

## **Access to Information on Civil Law for Remote and Rural Indigenous Peoples**

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## ACCESS TO INFORMATION ON CIVIL LAW FOR REMOTE AND RURAL INDIGENOUS PEOPLES

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*by Loretta de Plevitz and Heron Loban*

The United Nations Development Program on access to justice has observed that:

Legal awareness is critical to seeking justice. Poor and disadvantaged people often do not make use of laws, rights and government services because they simply do not know about them... Lack of legal awareness is a powerful impediment to those seeking access to justice. Those who are subject to grievances cannot seek a remedy unless they are aware that such a remedy exists. For awareness to be present, sufficient information has to reach people in ways they can understand.<sup>1</sup>

This issue is especially relevant in Australia where people in remote and rural areas have limited access to civil law information and often have 'no awareness that a problem is a legal problem...[or] that their rights have been infringed'.<sup>2</sup> For many Indigenous people, the only white law known to them is the criminal law which they or their family members encounter as offenders.

The Final Report of a Senate Inquiry into Access to Justice and Legal Aid, published in 2004, found that Indigenous people are 'disproportionately disadvantaged' when it comes to accessing the legal system.<sup>3</sup> It identified as a priority the need for culturally appropriate and culturally specific legal services for Indigenous people.<sup>4</sup> More specifically, the Senate Inquiry highlighted the Committee's grave concerns about the adequacy of legal services available to Indigenous women, particularly for civil matters relating to family law and family violence. It further identified serious problems for Indigenous people living in remote areas in accessing legal services. The Committee outlined an overall need for the expansion of services to adequately and properly meet the needs of Indigenous people living in remote areas.<sup>5</sup> Indeed, in its 2003 submission to the Inquiry, the Top End Women's Legal Service reported that access to justice in remote areas was

so inadequate that remote Indigenous people cannot be said to have full civil rights...they do not get adequate information let alone advice or representation about a range of civil law matters.<sup>6</sup>

The result is that Indigenous people in remote communities have no real means or opportunity to enforce their legal rights in civil law.

Apart from geographical barriers, inadequate funding for legal services for Indigenous peoples has narrowed the scope of services so that civil law problems and broad community legal education are prioritised well behind the vast and relentless work involved in representing individuals in criminal law matters.<sup>7</sup> The focus on providing criminal legal aid means even less access to services which could deal with civil matters such as housing, negligence, and employment law.<sup>8</sup>

A number of implications flow from not having access to timely advice and information about civil law issues. Unresolved legal problems can affect mental and physical health and a person's sense of wellbeing.<sup>9</sup> A person experiencing one legal event can become more vulnerable to additional problems, for example, a motor vehicle accident can lead to unemployment, burgeoning debt and welfare rights issues, or even criminal offences.<sup>10</sup> Without help, people feel the legal system does not support or assist them in dealing with their problems or meeting their legal needs. As a result, people develop distrust in the system and question its fairness.<sup>11</sup>

### THE PROJECT

Funded by a grant from the Queensland Government's Legal Practitioner Interest on Trust Accounts Fund, we set out to provide some accessible means to bridge the gap in civil law information. Drawing on a number of studies and experiences in community organisations, the authors identified the issues most likely to affect Indigenous people in rural and remote Queensland.

### CONSUMER RIGHTS

In rural and remote areas there may be only one place where people can shop. Consequently, they are often overcharged or sold out-of-date or sub-standard goods. Submissions to the Inquiry into Community Stores in Remote Aboriginal and Torres Strait Islander Communities repeatedly identify these as ongoing issues.<sup>12</sup> Further, salespersons

often misrepresent the benefits of insurance policies, mobile phone plans<sup>13</sup> and funeral schemes.<sup>14</sup>

Contributing to the high financial stress experienced by Indigenous people is the widespread practice of ‘book up’ or ‘book down’ – informal credit given by traders such as taxi drivers, stores, hawkers, hotels, and car yards – to enable consumers to purchase their goods or services.<sup>15</sup> This credit system is usually only available if the consumers hand over their debit card (and sometimes their PINs) to the trader or have their Centrelink payments sent to the relevant store.

