

The Family and Civil Law Needs of Aboriginal People in New South Wales

EXECUTIVE SUMMARY

Background to the research (Chapter 1)

This research seeks to provide a greater understanding of the civil and family law needs of Aboriginal people in New South Wales. Its purpose is to benefit Aboriginal communities by improving access to and effective provision of civil and family law services to Aboriginal clients.

The report addresses two broad research questions:

- The first is an analysis of the civil and family law needs of Aboriginal people in New South Wales.
- The second arises out of this legal needs analysis and explores how Legal Aid NSW might improve the services that they provide to Aboriginal clients in the areas of civil and family law.

The research was based on consultation with Aboriginal communities and with those who provide services to those communities, in eight focus sites: Redfern/Waterloo, Penrith/Mt Druitt, Dubbo, Wagga Wagga, Moree, Bourke, Tabulam and Goodooga. The sites were chosen for geographical spread as well as to represent remote, rural, regional and urban Aboriginal communities.

In each focus site, two focus groups were held; one for men and one for women, where participants were asked to fill in a questionnaire which identified the legal incidents that they had encountered recently in the areas of law that the research covers. There was then broad discussion about these incidents and about the current level of access of and satisfaction with legal services to seek remedies for the problems encountered. Focus groups were also asked about any experiences of Legal Aid NSW that they had, and asked about suggestions for improving the current mode of Legal Aid service delivery.

In each focus site, interviews were also undertaken with legal practitioners, Aboriginal people working as support people within the legal system and other organizations providing associated services. Selected stakeholders providing relevant state-wide services were also interviewed.

Quantitative data provided by Legal Aid NSW was also used to examine the extent of current usage of Legal Aid family and civil law services by Aboriginal clients, as well as the nature of the matters for which Aboriginal clients were most likely to approach Legal Aid NSW for advice or representation.

Usage of Legal Aid NSW civil and family law services (Chapter 2)

The profile of Aboriginal civil law applications, grants and minor assistance differed in various ways from non-Aboriginal clients in this area. Two striking differences were the different gender profile with Aboriginal women being the majority among Aboriginal clients, while men were the majority among non-Aboriginal clients. A second difference was in the type of matters for which assistance was sought. For example, mental health matters were

more pronounced among Aboriginal clients and veteran's affairs among non-Indigenous clients.

The main findings arising from examination of the usage data in relation to civil law show that, in 2007:

- Aboriginal people comprised 4.6 per cent of all civil aid applications, 5.1 per cent of all grants of civil aid and 5.8 per cent of clients who received minor assistance for civil aid. The rate of Aboriginal applications for civil aid and minor assistance per 100,000 of population was more than twice the non-Aboriginal rate.
- The most common civil law applications for Aboriginal people were, in order: mental health (19.5 per cent), personal injury/accidents (16.6 per cent), miscellaneous civil matters (12.4 per cent) and consumer issues (10.7 per cent). The most common grants of civil legal aid were for mental health (27 per cent), personal injury/accident (14.3 per cent) and consumer (12.7 per cent).
- Many of the mental health (forensic patient) and personal injury matters (victim's compensation and civil assault) were generated through crime or contact with the criminal justice system.
- Aboriginal women comprised the majority of Aboriginal applicants for civil aid (57 per cent), for grants of civil aid (59 per cent) and of Aboriginal clients receiving minor assistance for civil aid (62 per cent).
- Mental health was a major category for Aboriginal male applications for civil aid (30 per cent) and for grants of civil aid (44.2 per cent). Aboriginal women's applications for civil aid and grants of civil aid were spread across a broader range of civil law areas. For Aboriginal women, personal injury was the most frequent category for applications (17.7 per cent) and for grants of civil aid (18.9 per cent).

The main findings arising from examination of the usage data in relation to family law show that in 2007:

- Aboriginal people comprised 7.7 per cent of all family aid applications, 7.9 per cent of all grants of family aid and 6 per cent of clients receiving minor assistance for family aid. The rate of Aboriginal applications for family aid and minor assistance per 100,000 of population was more than three times (applications) and twice (minor assistance) the non-Aboriginal rate.
- The most common family law categories of applications for Aboriginal people were, in order, 'children' (primarily, residence and contact) (50.3 per cent), and care and protection (41 per cent). The most common grants of family legal aid were for 'children' (47.4 per cent) and care and protection (45.1 per cent). The most common categories for minor assistance were for 'children' (37 per cent), child support (28 per cent) and family law 'other' (19 per cent).
- Care and protection matters and 'children' matters under the Family Law Act were the dominant categories in both Aboriginal and non-Aboriginal grants of family law aid. However, care and protection formed a greater proportion of Aboriginal

successful grants than was the case with non-Aboriginal grants (45.1 per cent compared to 31.5 per cent) and ‘children’ matters under the Family Law Act were 13 percentage points lower for Aboriginal grants (47.4 per cent compared to 60.4 per cent).

