

Indigenous Legal Needs Project submission to the Senate Inquiry into Access to Legal Assistance Services

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Indigenous Legal Needs Project

The Indigenous Legal Needs Project (ILNP) is the first comprehensive national study of Indigenous civil and family law needs conducted in Australia.² The ILNP seeks to identify priority areas of civil and family law need in Aboriginal and Torres Strait Islander communities and to improve Indigenous access to civil/family law justice. The ILNP was preceded by pilot research on non-criminal Indigenous legal need, conducted in 2008 in New South Wales (NSW). This pilot was funded by Legal Aid NSW.³ The current research is funded by an Australian Research Council linkage grant, commencing from 2011 and ending in mid-2015. It is being undertaken with the assistance of ILNP project partners; that is, Aboriginal and Torres Strait Islander Legal Services (ATSILS), Indigenous Family Violence Prevention and Legal Services (IFVPLS) and Legal Aid Commissions (LACs).

The ILNP has completed fieldwork in 32 remote, regional and urban Indigenous communities, distributed in equal number across the Northern Territory (NT), Victoria (VIC), Queensland (QLD) and Western Australia (WA), with a further 8 communities visited in NSW for the ILNP pilot project. At each of these communities, focus groups have been held with local Indigenous community members, who were asked to identify via a questionnaire whether they had experienced a range of civil or family law issues in the last two years and to discuss these legal issues, including whether and how they were resolved through legal and/or other assistance. Issues of access to justice more broadly were also discussed during these focus groups, with these groups yielding both quantitative and qualitative data. Interviews were also conducted in each community with relevant stakeholder organisations, including legal services, key Indigenous and community-based organisations and government agencies, providing the ILNP with further qualitative data. In total, the ILNP and its earlier pilot project has spoken with around 800 Indigenous men and women in focus groups and over 300 stakeholder organisations. It has presented research findings in five jurisdictional reports, with findings from four of these reports also presented as animated films, including as a means of feeding research findings back to Indigenous communities. All ILNP material, including reports, films, articles and submissions, is available on the ILNP website.

The ILNP Submission

The Senate has invited written submissions on Aboriginal and Torres Strait Islander experience of law enforcement and justice services, setting out a number of terms of reference. Those terms to which the ILNP responds are discussed below.

The extent to which Aboriginal and Torres Strait Islander Australians have access to legal assistance services

The ILNP has as its principal focus (a) the identification and analysis of the nature and extent

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² The ILNP website is at: <http://www.jcu.edu.au/ilnp/>

³ Findings of this pilot research are reported in Cunneen, C and Schwartz, M (2008) *The Family and Civil Law Needs of Aboriginal People in New South Wales*, UNSW, available at: http://www.jcu.edu.au/ilnp/public/groups/everyone/documents/technical_report/jcu_083446.pdf

of *civil and family law* need in Aboriginal and Torres Strait Islander communities and (b) exploration of the extent to which Indigenous people are able to access civil and family law justice (particularly through legal services), barriers inhibiting this access and strategies to overcome these barriers.

Measuring Indigenous civil and family law need

Current Indigenous access to legal assistance services is far from adequate, given the extent of legal need in Aboriginal and Torres Strait Islander communities. Whilst this is undoubtedly the case in a criminal law context, the ILNP has also found that civil and family law problems are experienced with considerable frequency on Indigenous communities, and that in the overwhelming majority of cases the problems in question are left unresolved, including due to poor levels of Indigenous access to legal help and information.

