

**SUBMISSION TO THE SENATE ELGAL  
AND CONSTITUTIONAL AFFAIRS  
COMMITTEE**

**INQUIRY INTO ACCESS TO JUSTICE**

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## The adequacy of funding and resource arrangements for community legal centres

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### **1. Extent of Overrepresentation of Indigenous People in the Criminal Justice System**

The difficulties experienced by Indigenous people in their interactions with the criminal justice system have been well documented. The extent of over-representation of Indigenous prisoners has deepened since the landmark Royal Commission into Aboriginal Deaths in Custody in 1991. As the recent 2007 *Overcoming Indigenous Disadvantage Report* noted, 'Indigenous people's involvement with the criminal justice system continued to deteriorate'.<sup>1</sup> Some relevant headline statistics are:

- At 30 June 2006, Indigenous prisoners represented 24% of the total national prisoner population, the highest proportion since 1996. The actual number of Indigenous prisoners at 30 June 2006 was 6090, a dramatic increase from 3275 ten years earlier.<sup>2</sup>
- There are significant differences between states in the rate of Indigenous imprisonment, with Western Australia having the highest rate at 2668.5 per 100,000 of the adult population, followed by New South Wales at 1892.7. These rates are, respectively, three and two times higher than the rate in of Indigenous imprisonment in Victoria (940.4).<sup>3</sup>
- Between 2002 and 2006, the imprisonment rate for Indigenous **women increased by 34%** and for Indigenous **men by 22%**.<sup>4</sup>
- Currently, Indigenous people are 13 times more likely to be imprisoned than non-Indigenous people.<sup>5</sup>
- At 30 June 2005, Indigenous juveniles were 23 times more likely to be detained than non-Indigenous juveniles.<sup>6</sup>
- In 2002 some 16% of Indigenous people reported being arrested at least once in the previous five years.<sup>7</sup>
- The last national police custody survey (2002) showed that Indigenous people comprised 26% of all police custodies in Australia and were 17 times more likely to be held in police custody than non-Indigenous people.<sup>8</sup>

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<sup>1</sup> Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators* (2007), p.4.

<sup>2</sup> Australian Bureau of Statistics, *Prisoners in Australia*, released 14 December 2006.

<sup>3</sup> *Overcoming Indigenous Disadvantage: Key Indicators* (2007) at 3.126.

<sup>4</sup> Ibid. at 3.129.

<sup>5</sup> *Prisoners in Australia* (2006).

<sup>6</sup> *Overcoming Indigenous Disadvantage* (2007) p. 23.

<sup>7</sup> ABS, National Aboriginal and Torres Strait Islander Social Survey (NATSISS) 2002, Cat No 4714.0. p.4.

- Deaths in custody still occur at unacceptably high levels. Of the 54 deaths in custody in 2005, some 28% involved Indigenous detainees.<sup>9</sup>

## 1.1 Changes in Victimisation

Factors relating to victimisation and child abuse also impact on the legal needs of Indigenous people. Criminal victimisation rates and child protection notifications have been increasing.

- In 2002 nearly one in four (24.3%) of Indigenous people reported being a victim of actual or threatened violence in the previous twelve months.<sup>10</sup> This was **double the rate** reported in the 1994 NATSISS survey.
- Indigenous women are four times more likely to be the victim of indictable assaults, three times more likely to be the victims of summary assaults and twice as likely to be the victims of rape and sex offences than non-Indigenous women.<sup>11</sup>
- Between 1999 and 2005 the rates of substantiated notifications for child abuse and neglect for Indigenous children have increased significantly – **doubling from 14.8 per 1000 children to 29.5 per 1000 children**. The increase was far greater than for non-Indigenous children, and the 2005 rate for Indigenous children was 4.5 times higher than the non-Indigenous rate.<sup>12</sup>

## 1.2 Legal Needs

The figures on over-representation translate into an acute need for proficient and accessible Indigenous-specific legal representation. It also points towards the complex and often difficult work of Indigenous legal services.