- The categories of family law grants were similar for Aboriginal men and Aboriginal women clients. However, Aboriginal women were much more likely than men to seek minor assistance about child support and Aboriginal men were more likely than women to seek assistance in relation to children under the Family Law Act.

The civil and family law needs of Aboriginal people in New South Wales (Chapters 3-6)

Civil law, we just know nothing about it. We don’t know about this civil law stuff (*Aboriginal legal support workers 1, Dubbo*).

Based on the information collected from the focus group questionnaire and discussion, as well as through stakeholder interview, various civil and family law needs were analysed as follows:

Family law

The evidence suggests that family law matters tend to be worked out by the parties without legal assistance. Disputes usually involve children. Overall 17.2 per cent of focus group participants identified an issue relating to custody or access. Aboriginal women were more likely (20.8 per cent) to identify these issues than men (13.5 per cent).

Children being taken into care was identified as a significant problem, and Aboriginal women were more than twice as likely (22.5 per cent) to identify such as issue than men (9.9 per cent). There was wide-ranging dissatisfaction among focus group participants concerning their interactions with DOCS.

Many stakeholders commented on the apparent lack of legal advice or representation for parents in cases where their children are being removed. Focus group participants indicated that very few people (14.9 per cent) sought legal advice in relation to the issues around family law and DOCS associated matters. Although the numbers were small, Aboriginal women were more likely to seek legal assistance than men (23.3 per cent compared to 8.6 per cent).

Housing and Tenancy

Housing problems emerged as a major issue in the focus groups discussions and interviews with stakeholders. Overall 41.2 per cent of focus group participants identified disputes involving landlords, primarily the conduct of the Department of Housing or Aboriginal housing bodies. The most frequently noted matter was the issue of repairs, followed by rent.

Of the 63 Aboriginal people who identified a dispute with a landlord, some 70 per cent of individuals indicated they did not seek legal advice. Aboriginal women were more likely to seek advice than Aboriginal men (28.9 per cent compared to 20 per cent).

Neighbours

Some 26.8 per cent of focus group participants identified neighbourhood disputes as an issue that had affected them in recent years. Aboriginal women were more likely than men to identify a neighbourhood dispute as having been an issue for them (32.4 per cent compared to 21.3 per cent), and Aboriginal women were also more likely to seek advice (29.2 per cent compared to 18.7 per cent).

Overall however, the majority of individuals (67.5 per cent) did not seek legal advice. Those who had not sought advice generally had more negative outcomes including a criminal conviction, an apprehended violence order, and at least four cases where the participant had moved out of the residence.

Education

More than a third of the focus group participants (37.4 per cent) were responsible for a young person in an educational institution. The proportion was higher for Aboriginal women (44.6 per cent) than for Aboriginal men (30.1 per cent).

Half (50.9 per cent) of the 55 participants who were responsible for a young person reported problems. The percentage was particularly high among women (61.3 per cent) who had responsibility for a young person in education. The main problems identified by participants were suspension and expulsion.

Five of the 27 individuals (or 18.5 per cent) who indicated a problem at school sought legal advice (four women and one male).

Employment

Overall, 20.9 per cent of participants indicated that they had employment issues. The proportion of men identifying employment issues was slightly higher than women (22.7 per cent compared to 19.2 per cent).

The most common problem related to disputes over pay, followed by bullying, harassment and intimidation in the workplace. Some 29 per cent of the 31 individuals who indicated they had an employment-related problem also indicated they sought legal advice.

Stolen Wages and Stolen Generations

Some 15.6 per cent of participants indicated that they had been directly affected by policies relating to Stolen Wages and Stolen Generations. The proportion of Aboriginal women affected was higher than Aboriginal men (19.2 per cent compared to 12.2 per cent), which was probably influenced by the older age of Aboriginal women participants.

The vast majority of participants (92.9 per cent) had not received advice concerning the AFTR scheme.

