

Introduction

Legal Aid Queensland (LAQ) welcomes the Crime and Misconduct Commission (CMC) Inquiry into policing in Indigenous communities.

Legal Aid Queensland's services for Indigenous clients

Integrated Indigenous Strategy Unit

While many Indigenous people obtain legal advice and representation through the Aboriginal and Torres Strait Islander Legal Services (ATSILS), LAQ also represents Indigenous people who need legal representation.

The LAQ Integrated Indigenous Strategy Unit (IISU) began work in 1999 in response to the recommendations of the Aboriginal and Torres Strait Islander Women's Taskforce on Violence Report 1999. The IISU's objective is:

*To improve access to justice generally for Indigenous Queenslanders,
particularly Indigenous women and children.*

Historically LAQ has provided services to women and children who need legal advice and representation in criminal compensation matters. These services have been delivered in Rockhampton, Townsville, Mt Isa and Cairns. LAQ has recently reviewed the Integrated Indigenous Strategy and the IISU. The IISU will now:

- › operate from LAQ's Townsville and Cairns offices, servicing the four communities in each region with the highest legal needs
- › send a solicitor and community liaison officer to visit these communities on a monthly basis, ideally to coincide with court visits
- › employ solicitors for the unit who have a range of legal experience, particularly in family law and civil law matters, and who must have undertaken cultural awareness training
- › provide community legal education through health services or other community agencies to raise awareness of legal rights about domestic violence, family law, child protection and the legal system generally and
- › train and employ two part-time community liaison officers to work in each of the four communities for five hours per week to assist the work of LAQ by providing information and support to community members between staff visits and to seek assistance from LAQ between visits on behalf of community members.

LAQ will review this service delivery model for Indigenous communities after 12 months.

Indigenous information line - 1300 650 143

The Indigenous information line is a priority phone line that allows Indigenous people to access information and advice for the cost of a local call from anywhere within Queensland. The phone line gives Indigenous clients access to information and referrals even if they live in remote parts of the state where there are limited legal services.

Indigenous mediation program – Yarrabah

LAQ has operated a family law conferencing program to help people resolve family law related disputes without going to court since the mid 1980s. In response to the limited use of the

program by Indigenous clients, LAQ developed the Indigenous family conferencing program. After extensive consultation with the Indigenous community, the Yarrabah community agreed to be the program's first site. The program aims to improve Indigenous clients' access to family law (mediation) conferences, enabling them to resolve their family law disputes, while avoiding litigation and escalation and the subsequent involvement of other agencies in disputes.

The Indigenous family conferencing program was established in Yarrabah using LAQ's existing resources and infrastructure, including its Integrated Indigenous Strategy Unit. LAQ funded the development and delivery of an Indigenous mediation training package by AbSolve, an Indigenous business specialising in Indigenous dispute resolution, conflict management, mediation and peace-building processes. This training was delivered in 2006. Four members of the Yarrabah community have been appointed as Indigenous conference chairpersons.

The Yarrabah program involves a long-term commitment by LAQ to the concept of an Indigenous mediation model in partnership with the Yarrabah community. LAQ recognises that the success of the Indigenous Family Conferencing Program in Yarrabah relies on it maintaining its commitment to providing ongoing support and training for the local mediators.

Memorandum of understanding between LAQ and ATSILS

In December 2006, LAQ, the Townsville Aboriginal and Torres Strait Islander Community Legal Services (ATSILS NQ) and the Aboriginal and Torres Strait Islander Legal Service Ltd (ATSILS Qld Sth) signed a Memorandum of Understanding to clarify their working relationship (see attachment 1). The MOU outlines the organisations' commitment to:

- › cross-referral arrangements between the organisations to ensure clients receive legal help from the organisation with the greatest level of expertise in a particular law area
- › working together on policy development and law reform issues
- › providing joint training opportunities for staff
- › sharing statistics and other information to support decision making about services and to identify areas of need and
- › holding regular meetings to discuss service delivery gaps, strategic direction and conduct operational planning.

