

# **Submission to Joint Committee of Public Accounts and Audit Indigenous Law and Justice Inquiry**

**21<sup>st</sup> May 2004**

**Re: Indigenous Law and Justice Inquiry**

**Womens Legal Services NSW is a Community Legal Centre that exists to provide legal assistance to disadvantaged women and children. Womens Legal Services has been recognised as having made a major contribution to the development of legal services for women in NSW and nationally.**

**The service is contacted by over 23,000 women each year for legal advice, assistance, information and referral. In addition the service has an ambitious state wide Community Legal Education program and has developed resources to assist disadvantaged women and children to better understand their legal rights and how to access the law.**

**The Service auspices The Walgett Violence Prevention Unit. An Aboriginal Programme to service aboriginal victims of violence in rural NSW.**

**We have also established an Indigenous Women's Program to address the legal needs of Aboriginal women and children. In 2000 that programme was awarded the prestigious Human Rights Award for services to Aboriginal women and children.**

**The Service has established services for women in western Sydney in Campbelltown, Fairfield, Penrith and Blacktown and Court Support and Representation services for victims of Domestic Violence.**

**Womens Legal Services has been in the vanguard of promoting the development of services to address the disadvantage women encounter in accessing the law and in particular to represent the broader interest's of victim's of domestic violence.**

**We are pleased to be able to comment on the option paper and enclose our submission.**

**Yours faithfully,**

**Catherine Carney  
Principal Solicitor  
Womens Legal Services**

# **Submission to Joint Committee of Public Accounts and Audit**

## **Indigenous Law and Justice Inquiry**

The Womens Legal Service is a Community Legal Centre established over twenty years ago to provide services to disadvantaged women and children. In the last financial year we provided legal services to over 23,000 disadvantaged women and children. Aboriginal women and children are one of our target groups.

### **(A) The distribution of Aboriginal and Torres Strait Islander Legal Services resources among criminal, family and civil cases**

NSW Women's Legal Service (WLS) has a history of lobbying for a fairer allocation of ATSILS resources amongst different areas of law. As a provider of legal services to Aboriginal women we have found it very difficult to find ATSILS who will undertake casework for clients with family law and civil law problems.

Historically, ATSILS have been focused on criminal law. Issues that effect women and children - family violence, residence and contact disputes and abduction of children - are rarely dealt with by ATSILS. While ATSILS in Sydney and Western Sydney employ a family law solicitor from time to time, services in Far Western NSW and North Western NSW generally have not had family lawyers and do not usually act in family law matters. ATSILS prioritising of criminal law issues results in most ATSILS funding being directed to the defence of criminal charges with most of the defendants being men.

It is also our experience that ATSILS rarely take on civil law matters. Again in some ATSILS there are a perhaps one or two lawyers who will act in civil matters but generally ATSILS are reluctant to work in this area of law, particularly ATSILS in rural and areas of NSW. Lack of representation by ATSILS often means that a family will incur enormous debt, live with injuries for which they will never be compensated, become involved in unjust financial arrangements and suffer under adverse administrative decisions.

The focus of ATSILS on criminal law has also disadvantaged Aboriginal children. We have advised many Aboriginal children who were not able to access the kind of legal service that should be provided to children. It is essential that children and young people are represented in Court by solicitors who have specialised skills in working with young people and expertise in children's law. Inadequate legal representation has life long consequences for children and young people. Inadequate legal representation, lack of time for preparation or failure to be available to advise young people before the first court date, may mean a young person receives a harsher gaol sentence or larger fine. This can exacerbate violence and poverty and lead to recidivism and further incarceration.

ATSILS chronic lack of resources and their focus on court representation means that young people are often not seen by an ATSILS solicitor until their first day in court. Young people have no time to prepare, no time to gather character references, to consider alternatives to court and to sentences or to organise referrals to rehabilitation or employment services. Specialist, careful and thorough preparation and representation will keep many young people out of custody and instead link them with agencies who will work towards positive outcomes for them. There are no specialist ATSILS children's lawyers and no ATSILS resources focused on crime prevention, systemic advocacy or legal education for young people.