Discrimination

Racial discrimination has emerged as a major issue in this study, especially in some of the research locations. More than one quarter (28.1 per cent) of both males and females identified discrimination as an issue they had faced recently. Racial discrimination was the main type of discrimination identified, and pubs and clubs were the main problems, followed by real estate agents.

Of the 41 individuals who indicated a problem with discrimination, only seven (17.1 per cent) sought legal advice. Although the numbers are small, Aboriginal women were more likely to seek advice than men.

Social Security and Centrelink

Some 36 per cent of Aboriginal participants in the focus groups were receiving an Indigenous specific allowance. The proportion was higher among males (42.7 per cent) compared to females (28.4 per cent).

In addition three quarters of the focus group participants (75.8 per cent) stated they were receiving some other type of Centrelink benefit. The proportion was higher among females (85.1 per cent) compared to males (66.7 per cent)

Approximately one in three men (32.9 per cent) and one in four women (26.3 per cent) identified having dispute with Centrelink over the last couple of years.

Of the 44 people who identified having a dispute with Centrelink, five (11.6 per cent) sought legal advice.

Credit and Debt

Some 34.9 per cent of the participants identified debt-related problems. The percentage was similar for both males and females, and was more than one in every three participants.

Some 19 per cent of participants identified problems relating to their Credit Reference rating, as a guarantor for a loan or in relation to possible bankruptcy.

Telephone bills and Credit Reference Rating were two frequently mentioned problems.

Only five focus group participants (three men and two women) indicated they sought legal advice for their problem.

Consumer Issues

Some 19.9 per cent of participants indicated a dispute or problems accessing superannuation, or with a bank or financial institution. The percentage was higher for women (22.7 per cent) than men (17.1 per cent).

Some 6.1 per cent of participants indicated a dispute relating to insurance. There was little difference between the male and female responses.

Some 13.1 per cent of participants indicated a problem with a 'scam' such as a funeral fund or door to door sales. The percentage of Aboriginal men indicating this issue was higher than Aboriginal women (16.2 per cent compared to 9.9 per cent). Many participants in the men's focus groups identified problems with Aboriginal funeral funds.

Overall, seven individuals (four males and three women) indicated they sought legal advice.

Victim's Compensation

Some 28.9 per cent of participants reported being the victim of a violent crime. The proportion of women victimised was slightly higher than men (30.7 per cent compared to 27.0 per cent).

The majority (55.8 per cent) of those who reported being the victim of a violent crime did not know about the victim's compensation scheme. Aboriginal women were more likely to be aware of the scheme than men (47.8 per cent compared to 35 per cent).

Only one in four victims (26.8 per cent) pursued compensation. Although the numbers are small, Aboriginal women were more likely to pursue compensation than Aboriginal men (33.3 per cent compared to 20 per cent).

Accident and Injury

Some 14.2 per cent of the participants indicated they had been involved in a motor vehicle accident over the last couple of years. Of this group, slightly more than half were insured and less 20 per cent sought legal advice.

Some 13.3 per cent reported work-related injuries. Men (22.7 per cent) reported much higher rates than women (3.2 per cent). 17.8 per cent of participants reported other injuries outside of the home.

Wills and Estates

Only 6.1 per cent of the participants indicated they had completed a will. Twice the number of women compared to men had completed wills.

Almost half the men and more than two thirds of the women who had not completed wills would like legal assistance to do so.

Aboriginal Legal Needs: The Priority Areas (Chapter 7)

In discussing the legal needs of Aboriginal clients it is important to recognise that these needs are often more complex than those of other clients. Indigenous people are less likely to have the literacy and numeracy skills of the non-Indigenous population (ABS 2002: 28).

Indigenous people are more likely to have a disability (disability rates are approximately 1.4 times higher for Indigenous people) (SCROGSP 2007: 8), and are twice as likely to have experienced high levels of psychological distress than non-Indigenous people (SCROGSP 2007: 9.41). In addition, higher rates of self harm, the effects of childhood removal and drug and alcohol issues are all likely to make Indigenous clients a particularly disadvantaged group to work with (see generally ABS 2002; SCROGSP 2007). Thus the legal needs of

Aboriginal clients are complex, not only often involving several areas of law, but also a range of social and cultural issues.

In relation to the areas of civil and family law that were explored in this report, the areas of housing, discrimination, credit and debt and family/DOCS issues arose the most frequently in consultations as being the areas of highest priority for Aboriginal people across New South Wales. This is not to say that other areas of law were not considered urgent in some locations. Matters involving employment, neighbourhood disputes, social security and education emerged in some places as causing a lot of grief to individuals, largely without satisfactory resolution.

