Ngalaya Aboriginal Corporation – Indigenous Lawyers in NSW

The Secretary
Joint Committee of Public Accounts and Audit
Parliament House
CANBERRA
ACT 2600

21 May 2004

Dear Secretary,

Indigenous Law and Justice Inquiry

Ngalaya Aboriginal Corporation – Indigenous Lawyers in NSW is concerned that the process of tendering for the provision of legal services to Indigenous Australians or "mainstreaming" such services will reduce the quality of legal representation and legal advocacy available to Indigenous Australians.

We are disturbed that in the face of rising numbers of Aboriginal people in custody, especially Indigenous women, the government seeks to tender the provision of Indigenous legal services and to set priorities in the tender process which fail to comply with the Recommendations of the RCIADIC and which may further disadvantage conditions for Indigenous people in need of legal representation.

Ngalaya Aboriginal Corporation observes with apprehension the ongoing rise in the over representation of Indigenous men and women in all jurisdictions. Rates of over representation of Indigenous women are rising at unprecedented rates. Clearly Indigenous people are in need of the very best legal representation, legal advice and advocacy that can be made available to them. We believe that the tender process proposed by the government will have a detrimental effect on service provision.

Ngalaya Aboriginal Corporation notes the processes of the Senate Inquiry into the Legal Aid and Access to Justice, and request that the government delay the process until the findings of the Senate Committee are delivered and can be assessed.

We oppose the mainstreaming of legal services and instead encourage increased funding for ATSILS'. It is well known that existing mainstream services, such as Legal Aid, are already stretched by a scarcity of funding and resources. The legal practitioners and support staff in these organisations already work long hours, often in difficult conditions, to deliver an extremely important service. If these organisations are to assume responsibility for the legal services currently provided by ATSILS' we will inevitably see a marked fall in the quality of the provision of such legal services. Again, the government will expect more to be done with less.

Ngalaya Aboriginal Corporation- Indigenous Lawyers in NSW
C/- Terri Janke & Company PO Box 780
Rosebery
NSW 1445

We are concerned that rather than adequately resourcing services to improve service delivery, a tender process is envisaged that will give preference and priority to "on paper" efficiency and will emphasise quantitative outputs as key performance indicators, at the expense of holistic and culturally sensitive service delivery. It is well known that the provision of legal services is an industry based on time costing. Private legal services providers who wish to tender for the services currently performed by the ATSILS' will inevitably seek to make a profit from the process by minimising the time they spend on providing such services.

In addition, the tender process favours legal service providers who can support a payment arrangement based on monthly payments in arrears. This kind of payment arrangements operates to the disadvantage of not for profit organisations, cutting them out of the tendering process because they do not have the reserves or capital to meet expenses in advance.

The tender process prioritises profit, rather than good representation for clients. While we support high standards of efficiency and outcome focused practice, we do not do so at the expense of the rights of Indigenous Australians. We cannot see that the tender process will achieve effective and efficient service providers for Aborigines and Torres Strait Islanders. In fact, we believe that it has great potential to reduce the standard of services.

We do not agree that prioritising profit will achieve the best outcomes for Indigenous peoples. We support the submissions of ALRM ands NAILSS that the market value of the services provided by Indigenous legal service providers to clients has never been matched by government funding. In other words, if the legal services of Indigenous legal service providers were funded to reflect the market value of their services, they would receive vastly more funding. It is difficult to understand how commercial practices can make this arrangement work unless they pursue either drastic cut-backs to service provided to clients, or engage in a user pays system.

We believe that the legal services available to Aboriginal people are already stretched and there is no room to trim or cut the level of service available.

We oppose the proposed means testing of Indigenous clients. Means testing Indigenous clients would increase the administrative burden on services and exclude people on low incomes.

The tender process prioritises profit rather than Indigenous participation, advocacy and culturally appropriate services. It is an essential component of the delivery of legal services to Indigenous Australians that Indigenous people be involved in the provision of such services at all levels. The provision of adequate legal advice, representation and advocacy to Indigenous Australians cannot simply be achieved by

a purported understanding and empathy with Indigenous law and justice issues, it requires direct social and cultural experience and community knowledge.

To achieve this aim we recommend increased engagement of Indigenous legal professionals and the incorporation of long term professional development opportunities for Indigenous legal professionals.

We support funding priorities which focus upon client needs and expectations on a value for money contract basis that is outcome-funded and focused. We support funding for services which pursue best practice in operations and management structures that reflect principles of sound governance and leadership. We note the importance of the recommendations of the RCIADIC and we believe that Indigenous organisations are best placed to provide legal services for Indigenous people.

Yours Sincerely,

Robynne Quiggin
President
Ngalaya Aboriginal Corporation - Indigenous Lawyers in NSW