



The Research Director

Communities, Disability Services and

Domestic and Family Violence Prevention Committee's Parliament House

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Dear Colleague,

RE: INQUIRY INTO THE ADEQUACY OF EXISTING FINANCIAL PROTECTIONS FOR QUEENSLAND'S SENIORS

We welcome and appreciate the opportunity to make a submission on the inquiry into the adequacy of existing financial protections for Queensland's seniors ('the inquiry').

PRELIMINARY CONSIDERATION: OUR BACKGROUND TO COMMENT

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd ("ATSILS") provides legal services to Aboriginal and Torres Strait Islander peoples throughout mainland Queensland. Our primary role is to provide criminal, civil and family law representation. We are also funded by the Commonwealth to perform a State-wide role in the key areas of: Law and Social Justice Reform; Community Legal Education and Monitoring Indigenous Australian Deaths in Custody. As an organisation which, for over four decades, has practiced at the coalface of the justice arena, we believe we are well placed to provide meaningful comment. Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences. We trust that our submission is of assistance.

CURRENT LEVELS OF FINANCIAL LITERACY AND HOW THEY CAN BE IMPROVED

ATSILS conducts community legal education presentations on financial products and also provides advice in this area throughout the state. In our experience, many of our clients have a low level of financial literacy, particularly in the more regional and/or remote areas. The Australian Competition and Consumer Commission recently released their 'Targeting Scams Report', which revealed that in 2014, almost one third of Aboriginal and Torres Strait Islanders who came into contact with a scammer lost money, which totalled more than \$740,000 lost across Australia (and that was just what was reported)¹.

From ATSILS perspective, the issue of seniors being scammed is bigger than just considering what can be done for those who are legally, or commonly, considered seniors. Aboriginal and Torres Strait Islander families are often strongly financially interdependent, which means that scams on seniors impact on the whole family. Also, we note that consideration of Aboriginal and Torres Strait Islander 'seniors' and/or 'elders' should consider two factors:

1. When using the term 'elderly', it is important to note that this term carries a different connotation for Aboriginal and Torres Strait Islander people in general. Many Aboriginal or Torres Strait Islander people would define elderly or 'elders' to be those that have been identified as such in the community according to lore or custom. In comparison, the commonly accepted legal definition of elders is those who are 65 years or older.
2. The term 'seniors' also must be used with a degree of caution. The life expectancy for Aboriginal and Torres Strait Islander people is significantly lower than that of the non-Indigenous population, therefore commonly 'elderly' Aboriginal or Torres Strait Islander people are defined as between 50 to 55 years of age².

We consider it important to identify the issues with the terms 'elderly' and 'seniors' because Aboriginal and Torres Strait Islander 'seniors' require support at a much earlier age than non-Indigenous seniors. Secondly, it is important to be wary of the connotation the terms carry for Aboriginal and Torres Strait Islander people so that they do not perceive themselves as ineligible for support and assistance because of misunderstandings about the terms 'seniors' and 'elders'.

¹ <http://ican.org.au/indigenous-consumers-lost-740000-to-scams-last-year/>

² <http://www.seniorsrights.org.au/toolkit/toolkit/what-is-elder-abuse/>

In this submission, any reference to Aboriginal or Torres Strait Islander seniors is intended as a reference to those who are 50 years of age and over (we do not use the term Elder so as to reduce confusion).

In our view, the two main factors to improving financial literacy are increasing community awareness on financial products (including fraud, scams, unfair business practices, ect), and reducing the barriers to accessing justice.

Increasing community awareness

ATSILS community legal education program has a strong emphasis on financial products and regularly presents on this issue. We also strongly support the Indigenous ‘Money Smart’ program run by the Australian Securities and Investment Commission³. This program has created a wide variety of culturally appropriate resources for Indigenous people and undertakes some community legal education throughout Australia. Rather than ‘reinventing the wheel’, we would strongly encourage supporting the Money Smart program to undertake more community legal education and promotion of consumer rights in Queensland.

Reducing the barriers to justice

There are significant barriers which prevent Aboriginal and Torres Strait Islander seniors being able to seek necessary assistance when they have been a victim of financial fraud or scams.

With respect to the barriers to justice, we refer to the Indigenous Legal Needs Project report into the civil and family law needs of Aboriginal and Torres Strait Islander people in Queensland finalised last year⁴. This was the largest research project of its type and identified significantly high levels of unmet family and civil law needs in Aboriginal and Torres Strait Islander communities (civil law needs included the consumer law issues of financial fraud or scams). This is a cause of major concern for several reasons including:

³ For further information, visit <https://www.moneysmart.gov.au/life-events-and-you/indigenous>

⁴ *The civil and family law needs of Indigenous people in Queensland*, report of the Australian Indigenous Legal Needs Project, James Cook University, 2014.

