

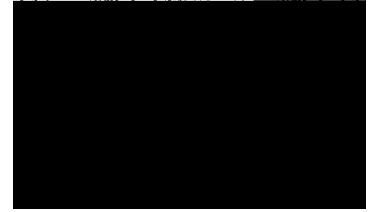
15 May 2015

Senate Finance and Public Administration Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: fpa.sen@aph.gov.au

Dear Madam/Sir

THE UNIVERSITY OF



UNIVERSITY OF
KINGSFORD
LEGAL CENTRE

5. The Government should ratify the *Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*, and establish independent National Preventative Mechanisms to prevent torture, cruel, inhuman and degrading treatment in places of detention, including police detention.
6. Police complaints should be handled by an organisation that is culturally and institutionally independent of police, with powers to making binding decisions.
7. The Government should analyse and address the disproportionate impact of proposed and existing laws on Aboriginal and Torres Strait Islander people. Consistent with 1987 *Royal Commission into Aboriginal Deaths in Custody* recommendation 92, imprisonment should be used only as a sanction of last resort.
8. The Government should implement the Productivity Commission's recommendation for an additional \$200 million to the legal assistance sector, including funding for systemic advocacy work and additional funding to ATSI

The program was initially funded by a generous donation from the Berg Foundation and grants from Randwick City Council and the Community Legal Centres NSW Aboriginal Legal Access Program. It has been difficult to obtain ongoing external funding to support this project and since 2012 it has been funded by the University of New South Wales Law Faculty.

The program has had a significant impact on increasing our services to Aboriginal and Torres Strait Islander members of our community. The proportion of our clients that identify as Aboriginal or Torres Strait Islander has doubled since the project commenced. In 2008, the year before the commencement of the AAP, 3.5% of our clients identified themselves as Aboriginal or Torres Strait Islander. In 2014, this had increased to 7%. The presence of an Aboriginal Access Worker has been crucial to reaching these clients. The position was vacant for 4 months in 2012 and this period corresponded with a temporary drop in our proportion of Aboriginal clients.

KLC also has policies, services and resources that enhance our capacity to reach and provide services to Aboriginal and Torres Strait Islander clients. For example, we give priority to Aboriginal and Torres Strait Islander clients. If a client calls or attends the centre and identifies as Aboriginal or Torres Strait Islander they are asked if they would like the assistance of the KLC's Aboriginal Access Worker and are put through to a solicitor immediately. If a solicitor is not available at the time, we collect their contact details and let them know that one of our solicitors will be in touch with them as soon as possible.

On a fortnightly basis, KLC provides an outreach service to the local Aboriginal community in La Perouse. The service is conducted at the La Perouse Community Health Centre.

In 2013, KLC launched Working with Aboriginal Clients at Kingsford Legal Centre, a service provision manual aimed helping staff, students and volunteers at KLC to build strong,

Although the primary provider of legal service to Aboriginal and Torres Strait Islander Australians is the Aboriginal and Torres Strait Islander Legal Services (ATSILS) and the Family Violence Prevention Legal Services (FVPLS), community legal centres are a significant provider, with around 6% of their casework clients 2012-2013 being identified as Aboriginal or Torres Strait Islander.⁴

With ATSILS and FVPLS focussing mainly on crime and violence prevention, family and other civil law needs often go unmet. Statistics provided to the Productivity Commission indicated that civil law casework and advice is dwarfed by criminal and family or domestic violence casework and advice.⁵ The findings of the Indigenous Legal Needs Project has also identified problems in accessing civil and family law advice.⁶

In NSW, Aboriginal communities have identified tenancy, racial discrimination, neighbourhood disputes, debt and social security as legal problems frequently experienced but without a satisfactory resolution. There also appears to be substantial unrecognised legal need in Aboriginal and Torres Strait Islander communities, particularly in the areas of victims' compensation and wills.⁷

A 2008 report into the family and civil law needs of Aboriginal people in NSW, identified that few Aboriginal people sought legal advice when confronted with the following types of legal issues:

- family law and DOCS associated matters (14.9% sought advice)
- dispute with a land lord (15.4% sought advice)
- neighbourhood disputes (25% sought legal advice)
- employment (29 per cent sought legal advice)
- stolen wages (7.1% sought legal advice)
- discrimination (28.1% sought legal advice)⁸

Lack of awareness of legal issues (TOR A & B)

A

experienced racism in the previous 12 months.¹⁰ The 2008 National Aboriginal and Torres Strait Islander Social Survey found that 27% of Aboriginal and Torres Strait Islander people aged 15 years and over had experienced discrimination in the past 12 months.¹¹

In our experience, clients are often unable to use discrimination law and processes to address the racism that they have experienced. The insidious nature of racism means that it can be difficult to prove that a person has been treated unfavourably *because* they are Aboriginal or Torres Strait Islander. We successfully represented one client at the Administrative Decisions Tribunal who was excluded from a guesthouse and told “sorry we don’t take Aboriginals here because they cause too much trouble”.¹² However, in most cases unfavourable treatment is not accompanied by such explicitly racist statements. Many Aboriginal and Torres Strait Islander clients seek advice from us about unfavourable treatment they have received at pubs, hotels and other services. While they feel strongly that the treatment they have experienced is because they are Aboriginal or Torres Strait Islander, it is often difficult for them to prove this with the evidence that they have available to them.