While WLS see the distribution of resources and the focus on criminal law as problematic and creating a bias against Aboriginal women, we understand that ATSILS cannot, with their very limited funding, meet the needs of the community in family and civil law within current funding levels. If ATSILS were to broaden their scope to include family law and civil law matters there would need to be a substantial increase in funding.

WLS (NSW) believe that ATSILS should receive *additional* funding which should be earmarked for family and civil law cases. Further we believe that *additional* resources should also be earmarked to establish specialist children's solicitors within ATSILS with a small amount of this funding set aside for preventative and educational programs for young people.

### **(B) The coordination of Aboriginal and Torres Strait Islander Legal Services with Legal Aid Commissions through measures such as memoranda of understanding.**

Historically in NSW the coordination of ATSILS with LACs has been adhoc and piecemeal. However over the past five years LAC NSW and ATSILS have made efforts to coordinate their services through mechanisms such as Memorandums of Understanding and briefing arrangements with Public Defenders.

LAC NSW have also developed a Cooperative Legal Service Delivery Model to establish a 'map' of the high need communities and various legal services (Community Legal Centres, Legal Aid Offices, Aboriginal Legal Services and Family Violence Prevention Services) around NSW. In doing so, LAC NSW has attempted to identify the geographical areas of NSW which have high legal needs but are currently not serviced. The 'matrix' project assumes, wrongly in our belief, that once a gap is identified, in the absence of increased funds, the legal service provider who is geographically closest to that community can step in to fill it. However these legal service providers are already stretched and do not have spare resources to service another community with high needs. Both the ATSILS and the Family Violence Prevention Service at Walgett operate with two solicitors each. Similarly, Dubbo and Broken Hill Community Legal Centres have only two solicitor positions each and cover the entire Far Western region of NSW. LAC NSW in developing its matrix also relies on people in rural areas accessing telephone legal advice and the internet for referral and legal information. It is our experience that most rural workers and rural communities, especially Aboriginal people, do not have access to reliable computer and internet technology.

With LAC as with many other mainstream service providers (including community legal centres) there often exists a 'cultural demarcation' where mainstream services believe that it is the sole job of ATSILS to deliver legal services to Aboriginal people. Yet it is the role of LAC to deliver legal services to disadvantaged people in NSW and Aboriginal people clearly fall within their target group.<sup>1</sup> In our view, this 'cultural demarcation', which can prevent LAC from assisting Aboriginal people, occurs for a variety of reasons. LAC may believe it is culturally appropriate for Aboriginal people to be in control of and deliver legal services to their own communities. The Commission may be wary of being seen to 'poach' clients from ATSILS and of drawing criticism from ATSILS of its attempts to work with Aboriginal communities. Further, many Aboriginal people with high needs live in remote communities in Western NSW. These areas are expensive and difficult to service – finding and retaining staff (especially legal staff) is difficult, training legal staff to be 'culturally competent' can be

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<sup>1</sup> Legal Aid Commission NSW; 'Our Role' : see [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)

difficult, travelling is expensive and time consuming and managing a rural office can be problematic.

It is our view that in general over the past five years, mainstream legal services and ATSILS have considerably improved their coordination. At a local level some LAC offices, CLCs and Indigenous Legal Services cooperate very well. In other communities and regions there is little coordination between these services. The level of coordination and cooperation can vary a great deal. In some communities LAC (NSW) has worked collaboratively with ATSILS. Conversely, ATSILS have welcomed LAC and CLC assistance to deliver legal services to many rural and remote communities and to target groups such as young people.

