**Productivity Commission Inquiry into Access to Justice Arrangements**

**North Australian Aboriginal Justice Agency**

**Supplementary submission**

NAAJA provides these brief additional submissions ahead of its appearance before the Productivity Commission’s hearing in Darwin on 17 June 2014.

1. **Scope of NAAJA’s legal practice**

At the outset we note that NAAJA’s work is much broader than many of our counterparts. The draft report states that the casework of ATSILS is ‘almost entirely criminal in nature (around 90%)’ (p 31). This is not true of NAAJA.

Our legal practice comprises approximately 40% civil (including family) law and 60% criminal law. We have 18 lawyers in our civil practice out of 45 in total.

This has been a deliberate approach that reflects our commitment to providing access to justice for Aboriginal people, an awareness of the vast nature of unmet civil law need for Aboriginal people and the lack of any other service that can meet that need. For remote Aboriginal communities in the Top End, NAAJA is the only legal service that comes to their community to provide general civil law services.

Our civil law solicitors provide advice on all areas of civil law and representation in areas such as:

* Complaints about government services and departments
* Compensation claims against police and other government departments
* Child protection matters
* Adult guardianship matters
* Urban tenancies
* Statutory compensation
* Consumer matters
* Health care complaints
* Discrimination and human rights
* Coronial inquests
* Employment

Our family law solicitors provides services in

* Legal advice on family and child protection law
* Legal representation in parenting matters
* Referrals to Family Dispute Resolution
* Legal representation in child protection matters

Our welfare rights solicitors provide services in social security law, including income management and appeals of Centrelink decisions and remote tenancies.

It is important to note that NAAJA’s civil law work is significantly reliant on funding beyond our core operational contract. Eleven positions in our civil law practice (8 lawyers and 3 support staff), including our entire family law and welfare rights practices are reliant on additional funding. At this stage we are unsure of whether this funding will continue beyond June 2015 and expect that we may have to cease all services in family law as well as reduce civil law services as a result of funding not continuing.

The Draft Report recognises that the ever-increasing demand for criminal law services places great pressure on NAAJA and limits the extent to which we can properly meet the civil law needs of our clients. We support the ‘earmarking’ of funds for civil law services provided it increases our capacity to provide those services without reducing our ability to meet the pressing criminal law needs of Aboriginal people.

1. **Responding to ‘clusters’ of needs**

NAAJA’s coverage of civil and criminal law, community legal education and advocacy allows us to deal with a person’s ‘cluster’ of legal needs. We often have criminal clients who become clients of our Throughcare program and the civil section. In some cases we will have more than one civil lawyer working on different aspects of their legal needs. For example, a child protection client will often need assistance to apply for priority housing, assistance and advice regarding Centrelink debt or payment penalties, consumer law advice due to contracting with marginal service providers or require assistance in seeking victims of crime compensation. Our clients legal needs are often complex and intersecting. The Draft Report recognises unmet civil law needs can lead to criminal law consequences (p 28). This also works the other way – for example a person who is not granted bail may lose their tenancy and become homeless.

NAAJA’s clients also often need intensive support – completing forms, obtaining ID, referrals to other services - before legal work can begin. NAAJA civil staff will routinely assist clients with non-legal issues to ensure that their legal matter can be resolved. For example, we refer clients (including setting up appointments) to counsellors, domestic violence support and alcohol rehabilitation services; to doctors and clinics for follow up appointments, to financial counsellors for assistance with managing money and assist with letters outlining their current medical conditions, . For clients with child protection matters who live remotely, we often collect them from the airport and from their accommodation to take them to court. Without this extra service our clients’ legal matters may not be resolved or may resolve against their interests.

The need for intensive support for clients facing multiple and deeply-entrenched disadvantage is also important to keep in mind when considering the possible benefits of ADR. ADR processes can indeed be very effective, but access to legal services will, for many people, be critical to ensuring that they can participate fairly and meaningfully in ADR.

***Case study 1: Child protection and housing issues***

NAAJA’s civil service has been assisting a client who came to us for child protection assistance: her children had been removed from the remote community because of their high medical needs and concerns around violence in the community.

The child protection lawyer assisted the client to engage with the Department of Children and Families, which was seeking an order to remove the children into the care of the CEO for 18 years. This was reduced to a two year order with a reunification plan.

The welfare rights lawyer assisted the client to apply for priority housing in Darwin so she could see her children. It took one year to get the application approved due to a lack of clarity from the Department of Housing on how to transfer a remote tenant into an urban tenancy. The client needed assistance to obtain supporting documentation, including identification, bank statements and letters of support from housing providers.

