



North Australian Aboriginal Justice Agency

CIVIL LAW SECTION

North Australian Aboriginal Justice Agency – Submissions in response to Parliamentary Inquiry:

“How the corporate sector establishes models of best practice to foster better engagement with Aboriginal and Torres Strait Islander consumers”

December 2021

Background

Thank you for the opportunity to provide submissions to this inquiry. The North Australian Aboriginal Justice Agency (NAAJA) delivers high quality and culturally competent legal services to Aboriginal people in the Northern Territory (NT).

In addition to our core legal practice in criminal and civil law, we provide law and justice related services that aim to ensure that Aboriginal people have real access to justice. NAAJA is contracted by the Commonwealth Attorney General's Department (AGD) and National Indigenous Australian Agency (NIAA) to provide the following services to Aboriginal people and their families in the NT:

Criminal Law

Civil & Family Law

Law & Justice

Community Legal Education

Night Patrol Community Legal Education

Aboriginal Prisoner Throughcare

Kungas Program

Custody Notification Service (CNS)

DARWIN

61 Smith Street
DARWIN NT 0801
Tel: 08 8982 5100
Fax: 08 8982 5190

KATHERINE

10 Third Street
KATHERINE NT 0851
Tel: 08 8972 5000
Fax: 08 8972 5050

ALICE SPRINGS

55 Bath Street
ALICE SPRINGS NT 0870
Tel: 08 8950 9300
Fax: 08 8953 0784

TENNANT CREEK

61 Paterson Street
TENNANT CREEK
NT 0860
Tel: (08) 8962 1332

With a staff of over 160 across the NT, together we bring a wealth of experience in the fields of Criminal Law, Civil Law, Law Policy & Justice, Community Legal Education and Aboriginal Prisoner Throughcare.

Within our Civil & Family Law practice, we have a Debt & Consumer Practice Group which concentrates specifically on assisting Aboriginal clients with their debt and consumer legal needs, as well as advocating for reform in this space, and liaising with other relevant stakeholders to improve Aboriginal people's access to justice in this space. Our Debt & Consumer Practice Group is led by Sarah Black, a Senior Solicitor based in our Alice Springs office.

Terms of Reference

1. *The way the corporate sector supports meaningful engagement with Indigenous consumers; and*
2. *How to strengthen corporate sector cultural understanding, and how this is demonstrated through their engagement with Indigenous consumers.*

NAAJA is proud to be an Aboriginal-led organisation, and a leader in establishing and improving culturally competent practices within the Northern Territory and beyond.

It is our submission that there are several concrete, achievable ways in which the corporate sector can strengthen their cultural understanding and support meaningful engagement with Aboriginal consumers.

Compulsory cultural awareness and competency training and truth-telling

In order for the commercial and corporate sectors to meaningfully engage with Aboriginal consumers, it is vital that those organisations have a foundational understanding of Aboriginal cultures. It is our submission that these organisations need to provide regular compulsory cultural training to their staff to increase their understanding of culture and foster meaningful engagement. This may be in the nature of baseline cultural awareness training, or ideally at an advanced stage of cultural competency in knowledge and practice. In making this submission, we note that there are over 500 different Aboriginal cultural groups across Australia, and it is important not to homogenise these distinct cultures.¹ As such, it may be appropriate for individual organisations to seek out cultural training in the specific Aboriginal culture of the country on which their office is based, or the country on which their services are provided. Cultural competency training should always be provided by a cultural authority, such as an elder, who should be appropriately remunerated for their services. It should take place in a safe space of truth-telling, and staff should be encouraged to reflect upon and address their own unconscious biases at the same time as increasing their knowledge of Aboriginal cultures. We note that unconscious bias continues to create barriers between non-Aboriginal and Aboriginal Australians, causing arguably more harm than explicit

¹ Heather Anderson & Emma Kowal, 'Culture, History, and Health in an Australian Aboriginal Community: The Case of Utopia, Medical Anthropology Cross-Cultural Studies in Health and Illness' (2012), 444

prejudice.² An excellent example of high quality, immersive, and authoritative cultural training is the 'True Justice: Deep Listening' joint initiative between NAAJA and the Australian National University.³ Whilst this initiative has been designed for the legal sector, the fundamental tenets of immersive learning, being led by culture, and making space for truth-telling could certainly be adopted within corporate sector initiatives.

One mechanism by which the above training could take place in an appropriate and authoritative manner would be through the establishment of an Aboriginal consumer advocacy group, which is funded to support Aboriginal cultural brokers and people to canvas the views and experiences of Aboriginal communities and advocate for these in the formation of consumer policies and frameworks to corporate organisations.