ILNP quantitative data has identified priority areas of Indigenous civil and family law need in ILNP focus communities as **housing (tenancy), discrimination, credit/debt (and associated consumer issues), child protection, social security and wills and estates**. These issues are identified as such primarily because of the proportion of ILNP focus group participants who reported experiencing them in recent years. A brief snapshot of some of the ILNP quantitative data relating to these priority areas follows, with further detail available in our jurisdictional reports.⁴

In the ILNP focus communities, tenancy disputes and problems concerning repairs/maintenance, debt, eviction and overcrowding were especially common, affecting almost half (48.2%) of all Indigenous focus group participants across the five states/territories visited. Legal need around housing varied by location and gender, as was the case in a number of other civil/family law areas. In some jurisdictions and in specific communities the percentage of participants impacted by a tenancy problem was much greater than 50%, reaching as high as 100%.⁵ Female participants were also much more likely than male participants to have experienced a tenancy-related problem, and were less likely to have accessed help in response.⁶ Overall, only a quarter (25.1%) of those experiencing tenancy issues had sought legal or other advice or had otherwise attempted to resolve the problem arising. Significantly, many individuals indicated that they had (unsuccessfully) sought to address their tenancy issue through the public housing provider with whom they were in dispute, rather than by accessing independent legal or other advice.

The ILNP has also identified that whilst 29.5% of all focus participants had experienced a credit/debt related issue, just over a third (34.6%) of those had attempted to deal with it, including through legal assistance. Nearly a quarter of all participants (22.6%) reported being discriminated against and only 12.4% of those facing discrimination had sought legal or other help in response. Over three quarters (76.6%) of all participants were in receipt of social security benefits and 26% of these individuals had experienced a dispute or problem in relation to their benefits. A meagre 7.5% of affected participants had sought legal or other assistance in relation to Centrelink-related issues. Further, only 9.1% of all participants had completed a will, 40% of those with legal assistance, which demonstrates the important role legal services play in meeting legal need. Over half of those without a will (58.6%) expressed

⁴ This data is drawn from a national summary of all of the ILNP data presented in five jurisdictional reports. This national summary of data has not yet been published by the ILNP.

⁵ In WA, for example, 60.1% of all Indigenous focus group participants identified experiencing a tenancy-related problem. In the community of Balgo (WA), 100% of participants had experienced a problem in this area. See Allison, F, Schwartz, M and Cunneen, C (2015), *The civil and family law needs of Indigenous people in WA* (ILNP WA Report), James Cook University (JCU): http://www.jcu.edu.au/ilnp/public/groups/everyone/documents/technical_report/jcu_144396.pdf

⁶ Nationally, 54.8% of women identified a problem in this area, compared with 40.6% of men; and 19.2% of women accessed legal or other help in response, compared with 29.4% of men.

a desire to access legal help to draw one up. A very similar pattern – relatively high levels of need and comparatively inadequate access to legal assistance - has emerged in non-priority areas of civil/family law, including education, victims' compensation, Stolen Generations/Stolen Wages and employment.

In measuring legal need in Indigenous communities it is necessary to consider not just the regularity with which specific legal issues are experienced, but also the way in which different types of legal problems run alongside each other and, at certain points, come together or coincide, causing legal need to intensify. The ILNP has referred to this as a 'snowballing' of legal problems. It has identified numerous instances of Aboriginal and Torres Strait Islander people being affected by multiple legal problems simultaneously,⁷ with often one or all of these problems set aside and left unaddressed, for a range of reasons,⁸ until perhaps they reach a crisis point such as eviction from a tenancy or escalation to a criminal law matter. This has implications for service delivery, including requiring that legal services expend additional resources on working with Indigenous clients to effectively address need. They must, for instance, spend time 'unpacking' the complexity of the issues in question, they should approach this need holistically and should censure greater access to legal help as soon as possible after issues arise.⁹

An example of the interaction between various legal problems is that provided by family violence. ILNP participants report that a victim of family violence may take on a partner's debt under duress, may become financially and otherwise liable for damage caused to their rental home by a violent partner or family member, and may also be at higher risk of having children removed by child protection agencies. Conversely, an unresolved family law dispute and/or debt and other stressors associated with civil/family law problems may escalate to an incident or incidents of family violence. For Aboriginal and Torres Strait Islander people, racial discrimination is another very prevalent issue which commonly travels alongside a range of other legal problems, compounding Indigenous legal need. Discrimination connects, for instance, with the civil law issues of education (through bullying at or expulsion from school), employment (denial of a job, unfair dismissal) and housing (denial of a private tenancy application, disproportionate impacts of public housing provider policies). It is also an issue with real potential to escalate to offending.¹⁰