Many of our clients tell us that they have felt alienated by mainstream legal services. In general, these services do not employ Aboriginal staff and they do not ensure that their non-Indigenous staff are culturally competent. Further many services are reluctant to travel to remote communities or provide an outreach service, they do not have offices in remote areas, most do not have Aboriginal community involvement in their services or in their management and they do not effectively market their services to the Aboriginal community. In our experience Aboriginal clients will only seek assistance from LAC when there is a conflict of interest which prevents them accessing ATSILS, a conflict with staff or family members employed by the local ATSILS, where there is an issue of confidentiality or where a client has been denied representation by ATSILS for other reasons.

Mainstream legal aid services can better help Aboriginal people by delivering targeted, specialised legal services to Aboriginal communities. To do this, mainstream legal aid services need to employ Aboriginal staff and more than just a sole Aboriginal 'access' worker or Aboriginal Liaison worker. They need to ensure that non-Aboriginal staff, especially legal staff are culturally competent. Mainstream legal services need to involve Aboriginal communities in the design, development and running of their legal service. They need to be prepared to be accountable to the communities in which they work. The services need to be responsive to local community needs and they need to build a profile in the community which takes time and a significant level of community trust.

In our opinion, Aboriginal communities in NSW would benefit most from a range of legal services depending on community needs and community infrastructure. Ideally, self-managed, locally run Aboriginal legal services would be best placed to deliver services to the communities. But in our experience, for many Aboriginal communities this may not be possible. Aboriginal communities may be factionalised, have poor community leadership and committees and workers may not be adequately trained or experienced to manage funds and deliver services. In these circumstances it may be more appropriate for a mainstream service to deliver a specialised and targeted Aboriginal legal service. It is essential however that the targeted legal service employs Aboriginal workers and is informed and directed by Aboriginal community members. Alternatively it may also be appropriate that in some communities a mainstream services auspices a local Aboriginal organisation to deliver Aboriginal legal services.

Most importantly, Aboriginal people need to be consulted about the way in which legal services should be delivered in their local communities.

### **(C)The access for Indigenous women to Indigenous-specific legal services**

WLS (NSW) has a long history of providing legal services to Aboriginal women in NSW.<sup>2</sup> These services include court representation and casework, telephone legal advice, legal education, community advocacy, law reform and lobbying and support services such as assistance with housing and Centrelink issues. WLS (NSW) receives funding from the Commonwealth Attorney General's Department to run its Indigenous Women's Program (IWP) for Aboriginal women around NSW. The IWP offers telephone legal advice, casework and community legal education to Aboriginal women. In 2000 the Indigenous Women's Program won the prestigious HREOC Human Rights Award for its services to Aboriginal women.

WLS (NSW) also receives funding from ATSISS to run a Family Violence Prevention Program in Walgett, a remote community in Far Western NSW. Further WLS (NSW) has received regular project funding to run community development and community legal education programs with Aboriginal women in Walgett, Wagga Wagga, Lightning Ridge, Kempsey, Moree and Dubbo. These programs have included legal education games and camps for young Aboriginal women and legal education workshops for Aboriginal women and Aboriginal workers. We have also received project funding to write various legal publications for Aboriginal women on violence, family law and child sexual assault.

In 2002-2003 the calls to the IWP legal advice line doubled to 1003 calls up from 560 the previous year. The majority of calls and follow up casework were about family and civil law issues. The Family Violence Prevention Service at Walgett gave legal advice on 2,892 occasions over 2002 – 2003 at court, at the Walgett office or at outreach locations at Lightning Ridge, Collarenebri, Brewarrina and Bourke. One quarter of clients came to the Walgett service on recommendation of family or friends. Again most legal advice given was in relation to family law, violence issues and victims compensation.

These statistics demonstrate the high quality of service we deliver to Aboriginal women in NSW. As a mainstream community legal centre we have worked very hard to overcome the obstacles which can often prevent a service from assisting Aboriginal people. We recruited a team of expert Aboriginal women from around NSW to form an Aboriginal Consultation Group. This group meets quarterly in Sydney to advise WLS (NSW) on service development and strategic direction and trouble shoot if issues arise. We also have a local committee of Aboriginal community women from Walgett who meet regularly to specifically advise WLS on issues pertinent to the Walgett service.

