

What Does 'Self-Determination' Mean in the Context of Legal Service Provision for Aboriginal and Torres Strait Islander Legal Services (ATSILS)?

by
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CERTIFICATE OF ORIGINAL AUTHORSHIP

I, Eddie Cubillo, declare that this thesis is submitted in fulfilment of the requirements for the award of PhD: Law in the Faculty of Law at the University of Technology Sydney.

This thesis is wholly my own work unless otherwise referenced or acknowledged. In addition, I certify that all information sources and literature used are indicated in the thesis.

This document has not been submitted for qualifications at any other academic institution.

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ABBREVIATIONS

ABS – Australian Bureau of Statistics

ACCHOs – Aboriginal Community Controlled Health Organisations

ACCHS – Aboriginal Community Controlled Health Sector

ACNC – Australian Charities and Not for Profits Commission

ACOSS – Australia Council of Social Services

ACT – Australian Capital Territory

ADC – Anti-Discrimination Commission

AGD – Attorney-General’s Department

AH&MRC – Aboriginal Health and Medical Research Council

AIHW – Australian Institute of Health and Welfare

AJAC – Aboriginal Justice Advisory Committee

ALRM – Aboriginal Legal Rights Movement

ALS – Aboriginal Legal Service

ALSWA – Aboriginal Legal Service of Western Australia

ASIC – Australian Securities & Investment Commission

ASIO – Australian Security Intelligence Organisation

ATSIC – Aboriginal and Torres Strait Islander Commission

ATSICHS – Aboriginal and Torres Strait Islander Community Health Service

ATSILS – Aboriginal and Torres Strait Islander Legal Services

ATSILS QLD – Queensland Aboriginal & Torres Strait Islanders Legal Services

ATSIS – Aboriginal and Torres Strait Islander Services

BIA – Federal Bureau of Indian Affairs

CAALAS – Central Australian Aboriginal Legal Service

CAEPR – Centre for Aboriginal Economic Policy Research

CATSIA – Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)

CATSINaM – Congress of Aboriginal and Torres Strait Islander Nurses and Midwives

CERD – United Nations Committee on the Elimination of Racial Discrimination

CET – Community Engagement Team

CHC – COAG Health Council

CLANT – Criminal Lawyers Association of the Northern Territory

CLC – Community Legal Centre

CLE – Community legal education

COAG – Council of Australian Governments

CoP – Coalition of Peaks
CQI – Continuous Quality Improvement
CRT – Critical Race Theory
CSOs – Court Support Officers
CTG – Closing the Gap
CWC – Cashless Welfare Card
DGR – Deductible Gift Recipient
DPP – Department of Public Prosecutions
EMRIP – Expert Mechanism on the Rights of Indigenous Peoples
FVPLS – Family Violence Prevention Legal Services
HRLC – Human Rights Law Centre
IAS – Indigenous Advancement Strategy
ICCPR – International Covenant on Civil and Political Rights
ICESCR – International Covenant on Economic, Social and Cultural Rights
ICGP – Indigenous Community Governance Project
IGA – Indigenous Governance Awards
ILAP – Indigenous Legal Assistance Program
ILNP – Indigenous Legal Needs Project
IUIH – Institute for Urban Indigenous Health
KPI – Key Performance Indicator
KRALAS – Katherine Aboriginal Legal Service
LAC – Legal Aid Commission
LCA – Law Council of Australia
LLB – Bachelor of Law
MMY – Mura Malla Yawuru
MYEFO – Mid-Year Economic and Fiscal Outlook
NAAJA – North Australian Aboriginal Justice Agency
NAALAS – North Australian Aboriginal Legal Service
NACCHO – National Aboriginal Community Controlled Health Organisation
NATSILS – National Aboriginal and Torres Strait Islander Legal Service
NBY – Nyamba Buru Yawuru
NHMRC – National Health and Medical Research Council
NSWALS – New South Wales Aboriginal Legal Service
NTLAC – Northern Territory Legal Aid Commission

NTRC – Royal Commission into the Protection and Detention of Children in the Northern Territory

NTU – Northern Territory University

ORIC – Office of the Registrar of Indigenous Corporation

PBC – Prescribed Body Corporate

PLO – Principle Legal Officer

QAIHC – Queensland Aboriginal and Islander Health Council

RCIADIC – The Royal Commission into Aboriginal Deaths in Custody

SEQ – South East Queensland

UN – United Nations

UNDRIP – United Nations Declaration on the Rights of Indigenous Peoples

US – United States

WA – Western Australia

YCG – Yawuru Corporate Group

YRRC – Yilli Rreung Regional Council

ABSTRACT

What does 'self-determination mean in the context of legal service provision by the Aboriginal and Torres Strait Islander Legal Services (ATSILS)? This thesis analyses the complex factors characterising the environment in which ATSILS continue to survive and continue to achieve just outcomes for Indigenous people in Australia's justice system. It also examines the Indigenous legal sector's commitment to Indigenous people and includes a comparative analysis of it with the Indigenous community-controlled health sector.

The research investigated whether or not the ATSILS model is the only model able to provide a legal service to Indigenous people – one that accommodates their clients' unique needs through the shared experiences of their cultural understanding and historical knowledge of its people and its places. Does self-determination play a part in this model, and could a hybrid form of self-management be replicated by non-Indigenous legal service organisations?

This thesis showcases my personal experience through this original contribution to scholarship. I also want to elevate the stories and accounts of First Nations people who have been working at the forefront of Aboriginal legal services since their inception by weaving their voices into the thesis. I include other key voices that have contributed to ATSILS, using my knowledge to put them into context but without losing what has been relayed.

This study's research question and data analysis were fundamentally shaped by my personal experiences as a Larrakia, Wadjigan, Central Arrente man from the Northern Territory. I am a Son, Brother, Uncle, Father, Grandfather, and Lawyer. I have been Chair of the North Australian Aboriginal Justice Agency (NAAJA), Chair of Yilli Rreung Regional Council (ATSIC), Discrimination Commissioner for the NT, NATSILS Executive Officer, and Director of Community Engagement for the Royal Commission into the Protection and Detention of Children in the NT. My cultural obligations to my family, people and land shape who I am.

This is not standard Law thesis, but its great strength is that it presents an Indigenous point of view.