ILNP qualitative data also provides evidence of the necessity for increased access to civil and family law assistance in Aboriginal and Torres Strait Islander communities. As just one example of this, whilst nationally around one in six ILNP focus group participants (14.6%) had experienced a problem or dispute relating to removal of children by government (19.4%

⁷ See also Coumarelos, C, Macourt, D, People, J, McDonald, H, Wei, Z, Iriana, R & Ramsey, S (2012), *Legal Australia-Wide Survey. Legal Need in Australia*, Sydney, Law and Justice Foundation of NSW, p. 178

⁸ These reasons include being overwhelmed with issues needing attention and not feeling able, therefore, to prioritise a civil or family law matter (unless it is at crisis point), fear and resignation, mistrust of legal services and the legal system, and lack of knowledge about how to tackle relevant civil and family law problems. See further discussion in the ILNP's *Submission to the Productivity Commission's Inquiry into Access to Justice Arrangements*, available on the ILNP website at: http://www.jcu.edu.au/ilnp/public/groups/everyone/documents/journal_article/jcu_132183.pdf

⁹ Ibid

¹⁰ See further, Allison, F, Cunneen, C and Schwartz, M (2013), 'That's Discrimination! Indigenous peoples' experiences of discrimination in the Northern Territory', 8(5) *Indigenous Law Bulletin* 12; Allison, F (2014) 'A Limited Right to Equality: Evaluating the Effectiveness of Racial Discrimination Law for Indigenous Australians through an Access to Justice Lens' 17(2) *Australian Indigenous Law Review* 3. The 'three strikes' policy of housing providers (which leads to tenant eviction after three reports of 'anti-social behaviour'), for instance, is seen as having a disproportionate impact on Indigenous people. Whilst this policy exists in a number of jurisdictions, detailed discussion of its implementation and impacts in WA are set out in the *ILNP WA Report*, pp. 33-36, 90-102.

of female participants), child protection is identified as a priority area of need by the ILNP largely because of the enormity of concern the issue has consistently raised in every state/territory.

This concern relates to what is perceived to be the serious and negative impact child removal has had and continues to have upon multiple generations of Aboriginal and Torres Strait Islander. Many participants spoke of contemporary intervention by child protection agencies as creating new ‘Stolen Generations’, all over again. Concern is also generated, more particularly, by what is perceived to be the lack of access most Indigenous families have to timely legal advice and representation during their interaction with child protection agencies. One Indigenous legal service provider in Victoria has said, for instance, that ‘half of our clients do not get legal advice [about child protection]. Many of our clients do not understand all the factors.’¹¹ This same legal service alleges that their clients ‘are often tricked into signing documents’.¹¹ Adequate access to legal assistance in this area is seen as being critically important, as it provides some measure of accountability for child protection agencies. Given this, some participants thought it ought to be compulsory (enshrined in relevant legislation and policy) for child protection agency workers to refer families involved in the child protection system to appropriate legal advisors. The large demand for child protection-related legal advice in Indigenous communities is described as follows.

There’s not enough support for the families that have children in care. They don’t know their legal rights and the options are very limited... There’s a big void there. [Child safety] are just terrible. I don’t think we have good enough legal advisors or supporters in this community to help a lot of our women, to really take the fight up for them (Community organisation worker).¹²

Other ILNP qualitative data highlights the significant levels of demand in Aboriginal and Torres Strait Islander communities for legal assistance more generally, and that presently the legal assistance sector has nowhere near sufficient capacity to meet this demand in any jurisdiction. Legal services are acutely aware of the current under-servicing of civil/family law need and that the gaps in service delivery present as a major barrier to effective Indigenous access to justice. An Aboriginal legal service provider working in the NT notes, for example, ‘There is a good service being provided but it’s the tip of the iceberg... It’s still a big unknown exactly how much [civil and family law] work is out there’.¹³ These services also repeatedly state, however, that without additional resourcing they are simply unable to extend civil/family law service delivery (see further below).