We employ 2 Aboriginal women in the Sydney office and 4 Aboriginal women at the Walgett office. We also employ other Aboriginal women as consultants when needed. We offer flexible work practices, traineeships, encourage further study and pay above award wages. We regularly offer cross-cultural training for non-Aboriginal staff and spend a long period inducting staff in relation to these issues. We employ solicitors for the Walgett office who are Sydney-based but travel to Walgett for Court rosters. In return for the travel and work in remote communities we offer them above award pay and generous time in lieu leave. In this way we have been able to retain high quality legal staff who can build links and trust with the staff and with the community.

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<sup>2</sup> See Women's Legal Service NSW; *Annual Report 2002/2003*, Sydney, 2003, pp 14 - 21 (attached) and Women's Legal Resources Centre; *Report of the Macleay Valley Aboriginal Women's Family Violence Protection Project – Goorie Galbans and Women's Legal Resources Centre*, 2000 (attached). See also Women's Legal Resources Centre; *Women Out West: community legal education program for Aboriginal women in Far Western NSW*, Sydney, 1992.

While our legal service provision to Aboriginal women has been very successful it has also been challenging. There continues to be obstacles that prevent us from providing the full range of services to Aboriginal women. The legal needs of Aboriginal women are enormous and still go unmet due to a lack of resources. WLS (NSW) needs more resources to run Family Court hearings and provide specialist children's legal services to Aboriginal communities. Working in Aboriginal communities can be complicated by community politics and feuding. Relationship building, trust building and networking is essential and takes time and patience. Balancing accountability to funders as well as local communities is difficult. Recruiting and retaining staff can be challenging – the work is very stressful, it is not lucrative and is geographically isolating. Managing the Walgett office remotely from Sydney requires exceptional accountability systems and regular, careful communication. Travel is expensive and time consuming.

Despite the increased focus on issues for Aboriginal women over the last few years, their legal needs continue, for the large part, to go unmet. The most pressing legal issues for Aboriginal women continue to be in the areas family law, the high rates of child sexual assault and family violence in communities, housing, credit and debt and crime. To work successfully with Aboriginal women, it is essential to understand that these issues are intertwined and interconnected. For this reason legal services to Aboriginal women should be holistic and not just limited to one or two areas of law.

Research conducted in 2003 by the NSW Aboriginal Justice Advisory Council showed that Aboriginal women constitute 31% of all women prisoners in NSW which represented an increase of 14% since 1995.<sup>3</sup> This research also showed that 70% of the Aboriginal women in prison surveyed said they had been sexually assaulted as children, 78% of the women said they had been victims of violence as adults and 44% said they had been sexually assaulted as adults.<sup>4</sup> It is still important that ATSILS and mainstream services continue legal services in criminal law. However to effect permanent change in Aboriginal communities, ATSILS and mainstream services should be funded to provide comprehensive legal services in a range of other crucial areas – family law, civil law, victims compensation, family violence and children's legal issues.

Similarly, WLS (NSW) would be able to assist Aboriginal women more effectively with an increase in funding. Extra resources would allow us to employ more Aboriginal staff, undertake more casework and legal representation, fund a specialist children's solicitor, provide a legal service to other rural and remote communities and increase our community advocacy and community development work.

#### **(D) The ability of Law and Justice Program components to recruit and retain expert staff**

WLS (NSW) is currently funded to deliver Family Violence Prevention Legal Services in Walgett and has been approached by Aboriginal women in other rural communities to assist them with delivering similar services.