Under its arrangements with the ATSILS, LAQ reimburses the ATSILS for disbursements, like expert reports and counsel fees in state criminal law matters. LAQ's in-house legal counsel often appear on behalf of Indigenous offenders who are represented by the ATSILS on court circuits. LAQ is also administering funding from the Department of Justice and Attorney-General to the ATSILS for the legal representation of offenders participating in the Queensland Alcohol Diversion Program.

Submission on policing issues

LAQ has had the benefit of reading the submission of the Human Rights and Equal Opportunity Commission (HREOC) to the coroner in the inquest into the death of Mulrunji on Palm Island on 19 November 2004 (attachment 2). That submission is a comprehensive analysis of the human rights and policy issues relevant in the death in custody of Mulrunji. However, the issues raised in the HREOC submission also have much wider relevance in relation to the policing of Indigenous communities more generally.

LAQ endorses and adopts the HREOC submission and recommendations for the purposes of its submission to this inquiry.

This submission highlights a number of issues raised in the HREOC submission relevant to the way police perform their duties and exercise discretion when working in Indigenous communities. It also proposes greater funding and support for community justice groups and other services in Indigenous communities to assist police to perform their role and to provide diversion facilities and treatment interventions for people affected by alcohol. Finally, this submission proposes an on-going project supported by justice and community agencies that could offer a model for the coordination of justice services and complementary interventions in partnership with local Indigenous communities.

Policing-specific issues

The discretion to arrest and the detention of intoxicated people in police cells

LAQ supports the HREOC recommendation that the *Police Powers and Responsibilities Act 2000* (PPRA) and the OPM should be amended to:

- › reflect the principle of arrest as a last resort (by amending s 198(1)) and
- › impose a statutory duty on police officers to consider and utilise alternatives to the detention of intoxicated persons in police cells.

This position is consistent with Recommendation 87 of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) Report, which stated:

- › All Police Services should adopt and apply the principle of arrest being the sanction of last resort in dealing with offenders.
- › Police administrators should train and instruct police officers accordingly and should closely check that this principle is carried out in practice.

Despite the State Government claiming over many years that the RCIADIC recommendations have been implemented, it is clear that Recommendation 87 — which is potentially a critical factor in reducing deaths in custody — has not been implemented in terms of daily policing practice in Queensland.

LAQ would welcome the CMC undertaking a review of the implementation of the RCIADIC recommendations by the Queensland Government. In particular, any review would need to determine whether the implementation has been in the spirit of the RCIADIC report, or whether it has merely been a ‘tick the box’ exercise that could not be expected to have any real impact on the ground.

At the very least the arrest as a last resort principle should apply in the case of all public nuisance and public drunkenness offences to reduce the potential for Indigenous people who are drunk to be arrested and held in a police cell.

Detention of juveniles

Detaining juveniles in police stations and watchhouses in remote Indigenous communities is also a matter of concern. Many of these facilities are inadequate and inappropriate for the detention of children. Police should be applying the principle of arrest as a last resort in relation to suspected juvenile offenders. The CMC should undertake an audit of police stations and

watchhouses in remote communities to determine their appropriateness for holding children in custody. Until facilities meet minimum standards, children should not be held in custody in them. Minimum standards should also apply to transporting children from remote communities to larger regional centres or detention centres. The case of the child who was transported hundreds of kilometres in an open cage on the back of a vehicle should never be repeated. Officers who breach procedures relating to the detention and transportation of any suspects or alleged offenders should be disciplined.

Negotiation of Local Community Safety Plans by police and CJGs

RCIADIC Recommendation 215 provided:

That Police Services introduce procedures, in consultation with appropriate Aboriginal organisations, whereby negotiation will take place at the local level between Aboriginal communities and police concerning police activities affecting such communities, including:

- a. The methods of policing used, with particular reference to police conduct perceived by the Aboriginal community as harassment or discrimination
- b. Any problems perceived by Aboriginal people and
- c. Any problems perceived by police.

