. ATSIC Review Submission

The NNIWLS supports the National Network of Women's Legal Services position raised in their submission to the Inquiry into Current Legal Aid and Justice Arrangements in particular Recommendation one.

Contact: Denese Griffin, Network Coordinator. PO BOX 155, Cloverdale WA 6985. Ph: 08 9475 0755 Fax: 08 9475 0756 Mobile: 043 995 4648 Email: [Coordinator\\_NNIWLS@fcl.fl.asn.au](mailto:Coordinator_NNIWLS@fcl.fl.asn.au)

### **<sup>1</sup>Recommendation 1**

***That Commonwealth and State governments recognise that the following services are under-resourced:***

- ***Family Violence Prevention Units;***
- ***Indigenous Women's Legal Services;***
- ***Domestic Violence Advocacy Services;***
- ***Rural Women's Outreach Programs;***
- ***Women's Legal Services;***
- ***the National Network of Indigenous Women's Legal Services;***
- ***the National Network of Women's Legal Services.***

***As a result of this under-resourcing the services outlined cannot meet the demand for a range of domestic and family violence legal services and family law services and other legal needs that women facing disadvantage identify to CLCs.***

***Further to this, it is obvious that recruiting and retaining key personnel is harder and many services face the crisis of trying to fill legal positions.***

#### **1. NNIWLS 2003 Federal Budget Submission (attached)**

Intensifying Efforts to Address the Legal Needs Of Aboriginal And Torres Strait Islander Women: Policy Directions And Budget Submission

The NNIWLS has lodged a federal budget submission for the last three years to the Federal Government calling for an intensified effort by government to address the still appalling legal disadvantage of Indigenous women.

The submission recognizes the effort that has been made through:

- the provision of funding of the Indigenous Women's Programs by the Commonwealth Attorney Generals Department;
- Family Violence Prevention Units funded by ATSIIS;
- and other government initiatives such as the Office of the Status of Women under the Partnerships Against Domestic Violence initiative and the Department of Family and Community Services with programs to strengthen and assist Indigenous families.

The establishment, development and progress and success of these programs has gone some way to addressing the legal disadvantage of Indigenous women but more has to be done. The work that has been carried out has highlighted the enormous task that still lies ahead and the extent of the legal needs of Indigenous women.

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<sup>1</sup> **NNWLS Submission to the Legal and Constitutional Committee**

The submission recommends the following:

- National Review of Indigenous Women’s Legal Needs;
- National Indigenous Women’s Justice Research Fund;
- Increased funding for the IWP’s, FVPLU and the National Network of Indigenous Women’s Legal Services Inc;
- Resources to explore self management
- Establishment of a funding model

### **Recommendation 1**

**The NNIWLS calls on the Senate Legal and Constitutional Committee to recognize the work of the NNIWLS and examine the 2003 Federal Budget Submission Recommendations in relation to the legal disadvantage of Indigenous women.**

## **2. ATSI Review Submission August 2003 (attached)**

The National Network of Indigenous Women’s Legal Services Inc lodged a submission on the Review of ATSI covering a number of points including the following:

- <sup>2</sup>“funding services through the mainstream agencies without a significant involvement of ATSI seems unsustainable;” [p. 7]

<sup>3</sup>” *Additionally, ATSI should be working to sensitize the Commonwealth to its policy of only providing funding to Legal Aid Commissions for ‘ Commonwealth matters ’ – that is, matters that arise under federal laws ( the main one being family law ). Because many Indigenous people do not use the family law system the Commonwealth funding policy indirectly discriminates against Indigenous people and particularly against Indigenous women who typically need family law type help of another kind – that is to ensure their basic safety. Because the Commonwealth provides funds to ATSI to fund Aboriginal Legal Services that are mainly doing criminal law work and the Commonwealth funds Legal Aid Commissions mainly to do family law work – the special legal needs of Indigenous women, particularly arising from family violence, are not covered by ATSI or by LACS. Family violence restraining orders come under State and Territory law. The Commonwealth should be making an exception in its legal aid funding formula for family violence related legal needs of Indigenous people. ATSI should be pressing the Commonwealth to provide funding for legal services of this kind even though this arises under State and Territory law so that Indigenous people – and particularly Indigenous women, do not miss out.*

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<sup>2</sup> ATSI Review Discussion Paper

<sup>3</sup> NNIWLS ATSI Review Submission August 2003

*“Non-profit mainstream legal services are still not sufficiently accessible to Indigenous people including Indigenous women. Additionally, these services are only playing a very minor role in extending community legal education to Indigenous communities. These services have little understanding of Indigenous networks and how to apply a community development approach in an Indigenous context. ATSIC should be liaising more effectively at the highest levels, and with the funders of mainstream legal services. Demanding targets should be established by ATSIC and regular public reporting should be occurring. “*