NAAJA recommends:

- 1. That corporate organisations facilitate cultural competency training for their staff.**
- 2. That corporate organisations establish an Aboriginal consumer advocacy group, which is funded to support Aboriginal cultural brokers and people to canvas the views and experiences of Aboriginal communities and advocate for these in the formation of consumer policies and frameworks for corporate organisations.**

Aboriginal employment

An effective way to strengthen corporate sector cultural understanding is to increase cultural diversity and the cultural knowledge base within the corporate sector. It is our submission that organisations within the corporate sector should seek to increase their Aboriginal staff-base in order to strengthen their cultural understanding and engagement.

There is a considerable gap in employment rates between Aboriginal Australians and non-Aboriginal Australians. In 2018, the rate of Aboriginal employment was approximately 49%, compared to the employment rate of non-Aboriginal Australians of around 75%.⁴ The gap is even higher in the corporate and executive sector. Of the 2490 most senior roles in Australia (including chief executive officers and senior management of ASX 200 companies, federal ministers, heads of federal and state government departments, and vice-chancellors of universities) only 0.4% have an Aboriginal background.⁵ This is compared to those with Anglo-Celtic or European background, who make up about 95% of senior leadership roles in Australia.⁶

Numbers of Aboriginal staff can be increased through establishing quotas and creating identified positions. Aboriginal employees provide valuable alternate views, experiences and knowledge to businesses. Utilising the unique skills and knowledge of Aboriginal staff

² Siddharth Shirodkar, 'Bias against Indigenous Australians: Implicit association test results for Australia, Journal of Australian Indigenous Issues' (2020), 25

³ <https://www.truejustice.org.au/>

⁴ Australian Government, Closing the Gap Report (2020), 3

⁵ Australian Human Rights Commission, Leading for Change: A blueprint for cultural diversity and inclusive leadership revisited (2018), 1

⁶ Ibid.

through quotas and identified positions can improve businesses and have a positive long-term impact.⁷

It is our further submission that organisations within the corporate sector can most effectively strengthen their cultural understanding by creating 'jobs on country'. There are approximately 120,000 Aboriginal people residing in around 72 remote Aboriginal communities across Australia.⁸ All of these Aboriginal communities engage with and rely upon the services provided by the corporate sector, including telecommunications, utilities, transport, construction, and banking and finance. These services, when required in person, are usually provided in a hugely expensive manner by flying in staff from cities thousands of kilometres away, who have difficulty engaging with the local community due to the cultural gap. It is our submission that much greater productivity, efficiency, and cultural engagement could be achieved if corporate organisations were to strive to create 'jobs on country', whereby community members already residing in Aboriginal communities were trained in specific roles (eg. customer service officers; telecommunications technicians, etc) and employed by corporate organisations within their own communities. This would allow Aboriginal people to work and live on their own country. It would strengthen cultural engagement within the corporate organisation, and it would cut down on inefficient practices of flying in non-Aboriginal staff from cities to provide services which could quite easily be provided by staff already within the community.

In making this submission, we note the important reform recommendations undertaken by APONT⁹ in this space. APONT have continuously advocated that employment opportunities on country must be of a nature that generates opportunity and empowerment for Aboriginal employees, rather than tokenistic and menial tasks that disempower Aboriginal people and increase welfare intrusion and reliance. APONT have created a comprehensive proposal for a Remote Employment & Community Scheme that would create opportunity and empowerment for remote Aboriginal employees, from which organisations in the corporate sector could draw inspiration for increasing their own Aboriginal engagement.¹⁰

NAAJA recommends:

- 3. That organisations within the corporate sector implement quotas for Aboriginal-identified positions and Aboriginal staff numbers.**
- 4. That corporate organisations draft and implement a 'Jobs on Country' strategy in consultation with Aboriginal organisations (such as APONT) which seeks to create Aboriginal employment within remote Aboriginal communities.**

Culturally Competent Resources and Services

As mentioned above, there are approximately 120,000 Aboriginal people residing in around 72 remote Aboriginal communities across Australia.¹¹ All of these Aboriginal communities engage with and rely upon the services provided by the corporate sector, including telecommunications, utilities, transport, construction, and banking and finance. The services

⁷ Department of Prime Minister and Cabinet, Closing the Gap: Prime Minister's Report (2018), 75