Recruiting and retaining expert staff for Aboriginal legal services has been challenging. To overcome these difficulties we have put in place very flexible work practices and have

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<sup>3</sup> Lawrie, R; *Speak Out Speak Strong: Researching the Needs of Aboriginal Women*, Aboriginal Justice Advisory Council, NSW Attorney General's Department, pages 51 – 55, 2003 available at [www.lawlink.nsw.gov.au/ajac.nsf/pages/reports](http://www.lawlink.nsw.gov.au/ajac.nsf/pages/reports)

<sup>4</sup> see Lawrie at note 3 page 53-55.

always employed several Aboriginal staff not just a sole access or liaison worker. We have established some positions as traineeships and encouraged staff to study, allowing generous study leave. We have head hunted expert staff and offered above award wages to retain quality staff members. We have also tried to be flexible and creative about skills and training/qualifications needed for some staff positions. For example, where a drivers licence is essential for a position and the leading applicant does not have a valid drivers licence we have contracted to pay for driving lessons and driving tests to enable them to meet the criteria for the position.

We have also tried, as much as possible, to create a culturally respectful workplace. This has meant hosting regular cross-cultural training sessions for non-Aboriginal staff and dealing carefully and seriously with complaints from Aboriginal staff about comments, practices and alleged instances of bias. We have also recognised the difficulties for staff who work and live in Walgett on issues of family violence. It is our experience that communities and families place high demands on workers and can have unrealistic expectations of them. We offer extensive debriefing for all staff and acknowledge that in Aboriginal communities, such as Walgett, our staff are rarely 'off-duty'. Staff members commonly feel geographically and/or culturally isolated. Solicitors for the Walgett office are generally Sydney based and work in a shared arrangement so that they each fly to Walgett to attend the Court circuit for one week per month. They are then available for consultation over the phone and undertake casework back at the Sydney office. This arrangement has allowed our service to retain high quality, experienced legal staff who have built strong relationships with the Walgett community – which has been an essential part of the success of the service.

We have also established consultative mechanisms such as the Service's Aboriginal Women's Consultation Group which meets quarterly and includes expert Aboriginal women from all over NSW. Our Walgett office also has a Consultative Committee of local Aboriginal women. The Aboriginal women on our two consultative bodies support staff, provide informal mentoring, provide role models as well as set direction and provide advice for the service.

### **(E) Tendering of Indigenous Legal Services**

We have had concerns about the governance of some ATSILS and have questioned the prioritising of criminal law issues over other legal issues for some time. While the prioritising of women and children for ATSILS is long overdue the other proposals contained in the Exposure Draft, released in March 2004, are no improvement and in fact will have significant and negative effects on Aboriginal communities access to legal services.

WLS is strongly opposed to the tendering proposals set out in the Exposure Draft. Given the challenges of providing legal services to Aboriginal communities that we have discussed in this submission, it is unlikely that there will be much contest or competition for the delivery of these legal services. There is no money to be made or kudos to be gained by providing legal services to Aboriginal communities. The legal needs of Aboriginal Australians are overwhelming and continue to be unmet. The success of the legal services WLS (NSW) has provided to Aboriginal women comes from the continued hard work and good will of ground staff and management, the hours and hours of voluntary labour invested by Aboriginal community women, the pro bono time offered by private solicitors and barristers and the learnings from previous efforts at providing services. In providing Aboriginal legal services there is only money to be stretched and stretched, favours to be asked and obstacles to be

overcome. The government's 'commitment to contestability and competitive tendering'<sup>5</sup> has no place in the delivery of legal services to the most socially disadvantaged group of Australians.

Tendering will substantially undermine the quality and availability of legal services for remote communities in particular. The Exposure Draft indicates a preference for one service provider to cover the State. It would be extremely difficult to provide coverage for a range of NSW rural and remote communities from a Sydney base. Even under current arrangements, where ATSILS are regionally based it can be difficult to manage services in their region let alone to recruit and retain staff to provide legal services. Many remote communities are already not covered by an ATSILS and some Aboriginal people have to travel significant distances to get legal advice. Travel and outreach services are very expensive and difficult to arrange and staff. The success of our Family Violence Prevention Service in Walgett is partly due to our establishment of a local office in Walgett and that the service has included the Walgett community in its running and so has been able to be responsive to local needs. This model would be impossible for one service provider to replicate for a host of remote and rural communities around NSW.