- “areas of concern include women’s and men’s issues, youth, family violence, substance abuse and itinerants” [p. 8]

Comment:

*“We agree that each of these are major areas of concern that require much stronger emphasis. However thought needs to go into the dialogue when government engage communities on these issues in relation to addressing these issues separately by talking to women on women’s issues and men on men’s issues following traditional consultations and not just using government structures to consult by or through.”*

## **Recommendation 2**

**<sup>4</sup>“the National body should provide the policy interface for the commonwealth Government setting and advocating a national strategic direction; and monitoring progress against ATSIC’s national plan to reinforce the accountability of program and service providers;” [p.6-7]**

**The Federal Government need to engage with ATSI as the Peak Indigenous Body in relation to funding of FVPLU and ALS to provide assistance to Indigenous people in family law, criminal and civil matters**

### **3. NNIWLS Submission into a Legal Presumption – Joint Residency**

The NNIWLS lodged a submission on the proposed legislation to the Standing Committee on Family and Community Affairs. The submission has yet to be made public so the NNIWLS is not able to attach a copy for your information. The submission was in relation to Indigenous women, children and families and the main purpose of the submission was:

<sup>5</sup>*The NNIWLS maintains that the current legislative framework already encourages*

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<sup>4</sup> ATSIC Review Discussion Paper

<sup>5</sup> NNIWLS Submission – A Legal Presumption of Joint Residence

*parents to decide on residence, it is only when disputes arise between parents that they seek assistance from the Family Law Court in relation to intervention. The NNIWLS believes the powers afforded to the Court under the Family Law Act are adequate, and that judges/magistrates need to be able to evaluate each case on its merits.*

*The factors taken into account should remain in 'the best interest' of the child. Changes to the Family Law Act should not be driven by one parent's demands superseding the rights of the child.*

*The NNIWLS have concerns about the proposed legislation as it relates to:*

- 1) Section 68F of the Family Law Act 1975 (Cth), as it relates to Indigenous children and families;*
- 2) Where any family violence has occurred;*
- 3) The likely effects of any changes in the child's circumstances;*
- 4) The practical difficulty and expense of a child having contact with a parent;*
- 5) The capacity of each parent to provide for the needs of the child with strong reference to s.68F;*
- 6) The need to protect the child from physical or psychological harm.*

An example is:

*<sup>6</sup>In an excellent paper presented at the National Conference of Community Legal Centres in 2001 the solicitors employed at the Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service (ATSIWLAS) in Brisbane explored the problems their clients (mothers) faced in the family law system when confronted by a non-indigenous father.*

*The recommendations in the paper (adapted for an Australia wide approach) included:*

- specialized legal aid grants officers to process applications by Indigenous clients;*
- priority legal aid funding for Indigenous women in family law matters;*
- implementation of more culturally appropriate procedures for legal aid conferencing;*

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<sup>6</sup> NNWLS Submission to the Legal and Constitutional Committee

### **Recommendation 3**

**The Committee give consideration to the NNIWLS's overarching recommendation that each family law case is considered on it's own merit for the protection of children and women in relation to family violence and sexual assault issues. Included in this are the cultural complexities and economic status of Indigenous women who reside in rural, regional and remote areas.**

The Strengthening Committee (Executive) would be happy to discuss further representation of the NNIWLS during the References Committee's inquiries into the Inquiry.

The NNIWLS Coordinator, Denese Griffin can be contacted on 08 94750755 if you require any further information.

Yours faithfully

Dianne Gray  
Convenor - NNIWLS

**13 October 2003**

## Attachment 1

# National Network of Indigenous Women's Legal Services Inc

[www.nwjc.org.au/awlsn](http://www.nwjc.org.au/awlsn)



## About the National Network of Indigenous Women's Legal Services ('NNIWLS')

The NNIWLS is a peak Body for Indigenous Women's Legal Services that has been working tirelessly for the last three years to advocate on behalf of and support for Indigenous Women's Legal Services across the nation.

The Network was established in 1998. It has been operating since 2001 with philanthropic grants and short term seeding grants from ATSIC. The Network received a project grant from the Commonwealth Office of Status of Women to deliver leadership training workshops for our women, particularly in regional and remote areas.

