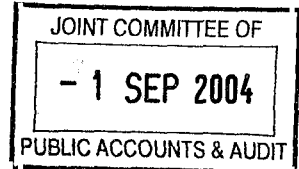


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25 August 2004



Mr Glenn Worthington
Inquiry Secretary
Joint Committee of Public Accounts and Audit
Parliament House
CANBERRA ACT 2600

Submission No. 39

Dear Mr Worthington

RE: INDIGENOUS LAW AND JUSTICE INQUIRY

I refer to the attendance of myself and Louise Blazejowska, Executive Officer, at the public hearing of the Joint Committee of Public Accounts and Audit's *Indigenous Law and Justice Inquiry* in Sydney on 13 July 2004, and the Joint Committee's request for further information from the NSW Legal Aid Commission.

Please find attached the Commission's responses to the five follow up questions from the hearing.

Please do not hesitate to contact either myself, or my Executive Officer, Louise Blazejowska, on (02) 9219 5883/email louise.blazejowska@legalaid.nsw.gov.au, if you require any further information.

Thank you once again for the opportunity to make a submission to this Inquiry.

Yours faithfully

Bill Grant
Chief Executive Officer

INDIGENOUS LAW AND JUSTICE INQUIRY

NSW Legal Aid Commission – Responses to Follow Up Questions

- 1) **“We are responsible for administering a women’s domestic violence court assistance program, which consists of a network of court assistance schemes around the state that provide legal and referral and non-legal assistance to women who are applying for apprehended violence orders in the local courts. At last count we had 27 or more of those schemes, and in the last financial year they assisted in excess of 30,000 women around the state. I do not know the percentage of those who are Aboriginal women, but it would be possible to find out if you wanted that information.”** (JCPAA Hansard, 13 July 2004, PA 77-8)
- **Could you provide details of how the women’s domestic violence court assistance program operates?**
 - **What percentage of women assisted are Aboriginal and Torres Strait Islander women?**

The Women’s Domestic Violence Court Assistance Program (WDVCAP) provides support, information and referrals to women at court seeking Apprehended Domestic Violence Orders (ADVO’s). Some schemes also facilitate access to legal representation.

Typically, schemes offer support during the court process and provide information through trained support workers and provide referrals to allied services such as health or housing.

The WDVCAP Program currently funds 33 courts assistance schemes servicing 52 courts across NSW. There remains, however, many areas of the State not serviced by WDVCAP, particularly in rural and regional NSW.

Funding from the NSW Government is administered by LACNSW and allocated to schemes through a funding formula developed by a cross sector Advisory Committee, comprising representatives from Local Courts, WDVCAPs, the NSW Attorney General’s Department and the Office of Women.

Some schemes are also funded to employ specialist NESB and ATSI workers, based on the demographics of the area in which the scheme operates. The aim of this funding is to improve access to schemes by these communities, and to ensure that services are culturally appropriate and strategically delivered to meet the needs of women and children.

From the information provided by the schemes to LACNSW for 2002/2003, approximately 4,418 Aboriginal women were assisted under the Program, out of a total of 30,188 women, thereby comprising 14.6% of clients assisted during that period.

- 2) **“I would like to see a situation where we can build technological and practical Chinese walls, so that, if I needed to, I could have a legal aid Family lawyer acting for the woman, say out of our Dubbo office, and someone acting for the man, if that was appropriate, our of our Wagga office. Things would be totally confidential and separate as part of our IT system and as part of our processes and procedures. Ultimately, to get that I think we will probably need some sort of legislative amendment, because the state of the law is so damned confused on conflict of interest.”** (JCPAA Hansard, 13 July 2004, PA 79)

- **You state that the state of the law on conflicts of interest is confused. Can you provide details?**

The law relating to conflicts of interest is in the main governed by case law which is complex and often difficult to interpret. In this regard in late 2001 LACNSW obtained advice from Senior Counsel in an attempt to bring clarity and guidance to the subject, particularly in relation to the impacts on this organisation. The following passages (which remain relevant) from the advice put the situation into perspective and also provide a connection to the provision of legal services to Aboriginal communities:

“Conflicts of interest have long been a potential problem for the Commission, which now employs approximately 268 solicitors of whom approximately half work in one of 18 regional offices around the State.