Once the client was allocated a house, she needed assistance from the welfare rights lawyer to obtain bond assistance from 5 different service providers, each with separate processes and forms to complete. The client also needed assistance to read the tenancy agreement, connect power and water to the premises, and referral to tenancy support.

***Case study 2: Child protection, domestic violence and alcohol abuse***

NAAJA is assisting Ms W to have her 6 month old baby returned to her. The Department of Children and Families originally took the child into care and sought a 12 month order because of concerns about domestic violence in Ms W’s relationship, drinking and unsuitable housing.

NAAJA assisted Ms W to enrol in residential rehabilitation and organised for her to get domestic violence counselling while there. NAAJA met with Ms W and her extended family to work out a future housing plan. Ms W has decided to return to her home community at the end of her 3 months rehabilitation and live with her mother. DCF are assessing this plan. Now that Ms W is stable in her rehabilitation placement, NAAJA will apply to the court to allow her baby to live with her there.

***Case study 3: Criminal and civil law needs***

Mr G has an intellectual and physical disability and is under an adult guardianship order

Mr G was arrested for aggravated assault on a bus driver. He was found not guilty when the Magistrate heard the evidence that the bus driver had tried to refuse Mr G entry onto the bus and had assaulted Mr G by holding him by the neck. Once the NAAJA criminal solicitors had represented him successfully in the assault matter they referred him to the civil section.

NAAJA civil assisted Mr G to bring a discrimination and assault complaint against the bus company and the bus driver. This matter has been resolved.

NAAJA civil also assisted Mr G to make complaint to the NT Ombudsman about the handling of his case by the NT Police who were aware that Mr G is under guardianship, so should not be have been interviewed without a support person or his guardian.

The complaint also concerned the decision by police to release the client on bail from police custody under the condition that he could not catch public transport. He was put in a taxi, with no taxi fare, despite assurances made to his sister (and appointed guardian) that he would get home safely. NAAJA is also assisting Mr G to lodge a disability discrimination complaint against the NT Police.

1. **Changes in the Legal Landscape**

The Draft Report recognizes some of the complexities in meeting the legal needs of Aboriginal and Torres Strait Islander people. NAAJA welcomes the Commission’s recognition that specialized services for Aboriginal and Torres Strait Islander people remain justified.

It is also important to recognise that services like NAAJA work across a range of diverse legislative and policy environments that are constantly changing. We do not provide services in a static legal environment and this can add significantly to the complexity of our work. Particularly in the NT we have seen that changes impacting upon Aboriginal people and communities can be bold, complex and wide-ranging. It is also relevant to note that it is a feature of our clients’ profound social and economic disadvantage that they have constant contact with courts and government agencies so these changes often have profound and immediate effects upon them.

By way of example, considering just the work of NAAJA’s welfare rights team, there have been a significant number of changes to law and policy in recent years at both Federal and NT level which affect Aboriginal and Torres Strait Islanders’ daily lives and legal needs. Some of the changes since 2007 have been:

1. 2007 NT Emergency Response. One of the measures of this new and multi-faceted regime put all remote community residents who were Centrelink recipients under income management, whereby 50% of Centrelink payments were put into their bank account and 50% in an income management account administered by Centrelink. The income-managed funds could only be spent by direct allocations to community stores, or stored value cards at Kmart. This was a fundamental change to the way 15,000 Aboriginal people across the NT accessed their Centrelink payments.
2. 2008 the BasicsCard was introduced, for people to use to spend their income managed funds at small number of approved stores.
3. 2008 NT Local Government Reform – Community Councils dissolved and replaced with Super Shires – this saw significant changes in local community decision-making and access to service providers as well as community ownership and control of assets
4. 2009 Changes to CDEP – phase out of CDEP wages and transition of workers onto Centrelink income support payments
5. 2009 Commonwealth and Territory Housing take over remote public housing and service delivery; prior to this most remote tenants did not have recognised rights under tenancy law or had tenancy agreements. 2009 School Enrolment and Attendance Measure – linking parents’Centrelink payments to child’s school enrolment and attendance
6. 2010 Changes to income management – becomes NT wide
7. 2011 Three Strikes Policy (Territory Housing)
8. 2012 Introduction of Public Housing Safety Officers
9. 2013 Alcohol Mandatory Treatment Tribunal, with powers to income manage people
10. 2013 Changes to CDEP – Remote Community Jobs Project
11. 2013 Changes to income management – expanding the categories of vulnerable welfare payment recipients
12. 2014 Tenant Participation Policy (Territory Housing) – making at risk applicants and tenants participate in life skills training or face eviction or rejection of application
13. 2014 Local Government Reform – Shires replaced with Community Government Councils
14. 2014 – Repairs and maintenance services in some remote communities no longer provided by Shire Councils, now local contractors under tender