Barriers to accessing justice

The ILNP has considered at some length barriers that are likely to inhibit Indigenous access to legal assistance and therefore to justice. At least two of these may be especially pronounced in civil or family law contexts and could be better responded to, to a large degree, with additional legal service funding.

Geography is an issue impacting on Indigenous access to justice even in smaller states like Victoria, which many ILNP participants identified as having a ‘Melbourne-centric’ focus in terms of legal service delivery.¹⁴ As one indication of this, at the time that the ILNP was conducting fieldwork in Victoria the Aboriginal legal service had just *one* civil law solicitor

¹¹ Schwartz, M, Allison, F and Cunneen, C (2013), *The civil and family law needs of Indigenous people in Victoria* (ILNP Vic Report), JCU, p. 43

¹² Cunneen, C, Allison, F and Schwartz, M (2014), *The civil and family law needs of Indigenous people in Queensland* (ILNP QLD Report), JCU, p. 120

¹³ Allison, F, Cunneen, C and Schwartz, M (2013), *Indigenous Legal Needs Project: NT Report*, JCU, p. 18

¹⁴ Schwartz et al, *ILNP VIC Report*, p. 58

to cover the whole state. In jurisdictions with larger geographic areas to cover, distance inevitably limits access to legal help to an even greater extent. Whilst location (particularly where very remote) may impede access to all types of legal assistance, the ILNP has identified that ATSILS and LACs often have some focus on providing criminal rather than civil or family law services beyond city centres, whether that be through their permanent offices or outreach. Community legal centres (CLCs) and IFVPLS may take on more civil and family law work, including outside major centres. CLCs, however, are usually unlikely to be engaging with local Indigenous communities to the same extent as Aboriginal legal services,¹⁵ and the scope of work IFVPLS are able to undertake is in some senses constrained as it must have some connection with family violence. This leaves large geographic areas in which Indigenous people live without any access to civil and family law legal assistance.¹⁶ In this context, more funding could be used to extend outreach services, to establish a greater number of permanent legal service offices in regional and remote locations (which also employ more civil and family lawyers), to fund more civil and family law positions in existing legal service offices located outside centres or to fund training and employment of local Indigenous people who could be employed as ‘triage workers’. These workers would know ‘whether or not there are avenues to address things that appear’ in a particular community and could work collaboratively with and for legal services.¹⁷

A further significant barrier to Indigenous access to civil/family law justice is the lack of awareness in most Indigenous communities of what civil and family law actually is, how to address relevant issues arising and where to get help to do so.

We need something to follow, ‘cause nobody’s actually set anything down in black and white ... so we know this is the process we need to go through to fight for this, to fight for that... If you don’t know how to go about it, then nobody wants to take [it on]... How to go about [fixing] your housing issue, how to go about [it] if you’ve fallen and slipped and broke your ankle in a supermarket (Bendigo Men’s Focus Group Participant).¹⁸

Without sufficient knowledge, Indigenous people are unlikely to take the important first step of identifying issues relating to (for instance) housing, child protection, consumer law or discrimination as *legal* problems, for which there may be a legal remedy and to which are attached certain legal rights and responsibilities. In comparison, levels of Indigenous understanding of and engagement with the criminal justice system are *much* higher, including no doubt due to the disproportionate contact Indigenous people have had with that system over decades. As one male focus group participant from Tennant Creek suggests, Aboriginal people may ‘think the only thing those [legal] services are there for are the courts, for fighting, or when you are in trouble with the police.... They don’t know there’s other stuff out there you can see [them] about.’¹⁹ An important distinction that can be made between civil and family law and criminal justice systems is that Indigenous people are invariably involuntarily pulled into interaction with criminal justice system, whilst there is a greater

¹⁵ There are definitely exceptions to this, including those CLCs whose Indigenous clientele constitutes over 90% of their overall client numbers (in Roebourne and Kununurra (WA), for example). There is also some variation in the extent to which ATSILS and LACS focus on civil and family law work.