In addition, there were a number of legal areas where there may not have been a high recognised legal need, but where there was yet a substantial unrecognised need. The lack of identification of need spoke more of the absence of community legal education in the area rather than an absence of need. Three legal areas that we have identified as falling into this category are victim's compensation, stolen wages and wills.

Observations on Legal Aid NSW Service Delivery (Chapter 7)

A substantial component of the research involved the exploration of Aboriginal clients' experiences of Legal Aid NSW and stakeholder reflections on that experience. The responses showed a number of areas where it was felt that obstacles to effective service delivery arose. Many reflected a feeling that Legal Aid NSW does not provide the level of assistance that Aboriginal clients require at all stages of the legal process, from filling in application forms to apply for aid, to being referred to another services where Legal Aid cannot assist. The observations were grouped under the following headings:

- The issues arising from the fact that Legal Aid is not an Aboriginal service provider
- Literacy issues, complexity of Legal Aid forms and lack of assistance
- Issues involving conflict, referral and lack of assistance
- Levels of attention and friendliness given to clients
- Breakdowns in client-practitioner communication
- Issues around flexibility of service delivery

Despite the range of difficulties that were identified as impeding effective access of Aboriginal clients to Legal Aid services, there was widespread consensus among community members and stakeholders alike that it was possible for Legal Aid NSW to improve in large measure the effectiveness of their services to Aboriginal people.

Civil and Family Law Initiatives in Other Jurisdictions (Chapter 8)

Several Australian legal aid commissions are attempting to improve their service delivery to Aboriginal and Torres Strait Islander communities. Outreach services are provided by the Northern Territory and Queensland LACs. In particular the NTLAC has a large outreach project from its two offices in Darwin and Alice Springs.

Some of the LACs have specific cross cultural training for their staff – see for example Victoria and Western Australia. VLA has also concentrated on access and equity issues in their offices, including considering location; trying to ensure positive first contact with the service by telephone; running art competitions; and ensuring that copies of the Koori Mail are available at reception. The LAQ also has an Indigenous information hotline line that enables

Aboriginal and Torres Strait Islander people to access legal and referral information for the cost of a local call.

There are some innovative developments, particularly in Queensland involving the use of community liaison officers and Indigenous liaison officers. The CLOs provide court support, promote LAQ services, deliver CLE and provide referral information. They also work with solicitors providing outreach services. In addition there are a number of Indigenous liaison officers employed part-time in communities. They provide advice and referral to the community, and inform the CLOs and solicitors of community issues.

International comparisons need to be treated with care because of the substantial differences in the provision of legal aid services to Indigenous and non-Indigenous people. The Canadian system has Legal Aid Offices in each of the thirteen provinces or territories. However there are variations in coverage of family and civil law. Some offices only operate a 'judicare' model where private lawyers are paid to represent legal aid clients. In addition, Canada does not have an established, formal network of government-funded Aboriginal legal services, as we do in Australia.

New Zealand also operates under the judicare model with 12 regional Legal Aid Offices responsible for granting aid and funding a *private* lawyer to provide legal services to individuals. There are also 27 community law centres (one of which is Maori-specific) but no equivalent to the Aboriginal legal services.

In the US, legal assistance for Native Americans may be offered by any number of different service providers, and as part of mainstream or Native American-specific services. The Legal Services Corporation (LSC) funds 138 independent local programs covering over 900 offices, including Native-American specific programs.

The LSC funds programs which provide legal assistance to Native Americans, some serving as 'stand alone' Indian Law services (covering legal issues which are specific to Native American persons), others as 'component programs' (covering the same areas of law, but within a larger legal aid service), or offering broader legal assistance to Native American clients (both on an off reservation). The US situation is made more complex by the recognition of Indigenous jurisdiction in Indian nations.

Proposals for Reform (Chapter 9)

The final chapter of this report deals with recommendations for the improvement of Legal Aid NSW civil and family services to Aboriginal people. The recommendations and discussion involve the following:

Better equipping existing staff and improving existing services

In particular the need to provide support for existing Aboriginal staff is highlighted, as is the need to provide cultural awareness training for non-Aboriginal staff. Improvements to the CLSD program, changes to office space and a greater flexibility in service delivery are recommended.

Improving Legal Aid NSW service delivery by establishing better connections to the community through outreach

There are significant changes that can be made to the provision of outreach services to Aboriginal communities, particularly taking into account outreach services offered by other justice organisations.