Many clients are understandably frustrated and disillusioned with the legal system after hearing that the legal system might not be able to help them to address the racism that they are regularly facing. This can impact on clients’ reluctance to seek legal assistance in areas where the legal system might be able to assist them, such as tenancy, debt and family law. Strengthening discrimination law protections would improve the legal response to racism, and consequently have a positive impact on Aboriginal and Torres Strait Islander people’s experience of the law and likelihood to access legal assistance in other areas of law.

Recommendation 3: The Parliament should enact an Equality Act that promotes substantive equality, shares the burden of proof and provides effective remedies, including against systemic and intersectional discrimination.

Recommendation 4: The Parliament should support proposed amendments to enshrine Aboriginal and Torres Strait Islander’s right to non-discrimination and equality in the Australian Constitution.

Experiences with police

Disenfranchisement with the legal system also arises from bad experiences with interactions with police and with subsequent complaint processes. Clients tell us of their experiences of discrimination and harassment by police officers. Such stories are common amongst the Aboriginal and Torres Strait Islander communities with which we work and are shared amongst community members. These shared experiences contribute to a general sense of distrust of and victimisation by the legal system.

¹⁰ Ferdinand, Paradies and Kelaher, *Mental Health Impacts of Racial Discrimination in Victorian Aboriginal Communities: The Localities Embracing and Accepting Diversity (LEAD) Experiences of Racism Survey*, Lowitja Institute, January 2013, p 1.

Case study: Codie

Codie was driving down a main street when he was pulled over by police officers for no apparent reason. The police officers breath tested him and searched his car, uncovering nothing. They then strip searched Codie in full view of the busy street and in front of female police officers. They did not give him a reason nor did they offer him any more private options. The police officers let him go without issuing any cautions, fines or charges.

Codie came to KLC for advice about holding the police accountable for their behaviour. We advised him about his options and offered to assist him further but, after talking to family and friends, he decided not to take any action. He feared that making a complaint would only make things worse and that the police would continue to harass him and his family.

Consorting offences

Aboriginal and Torres Strait Islander people's confidence in police and the legal system continues to be undermined by the introduction of new laws that have a disproportionate impact on their communities. For example, the NSW Government introduced a new consorting offence in 2012 that criminalises continued association with two people who have been convicted of an indictable offence following a police warning about their convictions and that continuing to associate with them (including by email, telephone or oth

Legal assistance services in Australia are chronically underfunded and are not able to meet the current legal need, especially for civil law matters. The Productivity Commission found that “[a] lack of resources, combined with a focus on representation for criminal matters, has led to an under-provision of services for civil law matters”, and it recommended a \$200 million increase in government funding for legal assistance services.¹⁴ The Indigenous Legal Needs Project has also identified the urgent need for increased funding for ATSILS. It has found that ATSILS do not currently provide any sort of comprehensive service around the existing civil and family law need, and that additional funding is needed to meet that need.¹⁵ Both the Productivity Commission and the Indigenous Legal Needs Project have emphasised the importance of funding systemic responses to legal issues, including community education, and policy and law reform, as well as funding for advice and casework.¹⁶

Additional fundinet

Justice reinvestment has developed in overseas contexts to address both the rising cost of imprisonment and to strengthen communities with high rates of incarceration by reducing imprisonment and preventing crime. In Australia it has been considered a potential way of addressing Aboriginal and Torres Strait Islander over-imprisonment and the dramatic impact this has on communities. The focus on reinvesting funds that would ordinarily be spent within the prison system is also seen as a way of better resourcing Aboriginal and Torres Strait Islander communities, which are often economically and socially disadvantaged. In 2013 the Senate Legal and Constitutional Affairs Committee comprehensively examined the potential value of justice reinvestment in this context.¹⁷ The Committee made recommendations about the development of strategies and data collection to facilitate justice reinvestment in Australia. We support the recommendations including recommendation 7 that the Government fund trials of justice reinvestment in Australia. We note that there are proposed trials in Bourke and would support the development of further trials in order to determine the effectiveness of justice reinvestment for Aboriginal communities and in reducing imprisonment and crime.

While KLC supports the exploration of justice reinvestment we also wish to stress the importance of not only diverting funds ordinarily spent within the prison system but also the need to