The 1994 National Aboriginal and Torres Strait Islander Social Survey (NATSISS) showed that 17% of persons aged 13 years and over reported *using* legal services during the previous twelve months.<sup>13</sup> The proportion of Indigenous people in the 2002 NATSISS survey who reported using legal services in the previous twelve months had risen to 20%.<sup>14</sup> Those who needed legal services but did not use them had almost doubled from 1.6% to 3.1% between the 1994 and 2002 surveys.<sup>15</sup>

The Office of Evaluation and Audit recalculated the data from the 1994 NATSISS survey including data on Indigenous people who had been arrested in the previous five years, people who had been assaulted, and those requiring legal assistance relating to civil or family law. The Office concluded that in 1994, **31% of the**

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<sup>8</sup> Taylor, N. & Bareja, M. (2005) *2002 National Police Custody Survey*, Australian Institute of Criminology, Canberra, pp22-23.

<sup>9</sup> Joudo, J. (2006) *Deaths in Custody in Australia. National Deaths in Custody Program. Annual Report 2005*, Australian Institute of Criminology, Canberra., p.8.

<sup>10</sup> NATSISS 2002, p.21.

<sup>11</sup> Gardiner and Takagaki, (2002) 'Indigenous Women and the Police in Victoria: Patterns of Offending and Victimisation in the 1990s', *Current Issues in Criminal Justice*, Vol 13, No 3, p.319.

<sup>12</sup> *Overcoming Indigenous Disadvantage* (2007) 3.85.

<sup>13</sup> ABS, National Aboriginal and Torres Strait Islander Social Survey (NATSISS) 1994, Cat No 4190.0, p.57.

<sup>14</sup> NATSISS 2002, p.4.

<sup>15</sup> NATSISS 2002, p.32.

**Indigenous population required some kind of legal service – criminal, family or civil.**<sup>16</sup> No similar calculations have been provided for the 2002 survey data, but I could be expected that the proportion requiring legal assistance has risen given the other factors on increasing contact with the criminal justice system noted above.

ATSILS funding is intended to be sufficient to provide services in each of these areas, from advice on civil law matters, to advice for victims of crime, to representation of those charged with criminal matters. Under the current scheme, nine ATSILS service 96 sites nationally<sup>17</sup>. The failure to change the situation of over-representation of Indigenous people in the criminal justice system has seen an increase in the potential workload for ATSILS.

One example to demonstrate the point is the dramatic increase in imprisonment of Indigenous people. As noted above the actual number of Indigenous prisoners almost doubled over the ten year period to 2006. ATSILS lawyers provide assistance to Indigenous prisoners, including preparation for parole hearings, bail applications, classification and other prison issues. During this period their potential client base rose from 3275 to over 6000.

The Royal Commission into Aboriginal Deaths in Custody emphasised the important work of ATSILS in safeguarding and promoting the legal rights of Indigenous people as well as providing competent legal representation. Promoting Indigenous legal rights was seen to be necessary in all areas of the law both civil and criminal, and included the ability to provide community legal education, engage in policy development and advocate for law reform.<sup>18</sup>

A specific area discussed by the Royal Commission was the need to ensure Aboriginal women's interests were represented by ATSILS. These issues were reflected in the recommendations of the Royal Commission (recommendations 105-108). Indigenous women represent the group that has grown most in imprisonment levels in Australia.

The 2007 *Overcoming Indigenous Disadvantage Report* noted that Indigenous women are a growing proportion of the Australia prison population and have specific needs such as those associated with being a carer for young children. Because there are few prisons for women, Indigenous women are more likely to be removed long distances from their families and communities.<sup>19</sup> The number of Indigenous women in prison had risen from 367 in 2002 to 543 in 2006.<sup>20</sup> The problems facing Indigenous women

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<sup>16</sup> Office of Evaluation and Audit (2003) *Evaluation of the Legal and Preventative Services Program*, ATSIC, Canberra. 3.4 quoting the 1994 National Aboriginal and Torres Strait Islander Social Survey (NATSISS).

<sup>17</sup> There were twenty-five ATSILS prior to amalgamation in 2005.

<sup>18</sup> Cunneen, C. (2006) 'Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual and Explanatory Issues' *Current Issues in Criminal Justice*, vol 17, no 3, pp 329-346..

<sup>19</sup> *Overcoming Indigenous Disadvantage* (2007) 3.129.

<sup>20</sup> *Overcoming Indigenous Disadvantage* (2007) Attachment 3A, Table 3A.12.6.

have been dealt with extensively by the Aboriginal and Torres Strait Islander Social Justice Commissioner.<sup>21</sup>

Despite their importance, ATSILS function in an environment of “effectively static funding and increasing demand”<sup>22</sup> which compromises their ability to provide sufficient quality and quantity of legal services. The issue of the adequacy of legal representation for Indigenous people goes to the heart of questions of access, equity and the rule of law. It represents the ability of Indigenous people to use the legal system (both criminal and civil) to a level enjoyed by other Australians. The growing criminalisation of Indigenous people over recent years compromises this ability.