¹⁶ Relevant data indicates that 25% of Indigenous people live in remote and very remote areas, compared to 2% of non-Indigenous people. In some jurisdictions this difference is more pronounced, including in the NT where 80% of Indigenous people live remotely. It is also important to note that whilst non-Indigenous people do live in more remote locations, they are in general more likely than Indigenous people to have access to a phone, internet and/or car through/with which they might access legal help. See further discussion of these issues in Cunneen, C, Allison, F and Schwartz, M (2014), ‘Access to Justice for Aboriginal People in the Northern Territory’, 49(2) *Australian Journal of Social Issues* 219, p. 221.

¹⁷ See Allison et al, *ILNP NT Report*, p. 150

¹⁸ Schwartz et al., *ILNP Vic Report*, p. 60

¹⁹ Allison et al, *ILNP NT Report*, p. 125

degree of choice or agency as to whether or not legal action is initiated and/or responded to in civil and family law contexts.²⁰

With better resourcing, in response to this barrier legal services would be able to provide further and more effective community legal education (CLE) to Indigenous communities. It is also worth noting that the greater the level of funding provided to legal services to increase their capacity to take on civil and family law work in these communities, the higher the level of Indigenous awareness about non-criminal issues is likely to be. Importantly too, with improved knowledge about civil and family law rights comes the power to assert those rights, including without the support of legal and other services.

I reckon education. I'm always going to say that, go back to that [being essential]... Then they'll be empowered to stand up for themselves and then be able to be assertive.... With that information... they'll be able to stick up for themselves (Indigenous community organisation worker).²¹

Why is poor Indigenous access to civil/family law justice problematic?

Whilst there is a significant amount of research and discussion in relation to the importance of effective access to justice for Indigenous people in a criminal law context, key ILNP research findings include that enhancing Indigenous access to justice in civil and family law areas, including through legal assistance, is equally as essential for building Aboriginal and Torres Strait Islander community capacity and resilience and for further social advancement of Indigenous people.

Increasing Indigenous access to civil and family law justice is important, firstly, because failure to adequately resolve civil and family law issues has a substantial impact on the daily lives of many Indigenous people. The following comment from an Indigenous legal service provider illustrates this point.

Not every Aboriginal person is brought before the criminal justice system but every Aboriginal person has to live somewhere, they have to get an income... they buy goods and services, live with their neighbours, may face discrimination, have accidents...²²

Indigenous people require enhanced capacity, including through better access to legal assistance, to realise their full legal entitlements in all of these areas. As an Indigenous community organisation worker has stated Indigenous communities 'need support out here with legal advice. People do have the right to fix their lives up [through] legal advice. We need more services out here... to really tackle some of these issues'.²³

Whilst this should be sufficient reason alone to increase access to civil/family law legal help, the ILNP reports also present a myriad of examples of the close association between *unmet* civil and family law need and both Indigenous social disadvantage *and* criminalisation of Indigenous people. These examples show that restricting opportunity for Indigenous people to effectively address civil and family law issues relating, for instance, to education, housing and employment is only going to increase the likelihood, sooner or later, of adverse rather than positive outcomes in these same areas. Discrimination, for example, against an Indigenous child or young person at school on the basis of disability and/or race (leading perhaps to exclusion or poor engagement) will impact on learning and have long-term consequences.

²⁰ See discussion in, for example, the ILNP's *Submission to the Productivity Commission's Inquiry*.

²¹ Allison et al, *ILNP WA Report*, p. 256

²² This quote was provided by the legal service during the launch of the NT Report in Darwin in November 2011.

²³ Allison et al, *ILNP WA Report*, p. 240

Moreover, offending (and so too incarceration) may increase in Aboriginal and Torres Strait Islander communities when civil and family law matters are not resolved satisfactorily - not only because unmet civil and family law need feeds social problems likely to underpin offending (poverty, homelessness, unemployment, etc.), but also as relevant issues can all too quickly escalate to enter the sphere of criminal law.