The Network was formed by, and has a membership that consists of:

- Indigenous Women's Projects (legal services), funded by the Commonwealth Attorney General's Department,
- Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service, Queensland, funded by Commonwealth Attorney General's Department,
- Wirringa Baiya Aboriginal Women's Legal Centre funded by the NSW Attorney General's Department,
- Family Violence Prevention Legal Services, funded by ATSI, and
- individual Indigenous women who have a commitment to social justice for Indigenous women.

All of the above services are members of the NNIWLS who provide legal help to Indigenous women, children and families. Every day these services see the effects of communities in pain, leaving many of our women and children at risk and hurt that goes very deep. Whilst the services are providing legal help the main aim is healing and work is done with women and often men.

## Purposes of the Network

The Network's Rules of Association set out the purposes of the Network as follows:

### AIMS

- To empower and promote social justice for Indigenous women and Indigenous people with particular emphasis on law and justice issues

## **OBJECTIVES**

- Provide a network for organizations, services and programs that have the primary purpose of providing legal assistance, legal advice or legal information to Indigenous women,
- Promote the availability of legal and related services for Indigenous women that respect principles of Indigenous cultures,
- Improve the responsiveness of the legal system to Indigenous women and promote full exploration of opportunities for the recognition of customary lore,
- Build partnerships and social coalitions to address the legal and related disadvantage of Indigenous women,
- Provide input to government policy, reform bodies and inquiries on issues relating to Indigenous women and the law,
- Provide training for members and others to empower Indigenous women and promote quality legal services for Indigenous women,
- Mentor and promote peer mentoring of workers providing legal and related support assistance to Indigenous women,
- Provide representatives or participants for advisory bodies, reference groups and project management groups,
- Facilitate consultation and input about legal and related issues by and with Indigenous women,
- Develop and promote quality service delivery strategies, and
- Coordinate and advise on the above matters.

If further information is required please contact:

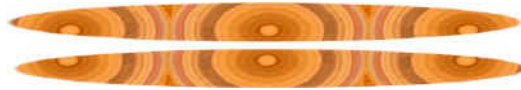
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ATTACHMENT 2

**NATIONAL NETWORK OF INDIGENOUS  
WOMEN'S LEGAL SERVICES INC.**



**INTENSIFYING EFFORTS TO ADDRESS THE LEGAL  
NEEDS OF ABORIGINAL AND TORRES STRAIT  
ISLANDER WOMEN: POLICY DIRECTIONS AND  
BUDGET SUBMISSION - January 2003**

**January 2003**

National Network of Indigenous  
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The Network acknowledges the support of The Stegley Foundation and the Lance Reichstein Foundation.

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# **National Network of Indigenous Women's Legal Services Inc. Policy Directions and Budget Submission**

**Jan. 2003**

## **1. About this submission**

This is a submission by the National Network of Indigenous Women's Legal Services Inc to the federal Treasurer and key federal Ministers, government departments and policy areas, particularly:

- the Attorney-General
- Aboriginal and Torres Strait Islander Commission
- Family and Community Services
- Office of Aboriginal and Torres Strait Islander Affairs, and
- Office of the Status of Women

The submission contains policy and budget recommendations by the Network to intensify efforts to address the legal disadvantage of Aboriginal and Torres Strait Islander women.

The National Network of Indigenous Women's Legal Services Inc ('the Network') is made up mainly of the existing services providing dedicated legal help to Indigenous women. For a full list of services see the Network Booklet that is attached.

### **1.1 Intensifying efforts**

In recent years the federal government has taken important steps to promote culturally appropriate access to legal information and legal help by Aboriginal and Torres Strait Islander women, particularly by providing operational funding for Indigenous Women's Legal Services.

There are 10 federally funded Indigenous Women's Legal Services and these are auspiced by generalist Women's Legal Services or Community Legal Services. In addition there is one independent Indigenous Women's Legal Service (Wirringa Baiya) operating in Sydney and 14 ATSIC funded Family Violence Prevention Legal Units. The latter are operating on a local level in each state and territory with the exception of Tasmania, and the ACT where there are as yet no FVPLUs.

The initial funding of Indigenous Women's Legal Services has thrown up important lessons and produced a number of highly innovative and successful service models. For example:

- In December 2000, the NSW Women's Legal Resource Centre's Indigenous Women's Project received the highly prestigious Law Council of Australia sponsored Commonwealth Human Rights and Equal Opportunity Commission, Human Rights Award in the Law Category - for work across NSW,
- the Top End Women's Legal Service Indigenous Women's Project has evolved a culturally appropriate community development model involving community women, which deserves national and international recognition,
- the Indigenous Women's Unit of the North Queensland Women's Legal Service in Cairns has developed a networking and partnering outreach model and attracted additional grants to work with Indigenous women on The Cape, and
- the Many Rivers Family Violence Prevention Legal Service has won awards including high commendation in the Australian Institute of Criminology's Violence Prevention Awards.