Such negotiations must be with representative community organisations, not Aboriginal people selected by police, and must be frank and open, and with a willingness to discuss issues notwithstanding the absence of formal complaints.

LAQ recognises that police in many Indigenous communities have been active in engaging with the community about policing and safety issues. However, this has occurred on an ad hoc basis and is not formally required as part of the role of police officers in these communities.

LAQ is of the view that police in Indigenous communities and the local Community Justice Group (CJG) should be required to work together to develop an annual Local Community Safety Plan. The plan should outline the respective roles and responsibilities of the QPS and the local community and address those issues outlined in RCIADIC recommendation 215. Annual reporting on the achievements under the plans should also be required. These obligations could be imposed by the Police Commissioner on police units in areas where there is a significant Indigenous population and an operating CJG. It could also be imposed on the CJGs under legislation created to establish them on a legal footing (see below for discussion of this issue).

Cameras in all parts of police stations and watchhouses

The Mulrunji death in custody also provided a strong case for the need to have cameras in all parts of police stations and watchhouses, not just in interview rooms and cells. If cameras had been installed and operating in the public areas of the police station, there could have been no dispute about what occurred in the police station after the arrest of Mulrunji or how he incurred his fatal injuries. LAQ submits that cameras installed in these areas should have up-to-date technology and the capacity to record. The QPS should be resourced to ensure officers are trained in the use of the cameras for recording and monitoring purposes. Operational procedures should require officers to ensure the technology is operating properly and continuously. Cameras in all parts of police stations and watchhouses would provide protection for both police and offenders from false allegations of misbehaviour and misconduct.

Training of police officers

LAQ also supports the HREOC recommendation that police officers who are to serve in Indigenous communities should receive specific training on the recommendations of the RCIADIC and how these recommendations are relevant to policing in Indigenous communities and the exercise of the discretion to arrest. Officers should receive specific training about the particular policing issues that arise in remote Indigenous communities and how best to respond to them. Upon arrival in an Indigenous community officers should receive a local induction and orientation that provides information to the officer about the community's history, the particular policing and community safety issues in that community and the names and roles of local community elders and members of the community justice group.

Resourcing for the QPS to employ and retain Indigenous police officers

LAQ supports the QPS commitment to a target ratio of employees who identify as being of Aboriginal or Torres Strait Islander descent within the Queensland Police Service of 2.4 percent sworn police officers and 4.0 percent staff members. Additional support and resources should be provided to the QPS to assist in the achievement of this goal and the retention of Indigenous police officers and staff.

CMC to investigate deaths in custody from the outset

While the focus of this submission and the CMC inquiry is on the general policing of Indigenous communities, there is a separate but related issue that LAQ considers is timely to address in this submission. Even with the best of efforts and intentions from the QPS and Indigenous communities across Queensland, it is likely there will be future deaths in police custody of Indigenous people. As the Mulrunji death and subsequent controversy has illustrated, it is essential these tragic incidents are investigated in a timely, objective and impartial manner. LAQ submits it is critical to the confidence of the Indigenous community (and the broader Queensland community) in the investigation of such a death, that it is conducted, only, and from the outset, by the CMC.

LAQ recognises the CMC's resources are stretched by increasing demands for its services and investigations. However, it is LAQ's view that there is no other incident or allegation of official misconduct of such importance that it should be given priority over an investigation involving a death in police custody. The conduct of the investigation into the death of Mulrunji, by local QPS officers with a personal friendship with the arresting officer, called into question the seriousness with which the government, the QPS and the CMC view these incidents. The CMC should commit to a formal policy of exclusive investigation of all deaths in police custody (subject to the necessary actions of local police immediately after a death).