[A civil law matter] may lead to a criminal matter. If they have no housing [or money]... they might have to go out and to do a little something (offend) to eat that night or whatever... I see the connection between civil and crime quite dramatically really... You can see ... [people who've] got debts and ... who can't [afford stuff offending], so [getting money is a motivator there (Indigenous legal service staff)].²⁴

Given these connections, increasing legal service assistance as part of improving access to civil/family law justice for Aboriginal and Torres Strait Islander people must be an essential component of any strategy designed to enhance Indigenous social inclusion and to reduce Indigenous over-representation in the criminal justice system.

The adequacy of resources provided to Aboriginal legal assistance services by state, territory and Commonwealth governments

Whilst acknowledging that access to justice is not solely about access to legal services, ILNP research has identified that the legal assistance sector has a hugely important part to play in ensuring that all Indigenous people have optimal opportunity to resolve their civil and family law problems.²⁵ Justice agency staff interviewed by the ILNP, for instance, suggest that 'most Aboriginal people... wouldn't attempt [to enter the civil law system] without the assistance of a lawyer. The instances of self-represented Aboriginal people getting involved in the civil law jurisdiction is just nothing... [Without a lawyer]... the walls are just too thick and too high.'²⁶

As noted above, lack of resourcing of the legal assistance sector in general is a major contributor to under-servicing of existing civil and family law need in Aboriginal and Torres Strait Islander communities. As one Indigenous legal service provider in WA states, 'I don't think you can say that anyone's satisfied, there's just not enough [servicing]. There's just so much out there, there's so much that could and should be done but you just don't have the resources.'²⁷

In each jurisdiction, the ILNP has established that increased resources are required immediately to enable legal services to provide more CLE, advice and representation to Aboriginal and Torres Strait Islander peoples. Whilst noting that Indigenous people must be given a choice about where and how they access legal help, and that non-Indigenous legal services also need to engage effectively with and offer a service to Indigenous communities, the importance of increasing *Indigenous* legal service capacity, in particular, to increase their capacity to address civil and family law need cannot be overemphasised. Overwhelmingly, stakeholder and community participants of the ILNP have identified these legal services as being the best placed to provide culturally responsive legal assistance to Indigenous communities. As a female participant in the Cairns focus group stated:

²⁴ Cunneen et al., *ILNP QLD Report*, p. 199. See also Schwartz, M and Cunneen, C (2009), 'From crisis to crime: the escalation of civil and family law issues to criminal law matters in Aboriginal communities in NSW', 7(15) *Indigenous Law Bulletin* 18.

²⁵ Indigenous people are generally unlikely to access private practitioners due to cost and perceived or actual lack of cultural competency of such practitioners. See discussion in the ILNP's *Submission to the Productivity Commission's Inquiry*

²⁶ Allison et al., *ILNP NT Report*, p. 19

²⁷ Allison et al., *ILNP WA Report*, p. 66

We're Indigenous people. We rely on our ATSILS. If we go somewhere else they're going to talk about money. How are we going to afford that? We need ATSILS. ATSILS will always be the first preference to us Indigenous people.²⁸

ATSILS are currently not providing any sort of comprehensive service around existing civil and family law need and urgently require more money to enable them to extend the assistance that they can offer to their local communities with respect to these areas of law, as the following comment indicates.

[Civil law work for Indigenous people] is just chronically underdone [by] the legal assistance sector, including ATSILS, ATSILS do great work. They don't have the resources to be assisting people [enough], particularly with civil law stuff.... I just don't think they're going anywhere near touching the sides of civil law need (Legal practitioner).²⁹

All ATSILS, to varying degrees, have a predominant focus on criminal law matters, and IFVPLS on family violence and associated civil/family law matters. This is understandable, given the high rates of Indigenous incarceration and family violence, as well as the causal links between victimisation (including through family violence) and offending. It should now be beyond dispute that these services need much greater resources to meet need in these *existing* focus areas. And so in calling for increased funding to enable Aboriginal legal services to better respond to civil and family law issues, the ILNP emphasises that *additional* funding should be provided, rather than simply shuffling resources already committed to these services around so as to incorporate a greater focus on civil and family law in their work.