The nature of the work undertaken by the Commission, including criminal matters, family law matters and child protection matters, will readily give rise to confidential information being received from one member of a family in relation to circumstances which may involve other family members. It will frequently be the case that if one member of the family is eligible for legal aid, on financial grounds, others will similarly be eligible.

These problems are by no means novel, nor are they restricted to intra-family disputes. For example, Aboriginal legal services, which deal with relatively close-knit communities, encounter the same problems, possibly with even greater frequency. Thus, a standard domestic violence case could give rise to a request for assistance from both the victim and the assailant.

The problem has increased in intensity in recent times, possibly for one or both of two main reasons. First, the increasing level of electronic storage of information increases the likelihood that confidential information will be available to all members of an organisation. Secondly, there may be an increasing level of sensitivity in relation to possible situations of conflict. One cause may, of course, be a function of the other.” (John Basten QC, 7 December 2001)

LACNSW is currently looking at conducting a pilot within the Commission of the use of both Chinese walls and electronic firewalls to better manage conflict. Should these potential solutions not be effective this may allow a case to be progressed for a legislative solution.

- 3) **“In Commonwealth family law, we pay \$130 an hour. That is way below market rate.” (JCPAA Hansard, 13 July 2004, PA 80)**

- **Could you provide an estimate of the private rate for Commonwealth family law in NSW?**

The current market rates in family law matters range from \$250 to \$300 per hour. A link to the Commission’s family law fee scales can be found at: <http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=7&cid=81&id=23>.

- 4) **“We have a memorandum of understanding with the Sydney Regional Aboriginal Legal Service, Kamilaroi Aboriginal Legal Service and the Western Aboriginal Legal Service, which is designed to increase the ability of those legal services to provide family law advice. Basically we pay those legal services to do family law work.” (JCPAA Hansard, 13 July 2004, PA 81)**

- **Could you provide the levels of payment received by the Sydney Regional Aboriginal Legal Service, Kamilaroi Aboriginal Legal Service and the Western Australian Legal Service for family law work under the relevant memorandum of understanding?**

In October 2002, the Commission signed a Memorandum of Understanding ("MOU") with the Coalition of Aboriginal Legal Services of NSW ("COALS") on behalf of the Sydney Regional Aboriginal Corporation Legal Service, the Western Aboriginal Legal Service and the Kamilaroi Legal Service.

The objective of the MOU is to provide assistance to three participating ATSILs in order to allow them to provide family law advice, and where appropriate, representation, in those matters that are within the Commonwealth agreement and are consistent with the Commonwealth guidelines for family law matters and ATSIC guidelines. A copy of the MOU is attached ("A").

The MOU commenced in late October 2002. The three main aspects of the MOU are:

- Payment by LACNSW for the provision of family law advice by participating ATSILs - \$40 for each advice (this is not available to private practitioners);
- Payment by LACNSW of a Family Law e-lodgment fee for successful applications for legal aid lodged with the Grants Division - \$80.00 for each successful application;
- Participating ALSs being entitled to submit applications for legal aid in family law matters and having the application lodged, assessed and paid like any other private practitioner. A copy of the Commission's fee scale in family law matters is attached.

Other initiatives under the MOU include:

- Training of participating ATSILs staff by the Commission in the Commonwealth Agreement, Commonwealth guidelines and recording requirements in family law matters.
- Training of participating ATSILs staff by the Commission in the use of e-lodgement. All relevant ATSILs staff were initially trained in the use of e-lodgement. Staff at the Kamilaroi ALS and WALs will receive refresher training in September 2004.
- Reciprocal participation in "in-house" training programs and cultural awareness training. ATSILs family staff are regularly invited and generally attend the Commission's family law and care and protection conferences and other seminars.

An analysis of payments made to the three participating ATSILs during the 2003/2004 financial year is attached ("B"). Efforts are currently being made to increase the uptake of these initiatives by the Kamilaroi and Western ALSs.

5) The Sydney Regional Aboriginal Legal Service Corporation stated in Hansard that the Legal Aid Commission solicitors come to the Corporation's office and provide civil advice to people from the Aboriginal community. (JCPAA Hansard, 13 July 2004, PA 64)

- **Could you provide further details of any formal or informal arrangements that the Legal Aid Commission has with ATSILs in**

the use of ATSIL facilities in the Commissions provision of legal advice to Indigenous people?