### 1.3 Seriousness of the Criminal Matters Facing Indigenous people

Many offences committed by Indigenous people fall on the serious end of the criminal spectrum, which has significant implications for the nature of the legal representation required. Indigenous people are over-represented in serious criminal matters – in 2004-05 some 16% of homicide offenders nationally were Indigenous. Adjusting for age differences Indigenous homicide rates are between 5 – 15 times the non-Indigenous rate depending on state or territory. Most Indigenous homicides take place in the family and involve Indigenous perpetrators.<sup>23</sup>

Nationally, assaults resulting in hospitalisation are more than 17 times higher for Indigenous people than non-Indigenous people, and **this rate has been increasing over recent years.**<sup>24</sup> The commission of violent offences and repeat offending also increases the likelihood of prison.<sup>25</sup> Clearly, then, given the seriousness of potential penalties for defendants and the legal needs of offenders and victims, skilled and thorough representation is vital. The fact that the stakes are so high casts a heavy onus on ATSIL service delivery.

processes are more time consuming than a ‘normal’ local court matter.<sup>26</sup>

## 2 Indigenous Clients’ Needs

### 2.1 Language issues

In some Indigenous communities, English is a second, third or fourth language and is

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<sup>21</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner (2002) *Social Justice Report 2002*, HREOC, Sydney; Aboriginal and Torres Strait Islander Social Justice Commissioner (2004) *Social Justice Report 2004*, HREOC, Sydney.

<sup>22</sup> Joint Committee of Public Accounts and Audit, *Access of Indigenous Australians to Law and Justice Services (Report 403)*, June 2005, Canberra, xxiii.

<sup>23</sup> *Overcoming Indigenous Disadvantage* (2007) p.20 & 3.98.

<sup>24</sup> *Overcoming Indigenous Disadvantage* (2007) 3.90. For earlier data see Steering Committee for the Review of Government Service Provision (2004) *Report on Government Services*, Productivity Commission, Melbourne, 2003, 3.451.

<sup>25</sup> *Overcoming Indigenous Disadvantage* (2007) 3.122.

<sup>26</sup> Potas, I., Smart, J., Bignell, G., Lawrie, R. and Thomas, B. (2003) *Circle Sentencing in New South Wales. A Review and Evaluation*, Sydney: New South Wales Judicial Commission and Aboriginal Justice Advisory Committee.

not spoken at home.<sup>27</sup> In a recent study of women prisoners, the WA Department of Justice found that 14% of Indigenous women spoke an Aboriginal dialect as their first language.<sup>28</sup> In metropolitan communities, Aboriginal English may be spoken, and lack of training in the nuances of this language may mean that understanding between client and lawyer is compromised.<sup>29</sup>

In a 2002 Office of Evaluation and Audit survey, 13% of ATSILS practitioners reported having difficulty in understanding what their clients were saying ‘very often/often’, and a further 50% had difficulties ‘sometimes’. Practitioners also reported problems with the client understanding what *they* were trying to convey<sup>30</sup>. The reasons given for these communication issues included the clients’ shyness or discomfort (65%); their having a disability which hindered communication (51%); their inability to communicate adequately in English (40%); and their lack of comprehension of legal process (77%).<sup>31</sup> Legal Aid Commission (LAC) practitioners reported lower levels of communication difficulty, highlighting the fact that:

ATSILS clients are likely to be socially and economically more disadvantaged, and more alienated from mainstream Australia than their LAC counterparts. In many ways therefore, ATSILS practitioners are dealing with more ‘difficult’ clients than LAC practitioners.<sup>32</sup>

Adding to these difficulties is the fact that Indigenous kinship relations can determine who should speak, and the subject matter about which particular people can speak. These restrictions can effect the giving of evidence or the participation in processes like mediation and conferencing.<sup>33</sup>

Where command of English is poor, interpreters are important to the provision of proper representation. The lack of interpreters continues to be a critical issue affecting access to justice.<sup>34</sup> In remote communities, accessing an interpreter can be close to impossible. Consider the recent statement by magistrates Tina Previtera and John Lock commenting on the circuit courts in Cooktown, Cape York and the Torres Straits in 2002-2006:

We cannot recall at any time in our experiences in Far North Queensland where a qualified interpreter has been used... we strongly suspect that despite our efforts to speak as simply as we can, the requirements of orders to be met by defendants are simply not understood by them. We cannot recall any

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<sup>27</sup> Senate Legal and Constitutional References Committee, *Legal aid and access to justice*, June 2004, Canberra, 5.101 – submission of Top End Women’s Legal Service; 5.103 – submission of Yilli Reung Regional Council.

