

THINKING ABOUT ACCESS TO JUSTICE

Indigenous Australians

The following supplements Chapter 13 and is referred to on page 394 of the textbook. It is one of two complementary exercises (this one on Indigenous Australians, the other on women).

We often hear the maxim that ignorance of the law is no excuse. This maxim has been argued as being necessary for the administration of justice so that people cannot claim ignorance of the law as a defence. The flipside is that most people have very little knowledge of the broad range of statute law, case law and even international law that applies to us all. We are all deemed to know of it.

Laws are generally written with wide applicability, and do not single out individuals. In legislation you often see the phrase 'no person shall' or 'any person'. This potential equality before the law lures many into thinking that people are all equal before the law. While one can argue this position, it is clear that there is not equality of access to the law. This has become a major critique of our legal system and led to the creation of institutions to try and correct this problem.

While we may be notionally equal before the law, few Australians have any direct input into new laws that are made. In fact many distinct societal groups have encountered structural barriers in accessing legal advice and legal services. Let's have a look at the situation of Indigenous Australians.

Chapters 8 and 9 of *Connecting with Law* outline the history of relations between the Indigenous inhabitants of Australia and the new settlers. The legacy of this history placed indigenous Australians at extreme levels of disadvantage. The following are key barriers to indigenous Australians accessing legal services identified in Schetzer & Henderson (2003), *Public consultations: a project to identify legal needs, pathways and barriers for disadvantaged people in NSW*, *Access to justice and legal needs vol. 1*, Law and Justice Foundation of NSW, Sydney, <http://www.lawfoundation.net.au/report/consultations>:

- a reluctance of Indigenous communities to involve outsiders in matters which they consider private and which would require them to 'hang out their dirty laundry', in front of strangers
- a lack of awareness by Indigenous people of the scope and ability of the law to resolve certain types of problems
- the limited ability of the law and traditional legal approaches to resolve problems that in many cases involve not just legal, but also significant political, historical and cultural issues
- the reliance on documentary evidence to substantiate legal claims and its reluctance to accept or rely on anecdotal or oral evidence by Aboriginal people
- long-term distrust of and previous negative experiences with the legal system
- formality of the legal system and its services
- lack of cultural awareness, sensitivity and compassion among justice system staff and legal service providers
- lack of Aboriginal personnel
- lack of relationship between the local Legal Aid office and the local community
- intimidation in approaching legal services
- lack of awareness of the services of Legal Aid
- the need to book Legal Aid's services
- location of legal aid offices
- lack of public transport to Legal Aid's offices.

To illustrate the overlap between the above category and this one, read Chapter 3 'Indigenous Women and Access to Legal Services' of the Joint Committee of Public Accounts and Audit, Parliament of Australia *Report 403: Access of Indigenous Australians to Law and Justice Services*, (2005). The chapter illustrates the issues that Indigenous women face in accessing legal services, and can be accessed online at <http://www.aph.gov.au/House/committee/jpaa/atsis/report.htm>.

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How should the law respond to fix the issues flagged in the Schetzer and Henderson report? Is it possible that the reforms needed are not necessarily legal? Read some suggested solutions posited in chapter 2 of the report online at <http://www.lawfoundation.net.au/ljf/app/&id=5B03EB7B96C25E56CA257060007D4EA8>

What it is clear from the above is that while law may appear value-neutral, it does not mean that it will apply in its effect equally. It's a lesson that you need to be mindful of when studying law. Many other groups experience similar structural barriers. Some of these issues are explored in *Connecting with Law* in Chapter 13.