ATSIC has also made progress in relation to Indigenous women's legal issues, particularly through the:

- establishment of the first 13 Family Violence Prevention Legal Units,
- implementation of guidelines for Aboriginal and Torres Strait Islander Legal Services about access to legal services for Indigenous women.

There are important additional initiatives underway including those by:

- the Office of the Status of Women under the Partnerships Against Domestic Violence initiative, and
- the Department of Family and Community Services with programs to strengthen and assist Indigenous families.

We believe that all sectors agree that while progress has been made, and while the work to date is still glancing at the level of need, the developments do provide a strong foundation for the next important steps.

The numerous and alarming indicators of the extreme legal disadvantage of Indigenous women are bound up with socio-economic deprivation, violence and geographic location and isolation. Cultural factors are also crucial in achieving full use of services in areas particularly where traditional culture is strong and/or where there is a long history of social exclusion. Language is a major barrier for many Indigenous women particularly in rural and remote Australia.

This submission is very similar to the submission that the Network made last year. This is because there was unfortunately little progress during the year on the matters that we have previously raised.

**The Network calls on relevant Ministers, departments, government bodies, NGO's and other stakeholders - to intensify efforts to address the still appalling legal disadvantage of our Indigenous women.**

**We have specific recommendations about how to move forward and we now put the following for your consideration and support.**

## **2. Policy and budget recommendations**

### **2.1 National Review**

The Australian Law Reform Commission's 1994 report on *Equality Before the Law*,<sup>1</sup> indicated that Indigenous women are the single most legally disadvantaged group in society.

Despite these findings and subsequent initiatives, outlined above, there has been no national qualitative and/or quantitative research to report on the actual extent and nature of the legal needs of Indigenous women.

Given the developments in service availability in several sectors in recent years, we consider that a detailed review is a matter of high priority to assist with future policy formulation, service targeting and service quality improvement.

The review should include:

- the extent and nature of the legal needs of Indigenous women,
- the extent to which legal problems go unrecognized and/or unattended and why,
- comparison of service statistics against indicators of need,
- what legal services Indigenous women access and why,
- the experiences of Indigenous women in seeking legal help, and
- what service models appear to be most effective and the preconditions for effectiveness.

Work of this kind would also provide a benchmark against which the success of subsequent initiatives can be gauged.

We also see the need for more research and development capacity at a local level. There are many Indigenous women who are very motivated to look at how culturally appropriate assistance can be provided more effectively and at a wide range of other issues to promote better legal system access and outcomes for Indigenous women.

### **Recommendation 1: National Review of Indigenous Women's Legal Needs**

<sup>1</sup> *Equality Before the Law: Justice for Women*, ALRC 69 Part 1, AGPS, 1994, Chapter 5. Access to justice: women's legal services.

That resources be allocated for the establishment of a major national solution focused review about the legal needs of Indigenous women, legal services are available and the gaps. The review should aim to assist with future policy formulation, service targeting and quality improvement.

That the review be undertaken in partnership by an office, such as the Human Rights and Equal Opportunity Commission's Indigenous Social Justice Commissioner, with the National Network of Indigenous Women's Legal Services.

Costing: \$0.5 mil.

### **Recommendation 2: National Indigenous Women's Justice Research Fund**

That resources be allocated to Australian Institute of Aboriginal and Torres Strait Islander Studies for the establishment of a National Indigenous Women's Justice Research Fund to provide research grants to individual Indigenous women and /or Indigenous women's legal organisations for research in the area of Indigenous women and the law.

Such a fund would empower and develop Indigenous women working in the field of Indigenous women and the law.

Costing: \$0.3mil per year for 4 years.

## **2.2 National Network of Indigenous Women's Legal Services**

The network was formed in 1998 and is now incorporated. The Network aims to promote information sharing and support between services and to assist services to work together nationally to raise awareness and advocate.

The Network has convened an annual meeting of services each year since formation. The annual meeting focuses on service quality, peer support and systemic issues. The Network has not had the resources to provide a full annual conference for services and other stakeholders. The Network sees that an annual conference would provide a vehicle for much more broad based engagement and partnering to address Indigenous women's legal issues.

The Network has been successful in three project grant applications from ATSIC to assist with developing the Network function. There is strong support for this function. It will be apparent from the January 2003 Network Booklet that is enclosed that services for Indigenous women are generally in regional and remote areas, they have very large service areas and the services want to Network and support each other.