‘Book up’ is used to deal with debt where people are financially dependent on the fortnightly payment cycle for welfare benefits and pensions. As money runs out before the next payment is due, and as many people in remote areas have limited access to financial services and guidance, they can find themselves in a ‘feast and famine’ debt cycle,<sup>16</sup> often with disastrous consequences. For example, many Indigenous Australians are in prison because they defaulted on fines for relatively minor traffic offences.<sup>17</sup>

#### FAMILY LAW

The limitations on government funding for Indigenous legal services particularly impact on women and children, as it is mainly men who use Indigenous legal services for criminal defence.<sup>18</sup> A lack of access to information and advice is of real concern because it is women and children who are most commonly the primary victims of family violence and family disputes. In circumstances where legal advice and support is urgently required in relation to matters such as contact and protection orders, the consequences of any delay can be dire. The Final Report of a Senate Inquiry into Access to Justice and Legal Aid identified the urgent need to improve the overall provision of legal and support services for Indigenous women.<sup>19</sup>

#### RACIAL DISCRIMINATION

The inadequacy of legal services funding means that legal aid providers cannot use contract funds to undertake ‘test cases’ which might otherwise address issues of systemic or institutionalised racism.<sup>20</sup> Indigenous peoples identify racial discrimination as a common feature of rural and remote life especially in relation to employment, buying goods, and the provision of government services such as education, health and housing. While these issues may appear relevant only to the affected individual, these same issues arise time and again, and are often the outcome of culturally inappropriate decisions made in far away capital cities. For example, Standard English is the

language of instruction in most Australian schools, yet many Indigenous schoolchildren in remote and rural areas speak it only as a second or third language after Aboriginal English and their own language. Though not motivated by racism, in these circumstances the education policy is unreasonable and has an adverse effect on students’ learning. In some instances this could amount to indirect or systemic discrimination.<sup>21</sup>

#### NATIVE TITLE AND CULTURAL HERITAGE

Native title registered prescribed bodies corporate and other community groups need clear and easily accessible information, not only regarding the application process, but also about how to enter into agreements with other landholders and how to manage legal obligations under corporations law. A major issue for native title prescribed bodies corporate is adequate funding – how are they to effectively carry out functions required by law and deal with external interests? Complex legal issues can arise for traditional landowners negotiating with government agencies or businesses seeking to carry out work on land or in the sea.<sup>22</sup> These issues can relate to the preservation of cultural heritage, compensation and land and sea management.

#### OTHER MATTERS

Several other key areas were identified where problems regularly arise for Indigenous people living in rural and remote areas. Advice and representation about compensation for victims of crime such as family violence is often difficult to access through the local Indigenous legal service because of the potential conflict of interest in acting for both the victim and offender. Assistance and support for administrative appeals for matters such as Centrelink decisions is a further area of need, particularly for Indigenous people who have the care of children in accordance with customary practices that may not be recognised as legally legitimate. Tenancy, particularly in relation to public housing, is a common issue as many tenants do not understand their legal rights or how they can enforce them. Wills and estate planning remain a challenge as many Indigenous people die intestate.<sup>23</sup>

#### THE RESOURCES – A WEBSITE AND BOOKLET

After consultation with a range of community members and organisations, both in writing and in person, we reflected on the best way to inform people about existing services and how to address the most pressing issues. We prepared a simple booklet in a question-answer format, with case studies and contact details for relevant government or non-government sources, outlining where more information, complaint forms, or specific contact details would be

available. The legal issues were situated in a rights-based framework and this information was compiled into a booklet *Got Rights*, which was distributed to organisations and communities across Queensland in 2008 and 2009. A 'one stop shop' website<sup>24</sup> was constructed by the Indigenous Consumer Assistance Network, an Indigenous consumer advocacy organisation based in Cairns.<sup>25</sup>

We noted early in the project that many of the target users of the booklet and website may speak English as a second or third language.<sup>26</sup> We considered writing the materials in Indigenous languages, but feedback from consultations suggested Indigenous languages may be difficult to read, being oral and not written. Plain English was preferred for written resources. Consultations also identified narratives as an effective and accessible way for many people to understand how the law operates in an everyday context.