⁸ <https://www.indigenous.gov.au/communities/list-view/all>

⁹ Aboriginal Peak Organisation Northern Territory

¹⁰ <http://www.amsant.org.au/apont/apo-nts-alternative-model/>

¹¹ <https://www.indigenous.gov.au/communities/list-view/all>

provided by the corporate sector to these communities is usually, at best, poor. Resources and information are not culturally appropriate. Many Aboriginal communities do not have English as their first language.¹² Despite this, services are not provided in the first language of the consumers. Due to cultural barriers in understanding, Aboriginal consumers within communities are highly susceptible to exploitation by corporate service providers. NAAJA have seen widespread financial exploitation of remote Aboriginal consumers by corporate organisations. We have set out some example case studies below:

- Credit and finance;
 - One client who is an Aboriginal woman residing in a remote Aboriginal community 200km outside of Alice Springs in the Northern Territory (NT) speaks English as a second language and has limited English literacy and no financial literacy. Our client has nil income, and is wholly reliant on Centrelink payments for subsistence. Our client and her family ran out of money for food. Our client's family told her they had heard of a website where you could get money for food. Our client accessed the website of a finance company and lodged an application to borrow \$300 for food for our client and her family. Our client was of the understanding that the \$300 would be deducted from her next Centrelink payment (similar to Centrepay credit). Our client never spoke to anyone from the finance company in person. Everything was arranged over the internet. Our client never signed any documents in relation to the loan. Our client paid \$90 towards the loan. Our client later received correspondence from the finance company demanding she repay the remaining \$210 credit plus \$1,159.85 in late fees, totalling \$1,369.85.
 - One client who is an Aboriginal woman resides in a remote community 120km outside Alice Springs and does not have English as her first language. Our client entered into a loan for \$14,440 with one of the 'Big Four' banks. Our client had no capacity to repay the loan without incurring substantial hardship, and the bank did not adhere to their legal obligations to assess the suitability of the loan for our client before extending the credit to her. Our client defaulted on the loan, and the loan was sold by the bank to a debt collection agency, who began aggressively chasing our client for the money.
- Telecommunications;
 - One client signed up for a land line phone with a major telecommunications provider over the phone. In that phone call she was offered the option of setting up a reverse calls service through the landline. The client speaks English as a second language and lives in a remote community with no mobile phone reception. The client did not understand that the reverse calls service meant that different charges would apply, particularly with incoming calls. No interpreter, or other aids, were used when the client signed up to the contract. The client received a large phone bill of around \$3,700 for a 6 month period. The client was unable to pay the phone bill. The major

¹²<https://www.abs.gov.au/ausstats/abs@.nsf/mediareleasesbyreleasedate/1DBCFBCE6CACB75FCA25815400049DBA?OpenDocument>

telecommunications provider then sold the debt to a third party debt collector, who aggressively pursued our client for the money.

- Insurance;
 - Our client resides in a remote Aboriginal community in the Top End, and has very little English literacy and financial literacy. Our client was contacted by a funeral insurance provider and was offered a funeral insurance plan that was beyond his requirements. Our client entered into a contract for the funeral insurance without understanding the terms or benefits of the contract. Our client paid over \$3,000 towards the insurance plan over a 2 year period.
- Photography;
 - Our client resides in a remote community in the Top End and has limited English language. Our client travelled to Darwin for shopping and a photography company was taking pictures of children in the shopping centre. Our client allowed the photographers to take some photos of her granddaughter, and understood that she would pay a small amount of money to purchase some of the pictures for her daughter. Our client paid \$1,016 towards the photographs but never received them. The photography company then aggressively pursued our client for an alleged debt of \$6,000.
- Vehicle sales.
 - One of our clients purchased a vehicle from a dealer in Adelaide and had it trucked to Alice Springs. When our client picked up the vehicle from the trucking yard and tried to drive it home, it was clear that it had mechanical defects with the automatic gear box. Our client drove the vehicle straight to a mechanic's garage. The mechanic gave our client a quote for the cost of repairs. Our client contacted the dealer immediately, but he refused to pay for repair of the vehicle.

We note there is a tendency of speakers of Aboriginal English in the Northern Territory to display “gratuitous concurrence”. Professor Diana Eades, the leading linguist in this area, describes concurrence as:

...when Aboriginal people say ‘yes’ in answer to a question it often does not mean ‘I agree with what you are asking me’. Instead it often means ‘I think that if I say ‘yes’ you will see that I am obliging, and socially amenable and you will think well of me, and things will work out between us.’¹³

Given the tendency of speakers of Aboriginal English to display “gratuitous concurrence”, there is the risk that Aboriginal consumers will not ask questions or specify when they cannot understand the resources or contracts that are provided to them.

