



The Cairns Institute



Access to Justice: Assessing the Civil and Family Law Needs of Aboriginal and Torres Strait Islander People in Australia.

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1. The Family and Civil Law Needs of Aboriginal People In New South Wales (2008)

Research funded by the Legal Aid Commission of New South Wales, conducted by Chris Cunneen and Melanie Schwartz, Law Faculty, UNSW.

The report addressed 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 arose out of the legal needs analysis and explore how Legal Aid NSW might improve the services that they provide to Aboriginal clients in the areas of civil and family law.

2. The Assessment of the Civil and Family law Needs of Indigenous People in Australia (2010 – 2013)

The Project will build on work done in 2008 for the NSW Legal Aid Commission.

We will conduct the research in Queensland, Northern Territory, Western Australia and Victoria, The lead researchers will be Professor Chris Cunneen (JCU), Professor Larissa Behrendt (UTS) and Melanie Schwartz (UNSW).

Aboriginal and Torres Strait Islander Civil and Family Law Needs are an Access to Justice Issue:

- ❑ *A Strategic Framework for Access to Justice in the Federal Civil Justice System*. Recommendation 11.4 states that, “The Commonwealth should consider options for improving access to culturally appropriate legal assistance services for family and civil law matters for Indigenous Australians”.
- ❑ Analysis of the legal needs of Aboriginal and Torres Strait Islander people has been largely focussed on criminal law.
- ❑ A growing demand for child protection, civil and family law matters has been identified, but ATSIILS report being unable to service this demand due to insufficient funding (Senate Legal and Constitutional References Committee 2004: 5.6, 5.14)
- ❑ Existing barriers that Indigenous people face in accessing legal services have been identified in various reports (eg Senate Legal and Constitutional References Committee (2004); Joint Committee of Public Accounts and Audit (2005))
- ❑ Indigenous people face well-documented disadvantages in the areas of education, housing, employment, income and health (SCROGSP 2009).
- ❑ Some categories of disadvantage are particularly relevant to client’s needs when accessing legal services: for example, low levels of literacy and numeracy; high levels of hearing loss; higher levels of disability; and higher levels of psychological distress compared with non-Indigenous people (SCROGSP 2009)
- ❑ Geographical isolation is also a major inhibitor to access to justice for Indigenous communities. In remote communities, access to justice is “so inadequate that remote Indigenous people cannot be said to have full civil rights” (Senate Legal and Constitutional References Committee 2004:5.120)

NSW research identified specific areas of legal need particularly in relation to

- ❑ child removal,
- ❑ racial discrimination,
- ❑ housing and tenancy,
- ❑ social security, and
- ❑ credit and debt,

as well as significant unrecognised needs in areas like

- ❑ victim’s compensation and
- ❑ wills and estates

Family law

- The evidence suggests that family law matters tend to be worked out by the parties without legal assistance.
- Children being taken into care was identified as a significant problem, and Aboriginal women were more than twice as likely (22.5%) to identify such an issue than men (9.9%). 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. Although the numbers were small, Aboriginal women were more likely to seek legal assistance than men (23.3% compared to 8.6%).

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%) of both males and females identified discrimination as an issue they had faced recently.
- Of the 41 individuals who indicated a problem with discrimination, only seven (17.1%) sought legal advice. Although the numbers are small, Aboriginal women were more likely to seek advice than men.

Housing and Tenancy

- Housing problems emerged as a major issue in the focus groups discussions and interviews with stakeholders. Overall 41.2% 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% of individuals indicated they did not seek legal advice. Aboriginal women were more likely to seek advice than Aboriginal men (28.9% compared to 20%).

Social Security

- Some 36% of Aboriginal participants in the focus groups were receiving an Indigenous specific allowance. In addition three quarters of the focus group participants (75.8%) stated they were receiving some other type of Centrelink benefit.
- Approximately one in three men (32.9%) and one in four women (26.3%) identified having dispute with Centrelink over the last couple of years. 11.6% of those sought legal advice.

Credit and Debt

- Some 35% of the participants identified debt-related problems. 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.

Victim's Compensation

- Some 28.9% of participants reported being the victim of a violent crime. The proportion of women victimised was slightly higher than men (30.7% compared to 27.0%).
- The majority (55.8%) 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% compared to 35%).
- Only one in four victims (26.8%) pursued compensation. Although the numbers are small, Aboriginal women were more likely to pursue compensation than Aboriginal men (33.3% compared to 20%).

Wills and Estates

- Only 6.1% 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.

The Assessment of the Civil and Family law Needs of Indigenous People in Australia (2010 – 2013)

The research will involve

- holding men's and women's focus groups in eight Aboriginal communities in each jurisdiction (32 communities and 64 focus groups altogether) and using both questionnaires and semi-structured discussion about legal issues that participants have encountered.
- interview with relevant stakeholders.
- cover urban, regional, rural and remote communities
- an analysis of data provided by partner organisations about the usage of their services by Aboriginal and Torres Strait Islander clients, and/or a review of existing policies in the partner organisations as they relate to servicing the civil and family law needs of Indigenous clients

The research will provide:

- Legal Needs Assessment
- Analysis of Legal Service's Policies and Existing Usage Data
- Develop Strategies for Improving Access to Justice in Civil and Family Law

Combined with the completed New South Wales research, we will have a relatively comprehensive picture of Indigenous civil and family law needs in Australia, given that the proposed jurisdictions cover urban, regional, rural and remote communities, and more than 85% of Indigenous people in Australia live in Queensland, New South Wales, Northern Territory, Western Australia and Victoria.

Who are our research partners?

- Victoria Legal Aid
- Northern Territory Legal Aid Commission
- Legal Aid Queensland
- Legal Aid Commission of Western Australia
- Victorian Aboriginal Legal Service Co-operative Limited
- North Australian Aboriginal Justice Agency Limited
- North Australian Aboriginal Family Violence Legal Service
- Aboriginal and Torres Strait Islander Legal Service (QLD) Limited
- Aboriginal Legal Service of Western Australia Inc
- Central Australian Aboriginal Family Law Unit

Funded jointly by the Australian Research Council (approx 80%) and the remainder from our research partners, primarily the Legal Aid Commissions.

We have 2 scholarships for Indigenous PhD students to work on the project for three years (law or socio-legal studies).