The Network has been advocating since 1999 for recurrent operational funding for the Network function.

While ATSIC provides substantial operational funding to the National Aboriginal and Torres Strait Islander Legal Service Secretariat, this Secretariat is not well placed to concentrate on Indigenous women's legal issues or to provide a Network for services providing dedicated legal assistance to Indigenous women.

Given the long standing and systemic nature of issues regarding Indigenous women and the law and considerations of access and equity, the Network considers that separate operational funding for the Network function is crucial. A strong Network function is a strategic way to promote legal and social justice issues, service quality improvement and the work of all the services in the Network for the benefit of Indigenous women.

### **Recommendation 3: National Network of Indigenous Women's Legal Services**

That ATSIC and/or the Federal Attorney-General's Department allocate funding to the National Network of Indigenous Women's Legal Services for service development and co-ordination focusing on service quality and effectiveness, representation, combined advocacy and research - all aimed at addressing the legal disadvantage of indigenous women.

Costing: \$0.5mil per year ongoing plus  
Annual conference - \$100,000

## **2.3 Indigenous Family Violence Prevention Legal Services**

From the mid 1990's there has been increasing recognition of the need for legal services specifically targeted to Indigenous women and particularly those Indigenous women who are at risk of family violence and sexual assault.

In 1998, the ATSIC Board began to pilot Family Violence Prevention Legal Units (FVPLUs). The first was at Kempsey and the Top End Women's Legal Outreach Project followed soon after.

The program was subsequently expanded and there are now 13 services focusing on a particular town or region. The FVPLUs provide culturally appropriate advice and information in relation to family violence issues to Aboriginal and Torres Strait Islander people. The units have a strong preventative focus and each uses a different service model to work to meet the needs of their communities. The units place strong emphasis on community networks and aim to build and strengthen community resources to address underlying causes.

There are FVPLUs in all states with the exception of Tasmania and the ACT.

Services are reporting a high level of community acceptance and many ATSIC regions are pressing for the establishment of FVPLUs in their area. The Network considers that this is a dramatic breakthrough and it is crucial that there is a strong and supportive response.

ATSIC is currently providing approximately \$4.9 million pa for this program. While there will probably never be enough FVPLUs there is the strongest possible case for more of these services to be established.

The Network considers that the next step should be the establishment of FVPLUs in Tasmania and the Canberra Region (estimated cost \$700,000 pa) and doubling of program resources to enable

the establishment of services in more high needs areas and where appropriate, additional resources to extend the capacity of existing services.

#### **Recommendation 4: Indigenous Family Violence Prevention Legal Services**

That funds be allocated to ATSIC to double the funding currently available for the provision of Indigenous Family Violence Prevention Legal Units with a view to additional Units being established in areas of highest need and funding for existing Units being increased to deal with additional demand.

Costing: Establishment of FVPLUs in Tasmania and ACT: \$700,000

Doubling of program resources: \$4.9 mil pa.

Additional: \$5.6 mil pa

## **2.4 Indigenous Women's Legal Services (Projects)**

### *Self management*

The Commonwealth currently funds Indigenous Women's Legal Service Projects. The full list is in the Network Booklet (attached).

In most cases the IWP's are auspiced by generalist Women's Legal Services. While this arrangement has worked well in some regions it has been very problematic in others where it is more appropriate for there to be an independent, dedicated IWP providing a service by Indigenous people for Indigenous people.

Many IWP's are striving to become independent, self managing organisations. In many cases IWPs and Women's Legal Services lack the resources for proper processes of their choosing to explore the issues effectively and cooperatively and to plan in accordance with their wishes. Funds should now be provided by the Commonwealth to enable services wishing to do so to constructively explore the issues and plan for the future.

### *Funding levels*

Funding levels for Indigenous Women's Legal Service Projects are clearly inadequate. For example:

- there is currently no IWP in Victoria and needs are not the same as those addressed by the ATSIC funded FVPLU being established in Victoria,
- the total funding allocation for Tasmania is \$42,252,
- there is no funding for the ACT and no dedicated legal assistance for Indigenous women in the ACT,



- Western Australian Indigenous Women's Projects (Legal Services) are being funded at the rate of about \$58,096 pa which is completely unrealistic given remoteness and outreach costs. When this figure is compared to the amounts allocated to services in the Eastern States there is a considerable difference given the size of the state.

#### *No funding model*

In addition there is no funding model / funding formula for Indigenous Women's Legal Services. The current funding arrangements are based on a historical division of Commonwealth funds appropriate in 1996 to establish the program.