The case for a comprehensive approach to reducing crime and violence in Indigenous communities

The QPS cannot be expected to single-handedly resolve the social problems in Indigenous communities that lead to alcohol abuse, conflict and violence, and ultimately, the need for police intervention. The QPS requires more support from government agencies and the Indigenous community to perform its role. More facilities and health and community services are necessary if the police are to be able to divert Indigenous people, particularly intoxicated people, from custody and to assist Indigenous communities to be safe places to live in the long term.

LAQ is aware of the Indigenous Partnership Agreement recently entered into by the Queensland Government and Queensland's Aboriginal and mainland Torres Strait Islander communities. The principles and scope of the partnership agreement will provide a strong base for the government to respond to the report of the CMC Inquiry into Policing Indigenous Communities. The following proposal by LAQ for a comprehensive approach to reducing crime and violence in Indigenous communities is consistent with the commitment and approach outlined in the Partnership Agreement and could provide a model for action under that agreement.

Support and funding for community justice groups

While Indigenous communities need to actively support police to perform their role, it needs to be recognised that many Indigenous people, particularly elders, already commit significant time to volunteer and community work.

The effectiveness of CJGs was recognised in the Cape York Justice Study, which made a range of recommendations about providing them with appropriate support and structures within which they could effectively operate. The HREOC submission to the Coroner in the Mulrunji inquest observed:

[T]he RCIADIC report noted the importance of effective communication between police and members of the community: having 'a real say at the local level in how their community is policed.' Also of great importance was having strong and supported Aboriginal organisations involved in such a process of ongoing communication. (HREOC submission, p 16 [79])

The RCIADIC observed:

I would like to make the point that a key element in the success of Aboriginal organisations is the legislative and administrative support offered by government to these organisations. The conditions under which effective social control can be exercised requires the effective development of an independent base for action by Aboriginal people and for the growth of strong Aboriginal organisations. While these organisations may be extremely effective in their own right, without external supports, the effectiveness of Aboriginal organisation strategies can be severely curtailed.

The CJGs are not established under a proper legislative framework, with the legal status and protections that such a scheme would provide. This is despite the fact various pieces of Queensland legislation impose certain roles and responsibilities on CJGs. The legislation supporting the Alcohol Management Plans (AMPs) and the responsibilities of CJGs under section 9(2)(o) of the *Penalties and Sentences Act 1992* are cases in point.

While the government has a funding program for CJGs, the funding is not equitably distributed, with some CJGs receiving no funding at all. Where CJGs are funded, it is not sufficient for them to function effectively and to provide the range of services and support to government agencies that is expected of them.

¹ RCIADIC National Report, v 4 p 80 [29.1.1].

² Ibid 83 [29.2.1].

³ Ibid 83 [29.2.1].

Some of the voluntary services being provided by community elders and CJG members include:

- › sitting as Justice of the Peace magistrates in remote communities when the magistrates court cannot sit frequently in that locality
- › providing information and reports to magistrates sitting as Murri Courts in the sentencing of Indigenous offenders
- › liaising with local police about policing and community safety issues
- › participating in a cell visitors scheme, such as Murri Watch, where Indigenous community members visit Indigenous people held in watchhouses
- › mediating community disputes (although in Yarrabah LAQ trained mediators are paid)
- › negotiating Alcohol Management Plans (AMPs) in their communities and
- › doing community patrols to pick up intoxicated people and take them to their homes, diversionary centres or other safe places to minimise their chances of causing a disturbance and/or being arrested.

Many of the Indigenous community members who undertake this voluntary work are quite elderly. The work they do can be very emotionally demanding. Much of it involves late nights and some of it, such as the negotiation of the AMPs, can put the elder into situations of conflict with other community members.

It is not reasonable for the government to continue to expect Indigenous community members to perform this level of community work without remuneration. The services many CJGs and elders are providing are critical and necessary services in their communities. Many of the services being provided by CJGs and other community members are to meet needs where government services are inadequate or non-existent.