The employment of field officers

A key recommendation to this report is the employment of Aboriginal field officers by Legal Aid NSW. The development of effective outreach services is dependent upon the use of field officers.

Greater use of Audio Visual Links (AVL)

There is significant scope for increasing the access of Aboriginal people to civil and family law advice through the use of AVL. However, the report notes that certain preconditions should be met before AVLs are used.

Ensuring better understanding by Aboriginal people of civil and family law

The report highlighted the lack of knowledge by Aboriginal people of civil and family and the possible remedies available. Recommendations relating to this issue include skilling Aboriginal workers in various justice agencies so that they can provide assistance and referral; the development of targeted community legal education for Aboriginal communities, particularly focusing on specific communities and specific needs; and the further exploration of creating an Aboriginal telephone legal advice line that might cover criminal, civil and family law.

Finally, an essential part of developing better links between Legal Aid NSW and Aboriginal communities is the need for a process of engagement. A key recommendation in this regard is the establishment of Aboriginal reference groups at the local level.

RECOMMENDATION 1

Cultural Awareness Training

It is recommended that current initiatives for cultural awareness training for all Legal Aid NSW staff be supported and that training be ongoing.

RECOMMENDATION 2

Special Disadvantage Test

It is recommended that any changes to the Special Disadvantage Test not specifically refer to Aboriginal people but refer to barriers arising from language, culture or lack of access to services due to remoteness.

RECOMMENDATION 3

Cooperative Legal Service Delivery (CLSD) program

While recognising that the CLSD program has led to some improvements in access to legal services by Aboriginal people, it is recommended that CLSD undertake initiatives to better include Aboriginal organisations in the CLSD process.

RECOMMENDATION 4**Improving Office Space**

It is recommended that Legal Aid New South Wales office managers, in consultation with the Director, Aboriginal Services, develop strategies to improve office space through, for example, art exhibitions/competitions, copies of the *Koori Mail*, etc.

RECOMMENDATION 5**Greater Flexibility in Service Delivery**

It is recommended that Legal Aid NSW through the Director, Aboriginal Services develop strategies for ensuring greater flexibility in service delivery. These strategies should include flexibility in the system for appointments with a trial 'drop in' initiative at one or more offices, an allowance for extra time when meeting with Aboriginal clients, and greater assistance for Aboriginal clients in the completion of legal aid forms.

RECOMMENDATION 6**Improving Outreach**

It is recommended that Legal Aid NSW, through the Director, Aboriginal Services, develop strategies for improving outreach both in areas where there are already existing Legal Aid offices and in rural and remote areas where there is at present no Legal Aid service. It is recommended that those strategies adopt the principles and cornerstones for services delivery outlined in this report.

RECOMMENDATION 7**Employing Field Officers**

It is recommended that Legal Aid NSW recruit and employ Aboriginal people to work in a role of field officer; the statement of duties for the position to be developed in consultation with the Director of Aboriginal Services. It is recommended that minimum training for the position be the National Indigenous Legal Advocacy Course (or equivalent).

RECOMMENDATION 8**Increased Use of Audio Visual Links for Legal Advice**

It is recommended that Legal Aid NSW develop the use of AVLs as part of their improvements in outreach services to Aboriginal communities. The use of AVLs should be adopted only when the concerns identified in this report have been satisfied.

RECOMMENDATION 9**Skills and Resources**

Following Recommendation 29 from the Dimos (2008) report to Legal Aid NSW, we recommend that Legal Aid NSW take a lead role in skilling and resourcing Aboriginal people working in justice agencies on civil and family law.

RECOMMENDATION 10**Community Legal Education**

It is recommended that targeted community-based promotion strategies on civil and family law services provided by Legal Aid NSW be developed for Aboriginal people.

It is also recommended that targeted community legal education on civil and family law be developed for Aboriginal people. Targeted CLE strategies are best developed at the regional level and in response to identified local issues.

RECOMMENDATION 11**Telephone Advice Line**

It is recommended that Legal Aid NSW discuss with the Aboriginal Legal Services (New South Wales/ACT) the desirability and feasibility of establishing a telephone advice line for Aboriginal people which covers criminal, civil and family law issues.

RECOMMENDATION 12**Aboriginal Reference Group**

It is recommended that Legal Aid NSW offices, in consultation with the Director Aboriginal Services, establish Aboriginal Reference Groups to provide advice on matters relating to improved service delivery to Aboriginal communities and legal needs in local Aboriginal communities.