An additional point is that Aboriginal legal services need to be adequately resourced to undertake work for their respective communities that includes but also moves *beyond* individual casework. These services should be given sufficient funds to enable them to develop as strategic an approach as possible to the extensive need in the community— one that is not just reactive to the individual clients that walk through their door and seek help and advice. They should be funded to undertake more CLE, for instance, the importance of which is highlighted above, as well as policy and law reform work. The latter type of work is likely to offer a more systemic response to legal issues, including those that arise with some regularity for Indigenous people - an important point, as a number of areas of priority legal need identified by the ILNP clearly involve or derive from the negative impacts government policy and practice have on Indigenous people.³⁰ This is evident in areas such as housing, child protection, social security and education. Given this, demanding that government better fund Aboriginal legal services to address civil and family law need is fair and reasonable.

I think that it is a basic right for people to have provision [for] and to be able to [access legal services]... [P]rimarily...the kinds of matters that ALS take on are matters where there's been a breakdown [in the relationship between government and Indigenous people]... [W]hat happens to these people is the police have failed them (leading to a police complaint). Or a government institution's failed them... or Homeswest (public housing provider in WA) has failed them. So when there's a complete failure on the part of the executive, there needs to be support there, because ... that's government not meeting [peoples'] basic needs.... [ALS steps in] quite often when there's been a failure of a state-based institution to provide the service that it's promised to provide.³¹

²⁸ Cunneen et al., *ILNP QLD Report*, p. 47

²⁹ Cunneen et al., *ILNP QLD Report*, p.198

³⁰ See discussion on this point in Final Report of the Productivity Commission's Inquiry into Access to Justice Arrangements (including Recommendation 22.1).

³¹ Allison et al, *ILNP WA Report*, p. 245

Apart from social justice arguments that might be made in advocating for more funding, increased resourcing of Aboriginal legal services around civil and family law need makes sound economic sense as it saves governments money in the longer term. As discussed above, unresolved civil and family law problems lead to offending (and incarceration) and other social problems (unemployment or homelessness for example), which then demand substantial expenditure on the part of governments. As one Indigenous legal service provider in WA notes, ‘access to justice for Aboriginal people is dramatically underfunded... There are a lot of vulnerable people out there who don’t have their legal needs addressed. Those legal needs not being addressed spiral into serious costs for the government.’³² Another Indigenous legal service provider suggests, ‘I think that if we were able to get statistics that showed how much we saved the state [in resolving civil and family law matters], it would be really dramatic.’³³

The benefits provided to Aboriginal and Torres Strait Islander communities by Family Violence Prevention Legal Services

The ILNP has identified in its research and in this submission the important place *Indigenous specific* legal services, including IFVPLS, have in Aboriginal and Torres Strait Islander communities. The benefits provided by IFVPLS, in particular, are extensive.

The ILNP has not collected quantitative data specifically relating to family violence - not because the project does not see it as a substantial issue in Indigenous communities, but because it was identified at the commencement of the research as a criminal rather than as a civil or family law matter. The project has, however, collected qualitative data relating to Indigenous family violence during focus groups and as part of stakeholder interviews with women’s shelters, IFVPLS and other family violence advocacy groups.

This data highlights the *specific* and highly *complex* legal and other needs of Indigenous victims of family violence. This complexity arises in part because (as noted above) family violence interconnects with a range of other legal issues, including but not limited to discrimination (poor police response to Indigenous victims of violence), child protection (family violence leading to homelessness, which increases the likelihood of children being removed), victim’s compensation, debt and housing. One example follows.

We’d actually moved out. We couldn’t stay there. Our lives were more or less at risk. So we basically had to move out of there in a hurry.... But because the keys were lost... I understand what the [housing provider]... are saying, because I still had the keys they were still charging me rent, but they weren’t listening to me. I couldn’t live there because of the violence (Heidelberg Women’s Focus Group Participant).³⁴

Complexity is also based on the particular circumstances and needs of *Indigenous* victims of family violence. The ILNP refers the Senate to, for example, material published in this area by the Victorian IFVPLS.³⁵

The IFVPLS are effective advocates for victims of family violence, including because of their broad understanding of and relevant responses to the aforementioned specificity and complexity. These services are able to provide culturally competent legal and other support, particularly to women and children experiencing family violence. This is seen as being especially vital where a conflict of interest prevents ATSILS and other legal services from assisting victims of violence.