A funding model that actually assesses need and takes into account the size of the service region and service delivery costs is required. The model should also consider the funding levels of other relevant services such as Aboriginal and Torres Strait Islander Legal Services, Women's Legal Services, Community Legal Centres and Indigenous Family Violence Prevention Legal Units.

#### **Recommendation 5. Resources to explore self management**

That resources be allocated to the Commonwealth Attorney-General's Department for funds to be made available to Indigenous Women's Legal Services wishing to constructively and effectively explore the possibilities of establishing independent self managed services and to develop plans for this purpose.

Costing: \$0.4mil

#### **Recommendation 6. Establishment of a funding model**

That the Commonwealth Attorney-General's Department immediately establish a process, in partnership with ATSIC and the National Network of Indigenous Women's Legal Services, to develop a funding model for Indigenous Women's Legal Services. The process should involve consultation with all Indigenous Women's Projects and other key stakeholders.

Costing: \$0.1mil

#### **Recommendation 7: Additional resources for more IWPs and more adequate funding**

That additional resources immediately be provided to address the need for Indigenous Women's Projects in Victoria, Tasmania and the ACT and to extend the capacity of existing services in other states and the NT.

Costing: 5mil pa ongoing.

### 3. Summary of new initiatives costings

		Year 1	Over 4
Rec 1:	National Review of Indigenous Women's Legal Needs	\$0.5	\$0.5
Rec 2:	National Indigenous Women's Justice Research Fund \$1.2mil over 4 years	\$0.3	\$1.2
Rec 3:	National Network of Indigenous Women's Legal Services \$0.6 recurrent	\$0.6	\$2.4
Rec 4:	Family Violence Prevention Legal Services \$5.6mil recurrent	\$5.6	\$22.4
Rec 5:	Resources to explore self management \$0.4mil	\$0.4	\$0.4
Rec 6:	Establishment of funding model \$0.1mil	\$0.1	\$0.1
Rec 7:	Resources for more IWPs and more adequate funding \$5 mill recurrent	\$5.0	\$20.0
<b>Total</b>		<b>\$17.4mil</b>	<b>\$47 mil</b>

National Network of Indigenous Women's Legal Services  
January 2003

## **ATTACHMENT 3**

### **Review of the ATSI Discussion Paper Submission by the National Network of Indigenous Women's Legal Services Inc.**

#### **About the National Network of Indigenous Women's Legal Services (‘NNIWLS’)**

The NNIWLS aims to empower and promote social justice for Indigenous women and Indigenous people with particular emphasis on law and justice issues.

The Network was formed by, and has a membership that consists of:

- Indigenous Women's Projects (legal services), funded by the Commonwealth Attorney General's Department,
- Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service, Queensland, funded by Commonwealth Attorney General's Department,
- Wirringa Baiya Aboriginal Women's Legal Centre funded by the NSW Attorney General's Department,
- Family Violence Prevention Legal Services, funded by ATSI, and
- individual Indigenous women who have a commitment to social justice for Indigenous women.

All of the above services that are members of the NNIWLS provide legal help to Indigenous women, children and families. Every day these services see the effects of communities in pain, leaving many of our women and children at risk and hurt that goes very deep. Whilst the services are providing legal help the main aim is healing and work is done with women and often men.

The Network was established in 1998. It has been operating since 2001 with philanthropic grants and short term seeding grants from ATSI. The Network received a project grant from the Commonwealth Office of Status of Women to deliver leadership training workshops for our women, particularly in regional and remote areas.

There is further information about the Network, including the detailed purposes, in the 2003 Network Booklet that is attached.

Also enclosed is a copy of the Network's February 2003 federal budget submission that highlights key issues – none of which were addressed by the 2003 budget i.e. everything in the submission is still outstanding.

If further information is required please contact:

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## **Submission**

The comments which follow address points in two sections of the Discussion Paper – that is *Principles for a ‘new ATSIC’* and *Issues for Consideration*.

### **Principles for a ‘new ATSIC’**

“the National body should provide the policy interface for the commonwealth Government setting and advocating a national strategic direction; and monitoring progress against ATSIC’s national plan to reinforce the accountability of program and service providers;” [p.6-7]

Comment:

- In order for the National body to provide policy interface for the commonwealth Government consideration should be given to how the National body interfaces nationally – as well as regionally – with programs and service providers.
- For example - historically Indigenous women have received less benefit overall from the funding provided by ATSIC (now ATSI) for Aboriginal and Torres Strait Islander Legal Services. As a result of this ATSIC took the important initiative of beginning to establish Family Violence Prevention Legal Services. There are now 13 of these –this is not enough and most are not adequately funded – but it is a start. Additionally, the Commonwealth Government has provided small amounts of funding for Indigenous Women’s Projects since 1997. These are Indigenous Women’s Legal Services. There are 10 of these. Again this is not enough, the funding levels are completely inadequate - but it is a start.
- Because of the level of legal disadvantage of Indigenous women and the isolation and difficulties faced by Indigenous women’s legal services – these services have formed an incorporated national network –that is, the National Network of Indigenous Women’s Legal Services Inc (NNIWLS). ATSIC and ATSI need bodies such as the NNIWLS for policy and service liaison and input purposes. ATSIC and ATSI should place emphasis on seeking and facilitating policy input from bodies such as the NNIWLS.
- The NNIWLS has received small project grants only from ATSIC, and currently funds will run out by the end of this year. The NNIWLS is crucial to these services and it is a crucial Network for policy and program liaison with ATSIC and ATSI and the Commonwealth. It is requested that the Review give consideration to recommending that ATSIC establish a priority on supporting the NNIWLS. Additionally, ATSI should place priority on providing operational funds for the Network to operate and function.

“strengthening Indigenous communities must not be based solely on the provision of welfare services;” [p.7]

#### Comment

- Additionally, where Indigenous programs and services have taken the initiative to strengthen service delivery through the formation of effective and constructive national networks, such as the National Network of Indigenous Women's Legal Services Inc, these initiatives should be supported as an effective way of building capacity and empowering Indigenous people and Indigenous programs and services.

“Indigenous Australians should be provided with equal access to health services and there should be an appropriate balance of preventative, environmental and public health policies, programs and services;”[p.7]

#### Comment

- The same principle should be stated in relation to legal services.

### Issues for Consideration

“The following key issues require further consideration:

- funding services through the mainstream agencies without a significant involvement of ATSIC seems unsustainable;” [p. 7]

#### Comment

- Legal services for Indigenous women are a good example of why ATSIC needs to have significant involvement in mainstream policy. Although ATSIC funds 13 Family Violence Prevention Legal Services (referred to above), there are additionally 10 Indigenous Women's Projects (legal services) funded by the Commonwealth Attorney-General's Department. The NSW Government funds a separate Indigenous Women's Legal Service (Wirringa Baiya), and Queensland Legal Aid has an Integrated Indigenous Strategy Unit with Indigenous and non-Indigenous staff in several locations. Additionally, Community Legal Centres, funded mainly by the Commonwealth Attorney-General's Department and Legal Aid Commissions funded by the Commonwealth and each State and Territory have a major role to play in providing accessible and culturally appropriate legal services to Indigenous women.
- Non-profit mainstream legal services are still not sufficiently accessible to Indigenous people including Indigenous women. Additionally, these services are only playing a very minor role in extending community legal education to Indigenous communities. These services have little understanding of Indigenous networks and how to apply a community development approach in an Indigenous context. ATSIC should be liaising more effectively

at the highest levels, and with the funders of mainstream legal services. Demanding targets should be established by ATSIC and regular public reporting should be occurring.

- ATSIC should aim to ensure that all non-profit mainstream legal services partner with ATSIC and ATSI to undertake a genuine assessment of Indigenous legal needs at a community level. The legal needs of Indigenous women should receive particular attention.
- Additionally, ATSIC should be working to sensitize the Commonwealth to its policy of only providing funding to Legal Aid Commissions for ‘ Commonwealth matters’ – that is, matters that arise under federal laws ( the main one being family law). Because many Indigenous people do not use the family law system the Commonwealth funding policy indirectly discriminates against Indigenous people and particularly against Indigenous women who typically need family law type help of another kind – that is to ensure their basic safety. Because the Commonwealth provides funds to ATSIC to fund Aboriginal Legal Services that are mainly doing criminal law work and the Commonwealth funds Legal Aid Commissions mainly to do family law work – the special legal needs of Indigenous women, particularly arising from family violence, are not covered by ATSI or by LACS. Family violence restraining orders come under State and Territory law. The Commonwealth should be making an exception in its legal aid funding formula for family violence related legal needs of Indigenous people. ATSIC should be pressing the Commonwealth to provide funding for legal services of this kind even though this arises under State and Territory law so that Indigenous people – and particularly Indigenous women, do not miss out.
- Indigenous women should be specifically, visibly and credibly represented in ATSIC and ATSI processes that develop policy and strategic direction to liaise with mainstream legal aid funding bodies and mainstream legal aid providers.