<sup>28</sup> *Overcoming Indigenous Disadvantage* (2007) at 3.128.

<sup>29</sup> Senate Legal and Constitutional References Committee, *Legal aid and access to justice*, June 2004, Canberra, 5.102 – submission of Wirringa Baiya Aboriginal Women’s Legal Service.

<sup>30</sup> Office of Evaluation and Audit (2003) *Evaluation of the Legal and Preventative Services Program*, ATSIC, Canberra. 3.6.4.1.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> New South Wales Law Reform Commission (2000) *Sentencing: Aboriginal Offenders*, Report No 96, New South Wales Law Reform Commission, Sydney.

<sup>34</sup> The importance of interpreters in ensuring access to justice is discussed in *Evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement* (2005), 128, 198, Recommendation 10.

instance where an interpreter or another suitable member of the community assisted during an actual hearing.<sup>35</sup>

Even where remoteness is not an issue, securing an interpreter can still be time consuming, which “impacts on the resources which the service provider uses and needs”.<sup>36</sup>

## 2.2 Cross Cultural Issues

Cultural awareness is crucial to providing effective legal service to Indigenous people. While this is particularly the case in more traditional communities, it is true in all Indigenous contexts. Provision of services – legal advice, education and advocacy - to communities organised according to traditional customs can be complex and far more time consuming than comparable work in non-Indigenous communities.<sup>37</sup>

Cross cultural issues cover a broad range of matters including who has the right to speak, Indigenous kinship relations, gratuitous concurrence, eye contact, and temporal and spatial definitions. There is not the space here to review this. However, it is important to acknowledge that these matters continue to impact on effective legal representation. As magistrates Tina Previtera and John Lock have noted,

The complexities of cross cultural communication impact not just upon exchanges between a non-Indigenous bench and Indigenous people, but permeate throughout the whole criminal justice process; from the first questioning by police, to the ability to properly instruct lawyers, to well known difficulties of the lack of understanding of the court process and the subtle nuances of giving evidence.<sup>38</sup>

The legal needs of Indigenous clients are complex, not only involving several areas of law, but also a range of cultural issues that require a multiplicity of skills in the legal service provider. The ability to attract, train and retain high quality legal advocates is essential if requirements of fairness and equality before the law are to be met.

## 2.3 Issues of Disadvantage

Indigenous people in Australia face well documented disadvantages in the areas of education, housing, employment and income and health. The 2007 *Overcoming Indigenous Disadvantage Report* provides clear documentation of these issues. While there may be slight improvements in some areas (eg education), other areas have not changed (eg hearing loss). The level of Indigenous disadvantage remains entrenched. Some are particularly relevant to client’s needs and the requirements placed on legal representatives.

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<sup>35</sup> Magistrates Tina Previtera, John Lock, *Fly in/Fly out Justice – an imperfect journey*, unpublished discussion paper, September 2006, p.12.

<sup>36</sup> Yilli Reung Regional Council submission in *Legal aid and access to justice* (2004) 5.104. It is noteworthy that the Federal Government funded an Aboriginal Interpreter Service in 2004-5 as part of a pre-court juvenile diversion scheme. However, there does not appear to have been any evaluation of the effectiveness or impact of this service.

<sup>37</sup> Yilli Reung Regional Council in, *Legal aid and access to justice* (2004), 5.108.

<sup>38</sup> *Fly in/Fly out Justice – an imperfect journey* (2006) p.12.