The tendering proposals state that the provider would need to enter formal agreements with other service providers allowing for cross referrals and briefing out. Other service providers (such as LAC, WLS, other community legal centres or Family Violence Prevention Services) have no capacity, within their current funding arrangements, to take on extra work and meet demand coming from referrals from other agencies.

The Part A and Part B means test which the Exposure Draft sets out is different from the LAC means test and discriminates against clients of Aboriginal legal services. While most clients will fall under the \$40,000 threshold allowing them free legal assistance, those that have to complete Part B may have to pay an upfront contribution which is unrealistic for most Aboriginal people. While it has been modeled on LAC QLD means test, for NSW Aboriginal people the means test proposed in Part B is quite different to LAC NSW.

The Exposure Draft proposes that priority be given to servicing clients living in an area not serviced by LAC. This means that Aboriginal clients with legal issues would be required to access their local LAC office. For these clients, replacing ATSILS with mainstream legal services will reduce their access to legal services. As we discussed in detail earlier in this submission most Aboriginal people do not access LAC for a range of complex reasons. Rather, Aboriginal people prefer to access legal services managed and/or directed by Aboriginal people which employ Aboriginal people. Based on our experience Aboriginal women would be reluctant to access LAC services. Further this proposal has significant resource implications for LAC in that it incorrectly assumes that LAC can 'pick up the slack'. It is likely, given that LAC is already significantly underresourced, that even if Aboriginal people were to access LAC services, the LAC could not meet the extra and very specialised demand for legal services that would arise.

The Exposure Draft allows the service provider to refuse to provide a service to Aboriginal people who have previous convictions for violence. This 'one strike for violence and out' policy for representing clients is not applied to clients of LAC or community legal centres. The proposed policy is clearly discriminatory. It flies in the face of domestic and international case law that enshrines the right of people facing gaol sentences to legal representation. It also contradicts the recommendations from the Royal Commission into

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<sup>5</sup> See ATSIIS, 'Exposure Draft of a Request for Tender for the Provision of Legal Services to Indigenous Australians for the Period 1 January 2005 to 31 December 2007', page 58.



Aboriginal Deaths in Custody. Further it does not acknowledge systemic causes of family violence and community violence, which is essential in working with the Aboriginal community.

The Exposure Draft also requires service providers to focus on serious criminal offences indicating that assistance for minor criminal matters should be limited. We strongly object to this proposal. For most Aboriginal people, especially juveniles, 'minor' criminal matters are the entry point into the criminal justice system. There is substantial research which shows that 'minor' charges, particularly public order offences, are often used arbitrarily by police against Aboriginal people.<sup>6</sup> Further there is also recent data which shows that there has been a substantial *increase* in the recorded number of public order charges for Aboriginal people.<sup>7</sup> This part of the Exposure Draft represents cost-shifting in its extreme. LACs around Australia will be forced to fill the gap left by the withdrawal of ATSILS from minor criminal matters. LACs may not offer culturally appropriate services and Aboriginal people have been reluctant to use LAC for legal services. It would leave most Aboriginal defendants, particularly young defendants and first time defendants without representation. Without representation, they are likely to receive a poor outcome from the criminal justice system – convictions, harsher sentences, higher fines. Arrests and convictions in turn have an adverse effect on the probability of employment for Aboriginal people.<sup>8</sup> The proposal in the Exposure Draft will eventually only cost governments more.

