



Photo: Getty Images

Delivering justice

Ninety per cent of funding for Aboriginal justice programs is spent on the criminal justice system. It's one of many statistics detailing the experiences of Indigenous Australians with the legal system. Submissions to a parliamentary inquiry give a deeper insight into the issues. Story: Chris Uhlmann

In December 1788, David Collins, Judge Advocate for the settlement of Port Jackson, noted in his journal that the colonists to New South Wales “remarked with concern that the natives were becoming every day more troublesome and hostile”.

The governor determined that one or two of those people should be seized and brought into the settlement, wrote Collins, so that they “might learn to distinguish friends from enemies”.

On December 30, the colonists captured a man who was subsequently “clothed, a slight iron or manacle put on his wrist and a trusty convict appointed to take care of him”.

Arabanoo was the first captive of the settlers—a pioneer of a path to be trod by far too many of his people.

Two hundred and sixteen years on the tale of Aboriginal Australia's encounters with the law can be measured by a sorry litany of statistics. Perhaps the most telling is that although they comprise roughly two per cent of the general population they make up 21 per cent of the prison population, or, to cut it another way, Indigenous Australians are 16 times more likely to go to jail than non-Indigenous Australians.

That helps to explain why Aboriginal and Torres Strait Islander Services has spent 90 per cent of its justice program funding in the criminal justice system. That money has a lot of ground to cover: beyond legal aid it must also fund law and justice advocacy; family violence prevention; and prevention, diversion and rehabilitation.

Numbers are blunt instruments and tell us nothing of each individual's circumstances, but they do serve to put enough scale on violence in the Indigenous community to properly describe it as a tragedy. A paper from the National Crime Prevention Program, *Violence in Indigenous Communities 2001*, showed the rate of death from interpersonal violence is 10.8 times higher than for the non-Indigenous population. A West Australian study found Aboriginal people in rural areas are 63 times more likely to be victims of reported domestic violence than their non-Aboriginal counterparts. The flood of dismal numbers could flow on for pages but one more will suffice: an Aboriginal Justice Advisory Council report released last year included a survey of Aboriginal female prisoners—70 per cent said they had been sexually assaulted as children, 78 per cent said they were victims of violence as adults.

An Australian National Audit Office review of the ATSI Law and Justice Program found there was room for a considerable improvement in it, so the Joint Committee of Public Accounts and Audit has launched an inquiry. As part of that inquiry, the committee will take into account a policy shift that will see Indigenous legal aid services opened up to competition. That looms as a very large carrot to law firms, with the government saying it will commit \$120 million to the purchase of legal aid services from January 2005 to December 2007.

Are mainstream legal services equipped to do the job? Probably not, according to a submission to the inquiry from the Warndu Watlhilli-Carri Ngura

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Aboriginal Family Violence Legal Service. Warndu is the sole Indigenous-specific women's legal service in South Australia. It's based in the town of Port Augusta, which has become a hub for Indigenous communities in the northern part of the state, with people from 23 Indigenous language groups living in the town.

The service's senior solicitor, Mark Forth, says, in his experience, mainstream service providers become frustrated by the circumstances of Indigenous Australians and the difficulties in dealing with them as clients. The complexity of the legal aid system itself is also a significant hurdle for people who speak English as a second, or third, language.

"The Legal Services Commission is located in Adelaide as well as Whyalla, a regional centre about 100km from Port Augusta," he says. "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."

Mr Forth says availability, literacy, the complexity of legal correspondence, process time and even intimidation are reasons 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". Warndu's clients have "almost without exception" expressed a preference for the type of treatment they get from Indigenous organisations.

"In short our clients have experienced a loss of faith or trust in most non-Indigenous organisations, statutory bodies and government," he said.

South Australian Attorney-General Michael Atkinson says his state has serious concerns about the possibility of Indigenous legal services being contracted out.

"If there is to be a change in the way the Commonwealth money for Indigenous legal

services is applied... the state would be required to pick up a large increase in Indigenous criminal law representation," he says. "Such attempts to cost-shift to states is not right."

Mr Atkinson concedes that most state money is also committed to criminal matters and acknowledges the other areas of need, "particularly as they deal with family violence and family law issues".

It is a sentiment echoed by the Law Society of South Australia which points out that the Aboriginal Legal Rights Movement has a single Adelaide-based lawyer responsible for providing family law advice to Aboriginal people throughout South Australia. The society's president David Howard says, despite the case load, repeated requests for more funding have been ignored. He is concerned that simply carving the existing legal aid budget differently could worsen the position of Aboriginal people.

Mr Howard notes that domestic violence in Aboriginal communities, and the need for more specific services for Aboriginal women, have enormous currency in the press and public policy debate, but money has not flowed as swiftly as the words.

"The findings of the State Coroner into the death of Kunmanara Hunt... indicate there is an enormous unmet need for legal assistance to victims of domestic violence in remote communities, particularly in cases where petrol sniffing and other forms of drug and alcohol abuse are involved," Mr Howard says.

It is hard to overstate the difficulties associated with trying to spread limited legal aid funding over such a vast area of need but the experience of Warndu gives some shape to them. Mark Forth's submission chronicles a list of complications ranging from the sheer size of the beat, through limited access to telephones, to a caseload where 75 per cent of clients fall outside the test for legal aid because their needs go

beyond a lawyer to protection, shelter, housing and crisis care. The service's clients also have special needs which mean that any given legal issue takes more time to examine, investigate, explain and process than mainstream cases.

Mr Forth says it is clear more money is needed to address the particular difficulties of 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," he says.

David Collins' story of his experience as Judge Advocate of the Port Jackson settlement was printed in 1798 as *An Account of the English Colony in NSW*. It was one of several books written by members of the First Fleet. Another, perhaps the best and certainly the most human, was penned by Captain Watkin Tench of the marines. He came to know Arabanoo, Colbee and Bennelong not as "natives", "Indians" or "savages" but as human beings. So, by the time he left the colony, he was able to write, "Man is the same in Pall Mall as in the wilderness of NSW".

Two centuries on, submissions to a parliamentary inquiry question whether the justice of Pall Mall is equally available in the wilderness. ■

Federal parliament's Joint Committee of Public Accounts and Audit has commenced public hearings for its inquiry into Indigenous law and justice. The next hearing will be held in Adelaide on 19 August 2004. For information, visit www.aph.gov.au/house/committee/jpaa/atsis or email jcpa@aph.gov.au or phone (02) 6277 4615.



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