- Indigenous people are less likely to have the literacy and numeracy skills of the non-Indigenous population. Indigenous people are far less likely to have progressed beyond Year 9 at school (33.4% have completed Year 9 or less compared to 15.8% of the non-Indigenous population) and are less likely to have a non-school qualification (29% compared to 50% of the non-Indigenous population).<sup>39</sup>
- Hearing loss arising from ear disease is much higher among Indigenous people of all ages up to 55 years of age. Between 2001 and 2005 there has been no change in the overall prevalence hearing problems among Indigenous children.<sup>40</sup>
- Indigenous people are more likely to have a disability (disability rates are approximately 1.4 times higher for Indigenous people).<sup>41</sup>
- Indigenous people are twice as likely to have experienced high levels of psychological distress than non-Indigenous people.<sup>42</sup>

In addition, higher rates of self harm, the effects of childhood removal and drug and alcohol issues are all likely to make Indigenous clients a particularly disadvantaged group to work with.<sup>43</sup>

These issues impact on the ability to provide legal services. For example, lack of literacy hampers communication by mail; hearing loss requires particular understanding and skill in interviewing.

## 2.4 Field Officers

As noted above, the particular needs and circumstances of ATSILS clients can lead to a range of cultural, communication and other difficulties in the lawyer-client relationship. Intrinsic to the efficacy of ATSILS service is the role of ATSILS field officers who act as a bridge between practitioners and clients through their understanding of community culture and politics. This is a role particular to effective representation for Indigenous people, and has not diminished in recent years. Indeed given the increasing over-representation of Indigenous people in the criminal justice system, it could be argued that there is a need to expand the numbers of field officers.

The importance of this role cannot be overstated; as VALS reported to the Joint Committee, “Solicitors would be lost without Field Officers. Field Officers are the most important link in the chain for legal service delivery”.<sup>44</sup> Indeed, client satisfaction with field officers are consistently higher than with their ATSILS lawyer.<sup>45</sup> Where these officers are not present, there is a marked difference in experience for clients. Magistrates Previtera and Lock, discussing their experience in remote Queensland communities, state, in the context of vulnerable witnesses:

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<sup>39</sup> NATSISS 2002, p.28.

<sup>40</sup> *Overcoming Indigenous Disadvantage* (2007) at 5.25.

<sup>41</sup> *Ibid*, p.8.

<sup>42</sup> *Overcoming Indigenous Disadvantage* (2007) at 9.41.

<sup>43</sup> See generally NATSISS 2002, and *Overcoming Indigenous Disadvantage: Key Indicators* (2007)

<sup>44</sup> *Access of Indigenous Australians to Law and Justice Services (Report 403)* (2005) at 4.41.

<sup>45</sup> *Evaluation of the Legal and Preventative Services Program* (2003) at 3.5.11.



So often we have been faced with Aboriginal women, who have been provided with no explanation/preparation about what to expect in the court setting, attending with or without a support person and being placed in the difficult situation where they are going to be asked about sensitive matters in the presence only of white males. The inevitable result is that they are unable to give evidence. This occurs, in our experience, at an alarming rate.<sup>46</sup>

It is to the field officers that ATSILS lawyers most often turn when cultural or communication issues arise (88% of ATSILS practitioners surveyed in 2002 rely on 'staff from ATSILS'). Yet 65% of ATSILS clients reported that they had no contact at all with a field officer during their case.<sup>47</sup>

Interestingly, 46% of LAC lawyers also nominated 'ATSILS staff' as their resource in circumstances of communication difficulties.<sup>48</sup> This represents a drain on ATSILS resources in conditions where the majority of their clients are already not gaining access to important services. It reflects the importance of the field officer role, and the fact that currently the role is not sufficiently resourced to cater to the extent of the need.

### **3. Restraints on Effective Service Delivery**

There are a number of further restraints on effective service delivery including remoteness, recruitment and retention of staff, funding, and the lack of ability to provide a full range of legal services.

#### **3.1 Remoteness**

Geographical isolation has been recognised as a major inhibitor to access to justice for Indigenous communities<sup>49</sup>; indeed, it is argued that in remote communities, access to justice is "so inadequate that remote Indigenous people cannot be said to have full civil rights"<sup>50</sup>. Living in remote communities is an issue that particularly affects Indigenous people given that 27% of Indigenous people in Australia live in remote or very remote communities compared to just 2% of the non-Indigenous population.<sup>51</sup>

The average cost of servicing a case in the Northern Territory and Western Australia can be double that in other states<sup>52</sup>. Contacting and obtaining adequate instructions from highly mobile and traditional communities who are alienated from the legal system and its practices was identified by ATSILS managers as among the greatest difficulty in servicing their client base.<sup>53</sup> The cost of travel to these communities is

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<sup>46</sup> *Fly in/Fly out Justice – an imperfect journey*, (2006) p.8.

<sup>47</sup> *Evaluation of the Legal and Preventative Services Program* (2003) at 3.5.10.