WLS were pleased to see that issues for women and children are included in the priority list of issues in the Policy Directions of the Exposure Draft. While it does recognise the importance of protecting children and women from violence, it does not include family law and civil law which is of significant concern to WLS. Further, previous ATSIC Audit reports have recognised that ATSILS are already significantly under funded yet more cost efficient than LAC.<sup>9</sup> The proposed priority list outlined in the tender document requires a service provider to increase service areas while receiving the same level of funding. This will only result in poorer quality services and less access to these services. If the priority areas are expanded the government must substantially increase funding to provide these services.

The Exposure Draft also limits the types of service that can be provided to Aboriginal people. It limits representation and casework. It is essential that Aboriginal people have access to lawyers who can represent them in court. These 'Priorities of categories of service' again differentially affect Aboriginal people and therefore are discriminatory. LACs do not have the same limits to types of services they can offer their clients.

The Exposure Draft prevents Aboriginal legal service providers from running test cases. These proposals further discriminate against Aboriginal people. In a democracy, test cases ensure that the law changes and develops to remain contemporary and reflective of community values and ideas. Test cases are an important part of a fair, just and responsive legal system. To be able to challenge issues and run test cases is an essential part of legal advocacy, especially for disadvantaged groups in the community. Further, governments benefit from successful challenges to laws which impact negatively on marginalised groups.

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<sup>6</sup> Aboriginal Justice Advisory Council NSW, *Policing public order, offensive language and behaviour, the impact on Aboriginal people*, AJAC, Sydney 1999, p3.

<sup>7</sup> NSW Bureau of Crime Statistics and Research; *Race and Offensive Language Charges*, Crime and Justice Statistics, August 1999, Sydney.

<sup>8</sup> Hunter, B and Borland J; *The Effect of Arrest of Indigenous Employment Prospects*, NSW Bureau of Crime Statistics and Research June 1999, Sydney.

<sup>9</sup> See Office of Evaluation and Audit; *Evaluation of the Legal and Preventative Services Program*, ATSIC, 2003 available at [www.atsic.gov.au/about\\_atsic/Office\\_Evaluation\\_Audit/Docs/LPSPrept.pdf](http://www.atsic.gov.au/about_atsic/Office_Evaluation_Audit/Docs/LPSPrept.pdf)

The ability to use the legal system as a tool of social change for Aboriginal communities is stifled by this proposal and we are strongly opposed to it being a requirement of the tender.

In short, the Policy Directions as set out in the Exposure Draft of the Tender are not an improvement on the previous ATSILS policy. The impact of the proposed tender arrangements will be significant – the quality of services will be substantially diminished and the availability of services will be reduced. There is no requirement that the legal service provider involve the Aboriginal community in its management or strategic direction or be accountable to the community. The tender will, in effect, mainstream Aboriginal legal services by directing Aboriginal people to LACs and Community Legal Centres. These agencies will not be able to meet the extra demand and offer the specialised service that is required and also may not be culturally appropriate to deliver these services. The proposal shifts costs away from the Federal government on to the States to provide legal services to Aboriginal communities. In doing so the Federal government is abrogating its responsibility to provide legal services to Australia's most disadvantaged community.

The requirement to have a single Statewide service provider means that services will not be locally or regionally based and hence can not be locally responsive to local needs and issues. A 'one-size-fits-all' approach will not work for the provision of Aboriginal legal services and NSW rural and remote communities will be impossible to service effectively from a Sydney base.

The requirements of the tender – priority legal areas, category of service priorities, Part B means test – result in a different service being offered to Aboriginal people than other users of legal aid services. These requirements are discriminatory. They require the legal service provider to do more with less. They will result in many Aboriginal people being unable to access legal representation for very serious legal issues and will only serve to increase the already large unmet legal needs of Aboriginal Australians.

We acknowledge that there are some problems with ATSILS and that resources could be more fairly distributed amongst different areas of law. However, mainstreaming Aboriginal legal services and tendering them out will result in poorer quality services and a reduction in access to legal services for Aboriginal people. This will only compound the extreme social disadvantage that already exists for Aboriginal people.