“our consultations highlighted an increased awareness of the importance of both governance and accountability for Indigenous bodies and a strong desire to strengthen both;” [p. 7]

Comment:

- there are also issues about governance and accountability of non-Indigenous bodies that auspice or provide Indigenous programs. Issues include: treatment and conditions of workers, failure to recognise and value community knowledge, direct and indirect discrimination particularly in relation to training opportunities, assignment of management roles and advancement.
- In relation to Indigenous bodies – requirements about representation including representation of Indigenous women, and bodies addressing needs that include those of women in the community, should be visibly entrenched as one measure of good governance and accountability.

“the gender imbalance in ATSIC and Indigenous organisations is a significant problem” [p. 7]

Comment:

We strongly agree with this statement and we have commented on the need for balanced representation and representation of the interests of Indigenous women, above.

Additionally, ATSIC should establish a policy that requires program outputs to be assessed by gender.

One example is the grant performance requirements that apply to Aboriginal and Torres Strait Islander Legal Services. Although ATSILS are required to provide statistics that include gender as a category in some elements, the statistical requirements do not deal with the key problem that ATSILS have historically not provided assistance to Indigenous women in relation to women's special needs. While the current statistics show the number of Indigenous women assisted in criminal matters there is no effective gender breakdown by other matter types including assistance in relation to family violence matters which have been at the heart of the problems. As a result, there is no effective monitoring of how much assistance ATSILS are providing to Indigenous women where women are approaching ATSILS for assistance to obtain protection or to take other related steps where they are at risk of family violence.

“behavioural issues on the National Board continue to contribute to ongoing negative media attention and diminish ATSIC's reputation” [p. 8]

Comment:

- The National Board needs to be a Board of leaders who can provide strong and effective leadership, inspire and have the confidence of all of our people – including our women

“ATSIC lacks vision and strategy and is not producing evidence based Policy” [p. 8]

Comment:

- We support directions recently established by the ATSIC Board to provide leadership to reduce and prevent family and sexual violence in our communities. At the same time, ATSIC must work on building community confidence in relation to its statements and efforts in this area.
- There is unfortunately still no strategy that has been made public by the ATSIC Board about specific and effective measures to address the profound legal disadvantage of Indigenous women.



“areas of concern include women’s and men’s issues, youth, family violence, substance abuse and itinerants” [p. 8]

Comment:

- We agree that each of these are major areas of concern that require much stronger emphasis. However thought needs to go into the dialogue when government engage communities on these issues in relation to addressing these issues separately by talking to women on women’s issues and men on men’s issues following traditional consultations and not just using government structures to consult by or through.

“current programs and services are not delivering long-term outcomes” [p. 8]

Comment:

- We are very concerned about the low funding levels that are provided for many programs and services including the Family Violence Prevention Legal Services (‘FVPLS’). Real change requires real resources and if ATSIC can not marshal the resources itself it should be actively working to establish funding partnerships with the Commonwealth and State and Territory Government funding sources,
- In the case of FVPLS many of the existing services have enormous service areas. More funding for existing services is needed and more services are needed,
- See our comment above about the need to monitor outcomes by gender

“ATSIC seems unable to discharge its role as mandated in section 7 of its Act, to monitor the effectiveness of Indigenous programs delivered by other bodies” [p. 8]

Comment:

- See our comments above about the need for ATSIC to exert effective policy and program influence in relation to mainstream services that should be accessible to Indigenous people.
- In relation to legal services for our people, neither ATSIC or the Commonwealth has published information about levels of use of mainstream services by Indigenous people, including Indigenous women. This information is available to the Commonwealth through the statistics collected by Legal Aid Commissions and Community Legal Services. The Commonwealth provides the raw statistics to stakeholders on request. But the Commonwealth and ATSIC do not appear to be analyzing the information, and there are no targets in place. Additionally, there are no strategies in place to lift levels of access to mainstream services for our people, and particularly by our women.

“many mainstream service and program providers avoid their accountability, preferring to leave the impression that ATSIC is at fault” [p. 8]

Comment:

- In relation to legal services for our people, we strongly agree with this statement. Historically, mainstream legal aid providers – particularly Legal Aid Commissions – have been extremely unclear in their policies and practices about boundaries between them and ATSILS. This has had a particularly negative effect for our women. As noted above, ATSILS are still not addressing the special legal needs of our women and at the same time neither are Legal Aid Commissions. The latter is partly based on a continuing debate about the role of ATSILS compared to the role of Legal Aid Commissions.
- ATSIC and other stakeholders – particularly the Commonwealth and State governments need to bring clarity into the equation. The fact is that mainstream providers have a responsibility and they should be aware of their accountabilities in providing accessible and culturally appropriate services to our people including our women.