The scenarios address 16 major civil law issues; each is dedicated a page, both in the booklet and on the website, followed by a telephone number (toll free or local call cost) where a person can seek relevant assistance. This is important given the limited availability of appropriate services for Indigenous people, living in remote communities. The website has the added benefit of providing links to further information available on external websites, thereby facilitating easier access to up-to-date content such as complaint forms and legal processes. We note that, while a website resource has the benefits of being quick and easy to update in a cost effective way, some of the target users may not have ready access to the internet. The booklet was developed specifically to reach these people.

It is anticipated this project will provide a useful, relevant resource, which will assist community organisations and community justice groups in making more effective and informed referrals when faced with new enquiries from Indigenous clients.

#### FEEDBACK AND EVALUATION

After the booklet and website had been in use for a period of time, we sought feedback about the usefulness of the project in face-to-face interviews on Thursday Island and at Yarrabah, the largest Indigenous community in Australia. In both places community organisations made frequent use of the website and the booklet as a source of referral information.

Suggestions were made that the website could be improved by adding new scenarios and information relating to

particular local issues, such as fishing issues in the Torres Strait. These issues will be incorporated into the *Got Rights* website with the assistance of the Indigenous Consumer Assistance Network.

Further, it was noted that, while many people in remote and rural areas do not have access to telephones and the internet, they do have a radio. In response to this feedback, we intend to trial radio broadcasts of the material in Torres Strait Creole and Kala Lagaw Ya through the Torres Strait Islander Media Association.

Our research suggests the following strategies may help increase access to legal rights by Indigenous people living in remote and rural areas:

- Information about civil law issues should be developed in an easily accessible and engaging form, using strategies such as narratives, plain English, and illustrations
- Websites that provide basic information need to be supported by people with appropriate knowledge, training and cultural sensitivity
- Legal studies and education about basic civil law issues and human rights should be made available in schools and community venues.

These recommendations are based on systemic deficiencies, including English as the language of the law and courts, availability of culturally appropriate and easily accessible information about the law, and the need to educate young Indigenous people about their rights. This last factor is particularly important because of the early contact many young people have with the legal system compared to their non-Indigenous peers.

#### CONCLUSION

Lack of access to civil law information and advice is a serious issue for Indigenous people in rural and remote areas. While the *Got Rights* booklet and website cannot in any way act as a substitute for culturally appropriate and culturally specific legal services delivered in person, they are designed to improve access to civil law information by creating *awareness* of issues as having both a basis and remedy in law. We have tried to provide an information gateway so that non-criminal matters can be dealt with at an early stage, people can access their legal entitlements where they live without the need for travel to consult with solicitors, and Indigenous communities can become empowered through increased knowledge and civic understanding. Information sessions and workshops would further expand on this work to increase and strengthen engagement with civil law issues and to start to develop

stronger pathways to accessing desperately needed legal advice and justice. After all, it is only with this essential knowledge about their rights that Indigenous people can begin to properly and meaningfully assert them.