It is LAQ's submission that a full review of the operation of the Community Justice Groups Program across Queensland should be undertaken. This review should consider:

- › whether the Community Justice Groups Program should be supported by legislation that gives the CJGs the status and protection of legal entities and recognises the range of statutory and other obligations imposed on CJGs
- › a core funding formula for CJGs that ensures that each CJG has adequate funding to provide the level and range of services that it is expected to provide
- › providing funding for at least one position in each CJG that performs a resource officer/ government liaison/community development role to assist the CJG to negotiate the complexities of dealing with government agencies and to assist the CJG to advocate for the needs of its community and develop appropriate programs to address community safety and justice issues. This role could also assist CJGs to identify projects for funding, develop project proposals and funding applications and document the operation of these programs and their outcomes for the information of government and other CJGs
- › the service needs of each CJG community, such as the need for community patrols, diversionary centres, safe places for women and children escaping violence, treatment programs such as anger management and domestic violence programs, and programs for children who have been the victims of violence or sexual abuse. This review of service needs should also include a strategy for the funding of the infrastructure and services

needed

- › proper remuneration for Indigenous Justices of the Peace who perform magistrates functions to ensure Indigenous JPs give this function priority and are available when required. Remuneration for Indigenous JPs is only reasonable and would be proper recognition of their critical role in the delivery of justice services to their communities and
- › at the same time, the policing needs of Indigenous communities also need to be assessed on a case-by-case basis to ensure there is coordination of services and functions between the police and the community (see discussion above on ‘Negotiation of Local Community Safety Plans by police and CJGs’).

Funding for infrastructure and services and a long-term commitment to outcomes for Indigenous communities

As was noted by HREOC in its submission to the coroner in the Mulrunji case, there were no diversionary facilities on Palm Island to which intoxicated people could be diverted from police custody. In cases where intoxicated people are causing a disturbance or posing a danger to themselves or others, there is no alternative to police intervention unless there is a community patrol that can intervene and take the person to a safe place or diversionary centre.

It is no longer acceptable that services critical to effective policing and community safety in Indigenous communities remain unresourced and unavailable.

Based on the service needs review described in the section above, the government needs to develop a funding strategy for a range of services in Indigenous communities. Priority must be given to providing infrastructure and resourcing for some critical services, such as community patrols, diversionary centres, domestic violence services and shelters for women and children escaping abuse. Complementary secondary services will need to follow, such as healing programs and alcohol treatment programs.

To really make a difference in these communities will require enormous government commitment and investment over the long term. The government will need to maintain its focus and engagement with the communities over many years. A short-term injection of money with a lot of media coverage will not deliver the outcomes the Indigenous community deserves and the broader community now expects.

As an agency that offers a statewide service, LAQ is acutely aware of the difficulties in attracting and retaining staff to work in regional and remote areas. LAQ is aware there are many designated positions in services delivery areas of government that remain unfilled in Indigenous communities because of a lack of skilled people prepared to work in these locations. The government will need to look at alternative methods and incentives for attracting workers to these communities, such as those adopted for recruiting doctors for the health system. All of the services funded should include a component for training of local Indigenous community members to provide employment opportunities in the community, but more importantly, to ensure services will be sustainable in the long-term.

Long-term project to develop a government/community partnership model for building safe and positive Indigenous communities

Failure of previous interventions and reports

Over many years, successive governments have made genuine efforts to address the problems and needs of Indigenous communities. However, these efforts have been characterised by a lack of coordination between agencies and either a one-size-fits-all approach or ad hoc individual projects at a local level. More recently, greater efforts have been made to deliver services in a more coordinated way, but it is difficult to effect change in communities that are in crisis and do not have basic facilities and services, such as diversionary centres, women's shelters and domestic violence services, to support a broader response to the communities' issues.