¹³ Diana Eades, *Aboriginal English and the Law*, Queensland Law Society (1992), 54.

We also note that a huge proportion of Aboriginal people in the NT are at an automatic disadvantage with regard to their access to, and ability to comply with the requirements of, corporate organisations due to:

- Remote locations;
- Limited or no access to technology;
- English as a second, third, or fourth language;
- Poor levels of English literacy;
- Low levels of education;
- Limited financial literacy;
- Complex trauma;
- Limited understanding of western commercial systems;
- Widespread health problems including hearing and visual impairments; and
- Limited trust in services where genuine cultural safety and trauma-informed approaches are not embedded.

It is our submission that corporate organisations can seek to achieve best practice standards in bridging cultural barriers, reducing exploitation, and strengthening cultural understanding by designing, producing, and disseminating culturally appropriate resources. These resources should be:

- Produced in consultation with cultural authorities, such as Aboriginal organisations and/or elders;
- Written and/or spoken in First Nations Languages;
- Supported by culturally identifiable graphics and pictures that are contextually appropriate;
- In a range of media forms (eg. posters, videos, radio announcements) to accommodate special needs such as hearing loss or poor eyesight; and
- Continuously evaluated and improved based on feedback from community sources.

We further submit that corporate organisations should seek to provide the following additional supports around contracts for goods and/or services when those contracts are with Aboriginal consumers:

- Supporting explanatory documents in First Nations language;
- The use of an interpreter in the consumer's first language when explaining the terms of the contract to the consumer;
- An extended cooling off period;

- Routine referrals of the consumer to support services (eg. financial counselling services, legal services) to further explain the terms of the contract; and
- Mechanisms for monitoring and identifying where it becomes clear that the consumer does not understand the terms of the contract (eg. unusually high phone bills; missed payments, etc) and policies for immediate action to be taken where this has been identified to prevent further hardship (eg. referral to support service; representative travelling to meet with consumer, etc).

We submit that the above additional supports and safeguards for vulnerable consumers ought to be introduced through legislative reforms. To introduce these reforms, a task force ought to be compiled consisting of Aboriginal leaders and consumer experts, who can analyse and propose how the above safeguards and protections may be offered through legislative reforms.

NAAJA recommends:

- 5. That a task force is compiled consisting of Aboriginal leaders and consumer experts, who can analyse and propose how safeguards and protections against exploitation of Aboriginal consumers by corporate organisations may be offered through legislative reforms such as those suggested at page 7 of these submissions.**
- 6. That corporate organisations seek to bridge the cultural barrier, reduce exploitation, and strengthen cultural understanding by designing, producing, and disseminating culturally appropriate resources.**
- 3. The impact of Reconciliation Action Plans (RAPs) in developing targeted approaches on engaging with Aboriginal and Torres Strait Islander people through such actions; and*
- 4. Other matters as required.*

NAAJA supports the development of Reconciliation Action Plans (RAPs) in developing targeted approaches to increasing cultural understanding, truth-telling, and reconciliation initiatives, with the following caveats:

1. All reconciliation initiatives should be designed in consultation with appropriate Aboriginal cultural authorities;
2. All reconciliation initiatives should be subject to a process of continuous improvement and evaluation to ensure they do not become tokenistic in nature;
3. All reconciliation initiatives should be Aboriginal-led where possible; and
4. All reconciliation initiatives should, where possible, be premised on the principle of cultural empowerment, recognising and respecting Aboriginal peoples' inherent right to self-determination.

NAAJA submits that the creation and implementation of RAPs, however, is not sufficient in and of itself to truly engage with and support Aboriginal consumers. Rather, RAPs should be

implemented in addition to the above proposed legislative reforms, protections against exploitation, and investment in jobs and opportunities for Aboriginal staff.

NAAJA further submits that corporate sector RAPs should include a specific focus on consumer needs and rights in an Aboriginal context. In making this submission, we note that such a focus requires Aboriginal-led structures for feedback and independent mechanisms for engagement such as a national Aboriginal Consumer Commissioner.

NAAJA recommends:

- 7. That corporate organisations implement RAPs in consultation with appropriate Aboriginal cultural authorities.**
- 8. That corporate organisations utilise RAPs as a springboard from which more holistic reconciliation initiatives can be pursued (such as NAAJA recommendations 1 – 7).**
- 9. That independent mechanisms for engagement of Aboriginal consumers such as a national Aboriginal Consumer Commissioner be established.**

Further information

We trust that the above is helpful to the inquiry process undertaken by the Parliament.

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Kind regards,

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Sarah Black
Senior Solicitor
NAAJA

16 December 2021