<sup>48</sup> *Ibid.* at 3.6.4.2.

<sup>49</sup> See *Aboriginal Legal Aid*, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Report, July 1980, 11; Recommendation 32 of *Legal aid and access to justice* (2004).

<sup>50</sup> Top End Women's Legal Service in *Legal aid and access to justice* (2004), 5.120.

<sup>51</sup> *Overcoming Indigenous Disadvantage* (2007), p.2.

<sup>52</sup> *Evaluation of the Legal and Preventative Services Program* (2003) at 3.3.

<sup>53</sup> *Ibid* at 3.7.4.

prohibitive, and face to face meetings are often impossible.<sup>54</sup> Where practitioners do attend, there is often little or no time to obtain a brief or advise clients of options. This lack of contact time can lead to advice to plead guilty irrespective of the merits of the case.<sup>55</sup> Indeed, there is evidence that ATSILS clients as a whole are more likely to put in guilty pleas and less likely to put in not-guilty pleas than mainstream offenders.<sup>56</sup>

Even where adequate pre-hearing preparation is possible, the number of cases listed before circuit courts in remote communities make adequate representation impossible. Magistrates have on average between 22 - 80 criminal charges to hear in one court day<sup>57</sup>, as well as child protection and domestic violence applications. Magistrates Previtera and Lock state that “even with the best of intentions, the sentencing of defendants often feels like a factory process...many sentences involve serious crimes and properly require much more time than we have to give”.<sup>58</sup>

### 3.2 Recruitment and retention of staff

In addition to the impact of Indigenous disadvantage and systemic failure on the service delivery capacity of ATSILS is the “chronic and increasingly acute inability to maintain expert legal staff”.<sup>59</sup> Between 2000 and 2005, solicitors at the Western Aboriginal Legal Service had an average employment of one year and 5 months. This period had decreased from the previous 10 years, when the average period of employ was two years and one month.

There are several reasons for statistics of this nature, including:

- salaries that are uncompetitive when compared with LACs;
- extremely large workloads and lack of time to adequately deal with the work<sup>60</sup>;
- lack of potential for career progression within an ATSILS, including inability to provide appropriate supervision to junior lawyers or to provide a clear career path;
- difficulty retaining staff in regional and remote areas.

This in turn compromises the level of service to clients: lack of continuity with one legal practitioner leads to frustration on the part of the client, time-wasting and duplication in re-briefing.<sup>61</sup> High workloads result in less time to prepare cases – often too little time to prepare adequately.<sup>62</sup> Low salaries mean ATSILS practitioners are likely to be nearer the beginning of their careers – practitioner inexperience has been a cause for concern among clients and magistrates alike. This problem is noted to have deepened in recent years.<sup>63</sup>

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<sup>54</sup> *Legal aid and access to justice* (2004) at 5.115. NAALAS quotes a figure of \$86,000/yr representing the cost of a lawyers travel and accommodation for servicing remote communities in the area they cover in the Northern Territory.

<sup>55</sup> NNIWLS in *Legal aid and access to justice* (2004) at 5.116.

<sup>56</sup> *Evaluation of the Legal and Preventative Services Program* (2003) p.3.

<sup>57</sup> *Fly in/Fly out Justice – an imperfect journey*, (2006) at 1.

<sup>58</sup> *Ibid* at 5.

<sup>59</sup> *Access of Indigenous Australians to Law and Justice Services* (2005) at 4.2.

<sup>60</sup> *Evaluation of the Legal and Preventative Services Program* (2003) at 3.6.2, 3.6.5.2, 4.3.

<sup>61</sup> *Access of Indigenous Australians to Law and Justice Services* (2005) at 4.2-4.8.

<sup>62</sup> *Evaluation of the Legal and Preventative Services Program* (2003) at 3.6.2.

<sup>63</sup> *Fly in/Fly out Justice – an imperfect journey* (2006) at 6.

SRACLS states that these factors lead to a situation where ATSILS become “a training ground for either the Legal Aid Commission or private firms”<sup>64</sup>, who have the resources to better address these limiting factors.