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- 1 United Nations Development Programme, *Programming for Justice: Access for All - A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice* (2005), 140 at <<http://regionalcentrebangkok.undp.or.th/practices/governance/a2j/docs/chapter5.pdf>>.
- 2 Submission to Senate Legal and Constitutional References Committee Inquiry into Legal Aid and Access to Justice, Parliament of Australia, Canberra, 25 August 2003, 7 (Miwatj Aboriginal Legal Service). The 2003 Senate Inquiry did not resolve the issues of access. Another inquiry is presently underway.
- 3 Senate Legal and Constitutional References Committee Inquiry into Legal Aid and Access to Justice, Parliament of Australia, Canberra, June 2004, 108.
- 4 *Ibid.*
- 5 *Ibid* 111.
- 6 Submission to Senate Legal and Constitutional References Committee Inquiry into Legal Aid and Access to Justice, Parliament of Australia, Canberra, 1 (The Top End Women's Legal Service).
- 7 Submission to Senate Legal and Constitutional References Committee Inquiry into Legal Aid and Access to Justice, Parliament of Australia, Canberra, 11 July 2003, 2 (Katherine Regional Aboriginal Legal Aid Service).
- 8 Melanie Schwartz and Chris Cunneen, 'Working Cheaper, Working Harder: Inequity in Funding for Aboriginal and Torres Strait Islander Legal Services' (2009) 7(10) *Indigenous Law Bulletin* 19.
- 9 Christine Coumarelos, Zhigang Wei and Albert Zhou, *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas*, (2006), 107, 161, available at <[http://xml.lawfoundation.net.au/ljf/site/articleIDs/B9662F72F04ECB17CA25713E001D6BB A/\\$file/Justice\\_Made\\_to\\_Measure.pdf](http://xml.lawfoundation.net.au/ljf/site/articleIDs/B9662F72F04ECB17CA25713E001D6BB A/$file/Justice_Made_to_Measure.pdf)>.
- 10 Joint Committee of Public Accounts and Audit, *Report 403: Access of Indigenous Australians to Law and Justice Services* (2005) [2.23], available at <<http://www.aph.gov.au/house/committee/jpaa/atsis/report.htm>>.
- 11 Homeless Persons' Legal Service and Public Interest Advocacy Centre, *Not Such a Fine Thing! Options for Reform of the Management of Fines Matters in NSW* (2006), 11, available at <<http://www.piac.asn.au/publications/pubs/06.04-COMPILED%20Fines%20Report.pdf>>.
- 12 For example see, Submission to House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into Community Stores in Remote Aboriginal and Torres Strait Islander Communities, Parliament of Australia, Canberra, 3 April 2009 (Kowanyama Aboriginal Shire Council).
- 13 *Australian Competition and Consumer Commission v EDirect Pty Ltd* [2008] FCA 65.
- 14 *Australian Securities and Investments Commission v Aboriginal Community Benefit Fund Pty Ltd* [2004] FCA 178.
- 15 Australian Securities and Investments Commission, *Report 12 Book Up: Some Consumer Problems*, (2002), available at <[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Book\\_Up.pdf/\\$file/Book\\_Up.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Book_Up.pdf/$file/Book_Up.pdf)>.
- 16 *Ibid*, 44.
- 17 Submission to Senate Legal and Constitutional Affairs Inquiry into Access to Justice, Parliament of Australia, Canberra, 30 April 2009, 2 (The Law Society of New South Wales).
- 18 Rene Adams and Yasmin Hunter, 'Surviving Justice: Family Violence, Sexual Assault and Child Sexual Assault in Remote Aboriginal communities in NSW' (2007) 7(1) *Indigenous Law Bulletin* 26; Rowena Medland, 'Re-victimisation of the Victim: Family Violence Issues facing Indigenous Women in Cape York', (2007) 7(1) *Indigenous Law Bulletin* 29.
- 19 Senate Legal and Constitutional References Committee Inquiry into Legal Aid and Access to Justice, above n 3, 110.
- 20 Submission to Senate Legal and Constitutional References Committee Inquiry into Legal Aid and Access to Justice, Parliament of Australia, Canberra, March 2004, 4 (National Association of Community Legal Centres).
- 21 Loretta de Plevitz, 'Systemic Racism: The Hidden Barrier to Educational Success for Indigenous Students', (2007) 51(1) *Australian Journal of Education* 54-71.
- 22 AIATSIS, Native Title Newsletter November/December, No.6 2007
- 23 This last was identified by Coumarelos, Wei, and Zhou, above n 10, 171, as an 'unrecognised legal need'.
- 24 See <[www.gotrights.info](http://www.gotrights.info)>.
- 25 See <[www.ican.org.au](http://www.ican.org.au)>.
- 26 According to the Australian Bureau of Statistics data in *Population Characteristics, Aboriginal and Torres Strait Islander Australians*, Catalogue No 4713.0 (2006), "Indigenous languages were much more likely to be reported by Indigenous people living in geographically remote areas. Over half the Indigenous people living in very remote areas (56%) reported speaking an Indigenous language at home, compared with 1% of those in major cities."