1. Financial entitlements are imperative to combating the social disadvantage experienced by Aboriginal and Torres Strait Islander people in all areas; and
2. There is a strong causal link between social disadvantage and high rates of criminal activity, meaning that one way to reduce the disproportionate imprisonment rate of Aboriginal and Torres Strait Islander people is to provide adequate family and civil law services to meet the needs⁵.

One of the main barriers which prevent Aboriginal and Torres Strait Islander seniors being able to seek necessary access to justice is simply the fact that they may be frail or suffering from a physical or mental disability. However on top of that, there are several other barriers which prevent Aboriginal and Torres Strait Islander people from being able to seek access to justice where they have been a victim of financial fraud or a scam, including:

1. A lack of awareness about consumer rights and protection. This problem is exacerbated by the fact that many Aboriginal or Torres Strait Islander people have limited access to financially suitable options for many things (including credit, water and electricity, etc.)⁶. This means that not only are many Aboriginal or Torres Strait Islander people in unfavourable financial arrangements to begin with, but also that fraud, scams and/or unconscionable conduct may often not be as obvious or apparent in the context of the other financial arrangements available.
2. The civil law system is perceived as being lengthy and arduous (quite rightly so) and many seniors feel that they would be unable to cope with the demands of having to prove their claim in a court system that they may not be familiar with.
3. Often legal issues have a 'snowballing' effect. This means that many Aboriginal or Torres Strait Islander seniors who have been a victim of a scam may feel exhausted or resign to accept their situation rather than seek advice or take legal action because they have more pressing matters to deal with⁷. For example, they may also commonly be facing eviction or legal demands requiring they pay utility bills.

⁵ Indigenous Legal Needs Project, James Cook University, Cairns *Submission to Productivity Commission Inquiry: Access to Justice Arrangements (2013)*

⁶ *The civil and family law needs of Indigenous people in Queensland*, report of the Australian Indigenous Legal Needs Project, James Cook University, 2014.

⁷ Indigenous Legal Needs Project, James Cook University, Cairns *Submission to Productivity Commission Inquiry: Access to Justice Arrangements (2013)*

1. In some cases, money scammed or defrauded is not retraceable so many people perceive little incentive in taking legal action.
2. Civil law services in remote or rural areas are extremely limited. If provided, they are often reliant on communication via internet or telephone. Given the complexity of this area of law, many people who are not confident with technology or do not have regular access to a telephone have no options available to seek legal advice.
3. Due to funding restrictions and the high incarceration rate of Aboriginal and Torres Strait Islander people, ATSILS and other legal services often must prioritise criminal law over civil and family law. Unfortunately this may leave some in the community with the perception that we do not offer legal assistance for victims of financial scams or fraud, or that we do not consider it important.

THE ROLE OF THE FINANCIAL SECTOR

A major factor inhibiting Aboriginal and Torres Strait Islander people from being able to seek effective access justice is the complexity of the law around scams. We therefore strongly urge the need for legislative reform in this area to allow for greater strategic intervention in fraud and unconscionable behaviour⁸.

We also suggest that there is a greater need for legislatively enforced 'cooling off' periods, particularly so where goods or services are marketed by telemarketers and/or door-to-door sales people. This cooling off period would allow clients time to seek advice or assistance on prior to being bound by the contract, and would reduce instances of unfair bullying tactics being used to push people into unfair contracts.

Furthermore or in the alternative, we suggest that contracts commonly involving fraud or scams be required to have a clause which strongly encouraging the person to actively seek legal advice before signing said contract, and that this clause be placed adjacent to the signing clause to ensure maximum exposure.

⁸ *The civil and family law needs of Indigenous people in Queensland*, report of the Australian Indigenous Legal Needs Project, James Cook University, 2014.

We also suggest that there needs to be a free, independent, culturally competent advice line for Aboriginal and Torres Strait Islander people on financial products. This advice line should be explicitly advertised to Aboriginal and Torres Strait Islander people where scams or fraud are common place. So for example, legislation could mandate that telemarketers and/or door-to-door sales people must advise a person that if they are Aboriginal or Torres Strait Islander and they are unsure of the product they are being offered, they should call the advice line before entering any contract. An advertisement for this advice line could also be advertised regularly on websites where fraud or scams are common place.

I close by once again thanking the Committee for this opportunity to have input into this very important area. If required, we would be only too pleased to provide additional information to the Committee.

Yours sincerely,



Shane Duffy

Chief Executive Officer