

**COMMONWEALTH AND STATE GOVERNMENTS' AGENDA
NATIONAL ACCESS TO JUSTICE AND PRO BONO CONFERENCE**

**Frank E. Guivarra
Chief Executive Officer
Victorian Aboriginal Legal Service Co-operative Limited**

I will look at the question of what should be the Governments', irrespective of whether they are Federal, State and Territory, agenda for improving Access to Justice for Indigenous Australians for the next two years and where are the opportunities to work better together.

The Governments have a big task on their hands when it comes to improving Access to justice for Indigenous Australians. To set the context, as at 30th June 2006, *"Indigenous prisoners represented 24% of the total national prisoner population"*.¹ According to Professor Chris Cunneen and Melanie Schwartz: *"the figures on over-representation translate into an acute need for proficient and accessible Indigenous-specific legal advice and representation"*.²

However, in 2003, it was estimated that the annual shortfall for funding of Aboriginal and Torres Strait Islander Legal Services [ATSILS], compared to Legal Aid Commissions [LACs] was approximately \$25.6 million.³ *"The number of criminal cases dealt with by ATSILS increased by 67% between 1998 and 2003; yet, despite this massive increase, funding for these services did not substantially increase in the period"*.⁴

Cunneen and Schwartz argue *"...the static funding environment that ATSILS operate in results in compromised capacity to provide adequate services to the sector of the population that arguably needs the best possible quality legal services"*.⁵ They continue.... *"the issue of the adequacy of legal representation for Indigenous people goes to the heart of questions of access, equity and the rule of law"*.⁶

The Governments should work together on two aspect of the topic of Access to Justice:

- [a] Improve the quantity of legal assistance: and
- [b] Improve the quality of the justice system, not only in terms of just outcomes, but also process.

There is a role for Pro Bono assistance in these areas, but at the same time, the willingness of some to provide such assistance should not enable the Government to shirk away from its responsibility to adequately fund the ATSILS.

¹ Professor Chris Cunneen and Melanie Schwartz 'Funding Aboriginal and Torres Strait Islander Legal Services: Issues of Equity and Access' (2008) 32 Crim LJ 38, page 39

² Professor Chris Cunneen and Schwartz 'Funding Aboriginal and Torres Strait Islander Legal Services: Issues of Equity and Access' (2008) 32 Crim LJ 38, page 40

³ Professor Chris Cunneen and Schwartz 'Funding Aboriginal and Torres Strait Islander Legal Services: Issues of Equity and Access' (2008) 32 Crim LJ 38, page 50

⁴ Professor Chris Cunneen and Schwartz 'Funding Aboriginal and Torres Strait Islander Legal Services: Issues of Equity and Access' (2008) 32 Crim LJ 38, page 50

⁵ Professor Chris Cunneen and Schwartz 'Funding Aboriginal and Torres Strait Islander Legal Services: Issues of Equity and Access' (2008) 32 Crim LJ 38, page 38

⁶ Professor Chris Cunneen and Schwartz 'Funding Aboriginal and Torres Strait Islander Legal Services: Issues of Equity and Access' (2008) 32 Crim LJ 38, page 39

Agenda

The agenda of Governments over the next two years should be:

- To devise and implement a strategy on how to adequately fund the ATSILS.
- Recognise the primary role of ATSILS as Legal Service Providers, in policy and nurtured through sustainable, consultative, inclusive and timely sector policy development.
- Implement all 339 Recommendations of the Royal Commission into Aboriginal Deaths in Custody.
- Addressing the underlying issues that lead to the over-representation of Indigenous Australian in the criminal Justice system.
- Replace a "Tough on Crime" with a "Smart on Crime" approach.
- Subsidise cultural awareness training for Law Firms who undertake Pro Bono work for Indigenous Australians.
- Introduce a Legal Aid Impact Statement prior to new legislation being presented to Parliament.
- A notion of social inclusion that does not forget about the need of cultural inclusion.

The agenda of each government should never be to 'mainstream' service delivery. There is a need for both Indigenous specific Legal Services and mainstream services and not just mainstream services.

Opportunities

The opportunities for governments to work better together, to ensure that Indigenous Australians have access to justice, are to:

- Tap into the SCAG process as "Indigenous law and Justice" is a standing agenda item of SCAG.
- Utilise the National Indigenous Law and Justice Advisory Body that the Federal Government plans to introduce.
- Speak to those States and/or Territories that have made some progress in achieving a "Whole-of-Government" approach.

Some guidelines on how governments should work together are:

- Avoid cost shifting;
- Be prepared to work towards a "Whole-of-Government" approach; and
- Be jointly accountable to the Indigenous Australian community.

Increased collaboration between governments is a necessity in order to eliminate the hurdles that stand in the way of Indigenous Australians achieving Access to Justice.