- **How regularly do Legal Aid Commission solicitors use the facilities of the Sydney Regional Aboriginal Legal Service Corporation?**
- **What percentage of the Legal Aid Commission's civil cases involving Indigenous people is handled in this way?**

For the past 6 years, LACNSW has had an arrangement with the Sydney Regional Aboriginal Corporation Legal Service (SRACLS) whereby Commission legal officers visit the SRACLS office at Blacktown to provide advice to clients in civil law matters.

A roster of Commission legal officers attends SRACLS's Blacktown office fortnightly on Friday mornings, where they give advice to clients of the SRACLS by appointment. Generally speaking, legal officers report that they see an average of three persons per morning advice session.

The number of Aboriginal clients, which the Commission assists through its outreach services, such as the Blacktown one, is not generally recorded. Only recently is such data being collected in relation to the family law outreach services. Discussions are underway with the Commission's information technology section to enable collection of this data across all program areas.

Other outreach advice services, which LACNSW provides to Aboriginal communities, include:

Wollongong

There is an advice service each Friday morning at the ALS office in Market Street, Wollongong. Apparently the ALS is actually part of the SRACLS. Usually 3 - 4 clients are booked in. The service has been provided since about 1996 - 1997.

Newcastle

At Singleton Base Hospital, we have an informal arrangement by which we provide advice as needed. A representative of the Ungaroo Land Council in Singleton convenes the advice sessions through the Many Rivers Aboriginal Legal Service ("MRALS") in Newcastle. A Field Officer from Many Rivers Aboriginal Legal Service attends. We aim to provide the service once or twice every 6 months, depending on need. On each occasion, we see between 5 and 10 clients.

We also provide an outreach service at Taree to provide civil advice to the general public. We have an arrangement with the Many Rivers Aboriginal Legal Service to use their premises. We attend on the third Tuesday of every month and see up to 5 clients each visit. Whilst the advice service is open to the general public it is located with MRALS to facilitate access to Aboriginal clients who are also referred by MRALS field officers.

Coffs Harbour

We have an arrangement with the Many Rivers Aboriginal Legal Service to attend their office in Coffs Harbour to provide advice once a fortnight as required. This arrangement was devised as a means of creating links with the local Aboriginal community. For about 12 months now MRALS has not called on the fortnightly service. Instead, Aboriginal persons are now going directly to the LAC office.

Lismore

We provide an advice service at the Lismore premises of the Many Rivers Aboriginal Legal Service once a fortnight, at which about 5 people are seen on each occasion.

We used to go to premises belonging to local Land Councils or Medical Centres, but that arrangement is not currently being pursued. Our experience is that MRALS automatically refers all its clients with civil law problems directly to LAC.

Dubbo

We have visited the Land Councils at Dubbo, Coonamble, Coonabarabran, Bourke, Brewarrina, Lightning Ridge, Walgett, Narromine, Nyngan, Trangie, Peak Hill, Wellington, but very few people have phoned to say they want an appointment for advice at those centres.

Memorandum of Understanding between the Legal Aid Commission Of New South Wales and named Aboriginal Legal Services

1. PREAMBLE

Further to the statement of co-operation between the Legal Aid Commission of NSW (the Commission) and the Coalition of Aboriginal Services of NSW (COALS) dated 5 April 2001, the Commission will enter into a twelve month pilot agreement with the Sydney Regional Aboriginal Corporation Legal Service, Western Aboriginal Legal Service and the Kamilaroi Aboriginal Legal Service (the RALS) for these Offices to provide family law advice and, where appropriate, representation (including primary dispute resolution) in those matters that are within the Commonwealth agreement and are consistent with the Commonwealth guidelines for family law matters and ATSI guidelines.

2. AGREEMENT

- A. In order to facilitate this pilot, the Offices will be entitled to be paid by the Commission of all family law advices. The rate for the advice will be pursuant to the Commonwealth agreement. Further, where representation is appropriate the Offices will be entitled to submit an application for legal aid and have that application lodged, assessed and paid like any other private practitioner.
- B. The Offices involved in the pilot will be trained by Commission staff about the Commonwealth agreement, Commonwealth guidelines and recording requirements in family law matters.
- C. The Offices involved in the pilot will be trained by Commission staff in the use of e-lodgement.
- D. The Commission will use its best endeavours to ensure as far as practicable, other services including LawDocs, MCLE, library resources and other legal information currently available to Commission staff will be available to the Offices involved in the pilot.
- E. At the expiration of the pilot, and once the pilot has been assessed, the Commission expects that COALS will be in a stronger position (by way of statistics) to submit to their funding body the need for funded family law positions.