We have also seen many reports and reviews of Indigenous justice and community issues that have come and gone. Enormous effort has been put into these reports by various eminent people and their recommendations have been thoughtful and comprehensive. However, governments consistently respond to these reports on the basis that the recommendations must be "implemented" by some self-imposed deadline so the government can announce "it's fixed", after which the report is treated as finalised and no further commitment is required. Communities and their problems are not static things that can be "fixed" by a one-off action by government. A large number of the recommendations of the RCIADIC required long-term commitment by government and a change in culture and attitude within justice agencies that needs to be maintained. However, to a large degree the implementation of these recommendations, over time, has descended into a "tick the box" exercise, as was illustrated by the numerous failures by police to comply with the RCIADIC recommendations in the Mulrunji case.

Long-term project to build safe and positive Indigenous communities

LAQ does not want the CMC report on this inquiry to be destined for the same fate as previous reports on Indigenous justice issues. Accordingly, LAQ is proposing that, in addition to a range of recommendations for change, the CMC propose the establishment of a long-term project to develop a government/community partnership model for building safe and positive Indigenous communities.

If the government is serious about wanting to assist Indigenous communities to change, this project will not be easy or cheap. LAQ proposes the project be trialled in two communities initially. These communities would need to be selected taking into account a range of issues, but a primary consideration would be that the community wants to participate in the project. Basic crisis intervention services would need to be established in the trial communities. These would include a diversionary centre, a shelter for women and children escaping domestic violence and a domestic violence support service. The CJG in the community would need to receive minimum base funding that would allow the CJG to employ a manager/coordinator and a resource/government liaison/community development officer. It would also require funding to reimburse CJG members and other community people who assist with a range of services such as community patrols and conflict mediation.

The QPS, the CMC, LAQ, the Department of Justice and Attorney-General, Queensland Corrective Services, the Department of Education, Queensland Health, the Department of Child Safety, Department of Housing and the Department of Communities must make a commitment to participate in the project and to offer a dedicated senior officer for the project. These project officers will report directly to their Directors-General on the progress of the project.

A project steering committee should be formed including the government agencies identified above, along with the CJG and other community organisations and representatives that will oversee the project. The steering committee should identify actions and interventions for the community, and establish goals for the project that will include improvements in quality of life, accommodation, employment and training and the level of violence etc in the community. The steering committee should also develop the Local Community Safety Plan for the community. This plan will include the range of commitments from each agency to support the community to re-build and to become a safer, more positive place to live. It should also outline protocols for government agency and community responses to incidents of domestic violence, public nuisance, breaches of AMPs etc.

The steering committee should also engage with the private sector for support and assistance, where possible. A framework for reporting to government would need to be established. It might be appropriate to use the new taskforce's framework for this. The project steering committee should develop proposals for intervention and their funding to government. A model for fast-tracking funding for the project would also need to be established.

The government must also be prepared to offer positive incentives for communities to change and to achieve the goals of the Local Community Safety Plans. These incentives should be negotiated with the trial communities at the time of the development of the Local Community Safety Plans, but could include provision of community facilities such as swimming pools, sporting facilities or cultural centres.

LAQ commitment to the project

LAQ could offer to train community members in mediation using our Indigenous Mediation Model outlined in the introduction to this paper. It could also provide community legal education, particularly about domestic violence legislation and legal representation to women to seek domestic violence orders and make criminal injury compensation claims. LAQ could also use our Community Liaison Officer network to provide support to clients and local communities (depending upon the location of the pilot communities selected). Other social work services may also be able to be provided depending upon LAQ's ability to fund additional positions or the availability of existing staff.

Conclusion

The measures and interventions proposed in this submission need to be considered and developed in the context of each community's circumstances and objectives. These solutions need to be locally-driven with support and guidance from government and community agencies. What is required is to create the environment that will encourage hope and change in these communities. There will not be a one-size-fits-all solution here. Different communities have different problems that may require a different approach. What they all need is support and resourcing to deliver some critical services and interventions to manage their immediate crises and a long-term commitment to helping them to rehabilitate their communities so they can again be positive, safe places to live.