Services like NAAJA must constantly respond to these sorts of changes. This requires:

* Understanding the changes and their likely impact
* Providing considered feedback to legislators or policy makers about how the changes may impact on the community – often through detailed submissions and generally at the request of government which recognizes the depth of our expertise
* Communicating the changes to staff (legal and non-legal), clients and other service providers to ensure awareness and compliance with the law
* Developing resources, including for clients who are not literate and do not understand English, that explain the changes
* Monitoring the impact of the changes and ensuring that government is aware of the impact and consequences of the changes.

The demands of such responsive work limits the ability of services like NAAJA, along with the existing high demand for services and the high levels of disadvantage amongst our client group, mean that proactive, early-intervention work to assist people to avoid and resolve legal problems is rarely possible. Only specific program funding can give us the capacity to take on that sort of work.

1. **‘Bridging the gaps’**

NAAJA recognises that there is significant scope for improvement in the way that government engages with service providers. Inconsistencies in data collection across programs is one obvious example where changes can be made to allow for more informed decisions to be made about where funding is needed and what is being delivered for the funding. Any moves to streamline reporting requirements and reduce administrative burdens will always be welcomed.

NAAJA stresses, however, that the chronic and structural underfunding of legal assistance services to Aboriginal people in the Northern Territory remains a pressing issue. It is critical that the Commission appreciates that for an organisation like NAAJA in a jurisdiction like the NT, significant improvements in providing access to justice will not be achieved through internally allocating resources more efficiently or better co-ordinating with other service providers. Of course, we will always strive to do these things.

The best evidence available supports a clear finding that Aboriginal and Torres Strait Islander Legal Services are not adequately funded. To meet the recognised widespread unmet legal needs of Aboriginal and Torres Strait Islander people in the Northern Territory, a significant increase in funding is required. The Commission should state this clearly and unequivocally.

1. **Information services**

The Draft Report suggests that there is generally a problem with duplication and a lack of co-ordination amongst legal information providers (p 10). NAAJA disputes that this is an issue in the NT. The problem we face is significant gaps in services, not overlap. NAAJA’s experience is that in our small (but geographically vast) jurisdiction, there is a high level of co-ordination and collaboration.

The Draft Report proposes the Law Access model of a single referral point for legal information. This is unlikely to work for the NT.

Unlike in other jurisdictions, the Aboriginal and Torres Strait Islander Legal Services are the largest legal service providers in the NT (NAAJA is in fact the largest law practice in the NT, larger than the NT Legal Aid Commission).

NAAJA and CAALAS provide comprehensive services to clients across civil and criminal law and are the first port of call for Aboriginal people. It would be inefficient and frankly confusing for Aboriginal people to have to first call another service for ‘assistance and referral’ – particularly where other services have significant gaps in what services they provide (the NT Legal Aid Commission, for example, does not provide casework assistance in civil law).

The significant limitation of telephone and web-based information in meeting the legal needs of Aboriginal people in remote communities also needs to be recognised – the lack of access to reliable telephone and online services is itself a significant issue, as are the problems raised by language and communication issues (including high rates of deafness and hearing impairment amongst Aboriginal people).

1. **Role of Ombudsmen**

NAAJA supports the role of Ombudsmen in providing access to justice, but we note our concern that their effectiveness depends upon being properly resourced and having real ‘teeth’ by way of adequate enforcement mechanisms

We note that the Northern Territory Ombudsman does not have offices outside of Darwin and does not travel to remote communities. This significantly limits the efficacy of the Ombudsman’s work as well as access to the Ombudsman – making the role of NAAJA all the more important in ensuring that Aboriginal people can bring and maintain a complaint.

The unenforceable nature of the recommendations of Ombudsmen also highlights the role of agencies like NAAJA in advocacy to ensure that complaints result in action.

***Case study: Remote housing reforms***

In 2012, the Commonwealth Ombudsman released a report into remote housing reforms in the Northern Territory, complete with 13 detailed recommendations aimed at improving the administration of the remote housing reforms.