3.

The Commission and Offices agree that, in carrying out their individual responsibilities to the Aboriginal people of NSW with family law matters, they will undertake the following:

- A. To take steps to ensure that all respective employees of the parties to the agreement are aware of the aims and terms and request that they abide by it.
- B. To assist in this the Commission and COALS will each appoint a "Liaison Officer " to act as a central point of contact between the Commission and COALS for the exchange of information in relation to family law services.
- C. To facilitate and promote reciprocal participation in "in-house" training programs and cultural awareness training.
- D. To share agreed statistical data between the parties on request to facilitate analysis of needs and concerns. This information exchange will enhance the ability of each part to best meet the needs of Aboriginal clients and plan for the provision of services in areas of unmet need.
- E. To promote each other services with the focus on informing Aboriginal clients about the services offered by each party.
- F. Where an Aboriginal applicant is not eligible for legal assistance from one of the named Aboriginal Legal Services (due to a conflict of interest) they will endeavour to provide the applicant with adequate information to ensure the applicant, subject to Commonwealth guidelines, is able to seek assistance from the Commission or private practitioners who undertake legal aid work. Where an Aboriginal applicant is not eligible for legal aid, the Legal Aid Commission will endeavour to provide the applicant with adequate information to ensure the applicant, subject to RALS' guidelines, is able to seek assistance from RALS.

4 REVIEW OF THE AGREEMENT

The parties agree to review the twelve month pilot agreement with the first part of the review to occur six months from the date it is signed.

5 TERMINATION

Either party may terminate the agreement and the obligation it entails by giving each party 21 days notice in writing with the necessity to give reasons for the termination without affecting grants of aid approved prior to the date of termination.

6 OBLIGATIONS ARISING UNDER LAW

The parties agree that this agreement does to give rise to any legal rights or obligations at law. The agreement will not be relied upon as a legally enforceable instrument by either of the parties.

7 DISPUTES

Disputes arising out of this agreement should be resolved by negotiation. Initially negotiation should be conducted between the employed solicitors at the relevant regional offices. If the matter is not resolved at this level it should be referred to the Liaison Officers for their assistance.

8 VARIATIONS

This agreement may be varied in writing by mutual agreement between the parties.

SIGNED FOR THE LEGAL AID COMMISSION OF NSW BY:

.....

SIGNED FOR THE COALITION OF ABORIGINAL LEGAL SERVICES BY:

.....

.....
Kamilaroi Aboriginal Legal Service

.....
Western Aboriginal Legal Service

.....
Sydney Regional Aboriginal Corporation Legal Service

"B"

Aboriginal Legal Services - Analysis of Services Provided 02/03 - 03/04

The numbers of family law advice payments made by the Commission to the 3 participating ALSs, with a breakdown of the amounts paid to each ALS office and the total amount.	No of Advices	Amounts Paid
Kamilaroi Aboriginal Legal Service (Tanworth)	0	0.00
Sydney Regional Aboriginal Legal Service	109	4,360.00
Western Aboriginal Legal Service	0	0.00
Total	109	4,360.00

The numbers of Family Law e-lodgment fee payments made by the Commission to the 3 participating ALSs with a breakdown of the amounts paid to each ALS office and the total amount;	No of Elodgements	Amounts Paid
Kamilaroi Aboriginal Legal Service (Tanworth)	0	0.00
Sydney Regional Aboriginal Legal Service	1	80.00
Western Aboriginal Legal Service	0	0.00
Total	1	80.00

Numbers of Family Law grants made to the 3 participating ALSs with a breakdown of the amounts paid to each ALS office and the total amount.	No of Grants	Amounts Paid
Kamilaroi Aboriginal Legal Service (Tanworth)	3	0.00
Sydney Regional Aboriginal Legal Service *	33	15,988.00
Western Aboriginal Legal Service	3	1,780.00
Total	39	17,768.00

* 11 do not have any payments recorded against them