³² Allison et al., *ILNP WA Report*, p. 67

³³ Cunneen et al., *ILNP QLD Report*, p. 199

³⁴ Schwartz et al., *ILNP Vic Report*, p. 78

³⁵ Available at the Victorian IFVPLS website: <http://www.fvpls.org/Policy-and-Law-Reform.php>

[Some] of the men who are more persistently violent will go and conflict women out of every service in town. It's pretty easy to do in a small town. So you just need to go and get advice from this service and that service and a couple of others, and she can't go anywhere, but she can come here usually (Indigenous legal service staff).³⁶

IFVPLS are also identified in the ILNP research as being proficient at providing a very holistic service to their clients, taking the time to address the wide range of legal and non-legal issues those experiencing with family violence often face.

The extent of the problem of family violence in Indigenous communities, the wide scope of the demand for assistance from IFVPLS, and the fact that IFVPLS require much greater resourcing to better meet this demand is illustrated in the following quote.

I would say that [family violence is]... something that spills over into a lot of these other [civil and family law issues]... and once you start looking at the rates of family violence in these communities and also the types of family violence - like I think it's quite extreme, and I don't think it's being given the right resources to address that and to help victims. Out there people are very much on their own (Indigenous legal service staff).³⁷

The reasons for the high incarceration rates for Aboriginal and Torres Strait Islander men, women and juveniles

Because they're having tenancy problems and they lose their house, they're homeless. Leads to drinking, police surveillance. Then people get themselves into trouble, because they're angry. You know, it's that balance at home and then what's happened there, I think, what affects us.... I think there is [a connection between all these things]. (Indigenous community organisation worker).³⁸

The underlying causes of or reasons for high rates of incarceration of Indigenous people include the disproportionately negative impacts of legislation (laws relating to driving offences, for example) and other forms of institutional racism within the criminal justice system, impacts of colonization, as well as race, poverty, disability and other social issues deriving from and contributing to Indigenous social exclusion.

Based on four years of research into Indigenous access to civil and family law justice, the ILNP identifies, amongst these and other (by now fairly well-documented) reasons for Indigenous over-representation, substantial levels of Indigenous civil and family law need and the significant barriers Indigenous people face in effectively responding to these issues as key contributors to high rates of incarceration.

As discussed above, the ILNP has found that unmet non-criminal legal needs exacerbate the incidence of poverty, poor educational outcomes, unemployment and other socio-economic problems in Indigenous communities, which then form part of the raft of issues which underpin offending and criminalisation. Further and as noted above, failure to effectively address civil/family law issues may result in them morphing into or escalating to become criminal law matters.

The adequacy of statistical and other information currently collected and made available by state, territory and Commonwealth governments regarding issues in Aboriginal and Torres Strait Islander justice

The ILNP refers the Senate to the Australian Justice Reinvestment Project's submission to

³⁶ Cunneen et al., *ILNP QLD Report*, p. 208

³⁷ Allison et al, *ILNP WA Report*, p. 238

³⁸ *Ibid*, p. 67

this Inquiry.

The benefits of, and challenges to, implementing a system of ‘justice targets’

The ILNP refers the Senate to the extensive work the Aboriginal and Torres Strait Islander Social Justice Commission has undertaken in relation to justice targets.³⁹

The ILNP submits, in addition, that justice targets provide benefit by establishing a clear focus and a greater degree of accountability for governments and the work they are undertaking in a justice context. Developing specific justice targets provides measurable outcomes towards which government and others can work in attempting to reduce Indigenous contact with the justice system. Any system of targets must also, however, incorporate relevant civil and family law-related targets, including given the link the ILNP has identified between Indigenous over-representation and unmet need in these areas.

³⁹ Aboriginal and Torres Strait Islander Social Justice Commission (2014), *Social Justice and Native Title Report*, Australian Human Rights Commission