The report was drafted in response to complaints to the Commonwealth Ombudsman, its investigations, visits to remote communities in the NT and its engagement with key stakeholders including NAAJA.

Following the release of the report, NAAJA understands that the team within the Commonwealth Ombudsman that produced the report lost a significant portion of its funding and has been largely unable to follow up on the progress of its recommendations.

The NT Ombudsman does not have the resources to assume jurisdiction over the recommendations. It does not have conduct regular outreach visits and does not have the capacity to take on the volume of complaints regarding remote housing.

As a result, the majority of the recommendations remain unaddressed, wholly or in part.

The NT Legal Services, particularly the ATSILS, are left to pursue the many systemic issues in remote housing.

1. **Advocacy and Community Legal Education**

The Draft Report rightly recognises the importance and effectiveness of advocacy and community legal education (CLE) in meeting and responding to legal needs in a cost-effective way.

NAAJA stresses the importance of advocacy and CLE work being done by legal services such as NAAJA that have experience and knowledge from casework. NAAJA also has a unique perspective it is only service that provides regular legal services to remote Aboriginal communities in the Top End. This allows priority to be given to the issues that we know matter and to ensure that advocacy and education is well-informed.

As a result, NAAJA is constantly called upon by government to provide input into new policy and legislative proposals. Our input is often highly influential and results in significant changes and improvements to legislation and policy.

To give just one recent example, the Northern Territory Government has proposed to establish a civil and administrative tribunal in the NT. NAAJA is the only legal service on the Advisory Committee that has been established. NAAJA was asked to provide a submission to the Attorney General’s Department on a bill dealing with the conferral of jurisdiction for the new tribunal. We were given three days notice. We were the only legal aid agency in the NT to provide a detailed submission. The Department expressed their gratitude for our ‘extremely useful’ submission and it resulted in a number of important amendments to the Bill. Our concerns about the workability of jurisdiction over residential tenancy disputes has resulted in an extended consultation period to allow further consideration of the issues raised by NAAJA. We have been advised that the redrafted Bill will address the majority of NAAJA’s concerns.

NAAJA is also a regular contributor to public debates on important issues that impact upon access to justice for Aboriginal people. We see this as an important part of effective advocacy. Again, our contributions in the media and public forums are informed by our casework, our experience, expertise and knowledge about the needs of the community.

In the NT, NAAJA is one of the few organisations that can provide a ‘voice’ on these issues and ensure a balanced and informed debate. It is important that organisations engaging in advocacy are not limited in the way that they can pursue issues (for example by allowing submissions to government but not allowing media comment). Organisations know the issues and understand the political and social environment – if public comment will assist to progress an issue, it should be one of the tools available.

***Case study: remote housing issues***

For example, NAAJA has worked extensively on issues involving remote housing and tenancy issues. Some years ago NAAJA wrote to the NT Ombudsman regarding its concerns with remote rent. The NT Ombudsman declined to investigate the matter. NAAJA has consistently raised its concerns with Territory Housing. Because of the number of clients involved, the systemic nature of the concerns and the time matters were taking to resolve, NAAJA has commented publicly, including through the media, to elevate the profile of the issue. This sustained advocacy has seen changes by Territory Housing including:

* prioritising the recording of 40 000 remote tenants onto an electronic database, enabling it to track remote rent payments;
* commissioning a report on how to reconcile its remote rent payment system to ensure that rent payments are only made by those liable to pay rent; and
* reconciling $40 000 000 of remote rent payments made since 2009 (still in progress) resulting in many refunds of rent.

NAAJA’s CLE work is also vitally important in helping Aboriginal people engage with the legal system and build the confidence that will allow them to access justice. An example is the work we are doing with young people through the Clontarf Foundation and ABC Open Top End with the innovative ‘Filming Law Stories’ project: <https://open.abc.net.au/posts/law-stories-29sx4fc>. The project aims to combine legal education with media and film-making training. Nathan Perrin of Clontarf commented of the participants in the project: ‘The three lads who came across from the CSC Clontarf for the program are legitimate future leaders and outstanding role models for their peers, none of whom would be at school without the Clontarf program. An excellent example of organisations working together to improve the general prospects of young Indigenous people!’

1. **Conclusion**

NAAJA thanks the Commission for the opportunity to provide these further submissions. We urge the Commission to acknowledge some of the particular features of the NT legal landscape that make it, and work of NAAJA in it, unique and the critical role that NAAJA plays in providing access to justice for Aboriginal people in the Northern Territory.