### 3.3 Impact on ATSILS service delivery capacity

The primary focus of ATSILS is to represent those in danger of incarceration, given the extent of Indigenous overrepresentation in prison<sup>65</sup>. **The number of criminal cases dealt with by ATSILS increased by 67% between 1998 and 2003, yet despite this massive increase, funding for these services did not substantially increase in that period.**<sup>66</sup>

The realities of the demand on ATSILS are highlighted by the fact that the vast majority (83 %) of Indigenous prisoners interviewed for the Office of Evaluation and Audit survey in 2003 did not have anyone present to support them or advise them when they were interviewed by the police after their arrest.<sup>67</sup> Some 97% of ATSILS lawyers nominated “lack of funding, lack of resources, and staff shortages, and work overload” as the main impediments to providing quality legal service in criminal matters.<sup>68</sup> In contrast, only 5% of LAC practitioners identified lack of funding as a difficulty, and 0% nominated staff shortage or work overload as an issue.<sup>69</sup>

In its submission to *Legal Aid and access to justice*, ATSIC stated that “in [the] face of sheer demand for assistance, ATSILS predominantly provide legal aid services for criminal matters (89% of case and duty matters in 2001-2; compared with only 2% family matters and 2% violence protection matters).”<sup>70</sup> Despite a growing demand for child protection, civil and family matters, ATSILS report being unable to service these due to insufficient funding for significant extension of services beyond criminal matters.<sup>71</sup> While situations “where there is a real risk to the person's physical safety” are also identified as priorities<sup>72</sup>, the reality is that family and civil law cases which may fit into this category are often not serviced by ATSILS. The reasons are various: the establishment of a civil law practice is prohibitive and often impossible under current funding arrangements<sup>73</sup>; family law is a ‘paper-driven’ jurisdiction requiring

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<sup>64</sup> Quoted in *Access of Indigenous Australians to Law and Justice Services* (2005) at 4.27.

<sup>65</sup> This is also reflected in the priority categories identified in Indigenous Law and Justice Branch, Attorney General's Department, *Policy framework for targeting assistance provided by Aboriginal and Torres Strait Islander Legal Services*, July 2005 at 4.1.1.

<sup>66</sup> Australian National Audit Office report no 13, quoted in *Access of Indigenous Australians to Law and Justice Services* (2005) at 2.2.

<sup>67</sup> *Evaluation of the Legal and Preventative Services Program* (2003) at p3.

<sup>68</sup> *Ibid* at 3.6.6.1.

<sup>69</sup> *Ibid*.

<sup>70</sup> *Legal aid and access to justice* (2004) at 5.5.

<sup>71</sup> *Ibid* at 5.6, 5.7; see also 5.14 (submission of the Katherine Regional Aboriginal Legal Aid Service).

<sup>72</sup> *Policy framework for targeting assistance provided by Aboriginal and Torres Strait Islander Legal Services* (2005) at 4.1.1.

<sup>73</sup> *Access of Indigenous Australians to Law and Justice Services* (2005) at 2.20. The establishment of a civil practice necessitates an initial injection of funds (estimated by SRACLS to be around \$250,000-\$300,000) which will only begin to be recovered around 18 months later. Scant funding does not allow ATSILS to invest in civil practice in this way. Further, funding bodies do not acknowledge in their allocations the greater costs of running non-criminal matters, thus disincentivising the undertaking of civil matters (which effectively sacrifices taking on comparatively more criminal matters): see *Access of Indigenous Australians to Law and Justice Services* (2005) at 2.24-5.

time and specialised skills<sup>74</sup>; private practitioners often choose not to service remote communities for civil or family matters, thus limiting the possibilities for referral.<sup>75</sup>

Issues also arise where both parties to a dispute apply for legal aid through an ATSILS. Where an offence is committed, a promptly laid charge will bring the offender to the attention of ATSILS as a client. This means that the victim of the offence, where they are also Indigenous, will have been ‘conflicted out’ of access to ATSILS assistance where there is a family, crimes compensation or domestic violence aspect to the offence.<sup>76</sup> ATSILS sometimes enter into agreements with LACs to contract out family law matters, but where this occurs there is a question of whether the LAC is as well equipped to provide culturally appropriate legal service<sup>77</sup>. Referral in these contexts is often unsuccessful in the sense that clients often drop out. ATSILS ability to contract out to private third parties is also often constrained by the paucity of funds available for briefing out<sup>78</sup>. Indigenous women and children are most likely to be disadvantaged in the conflict dynamic as victims of domestic violence or other crimes, where the perpetrator is represented by an ATSILS, although Family Violence Prevention & Legal Services will pick up some matters in areas where they are located.

Inaccessibility of family and civil law services compromises the ability of Indigenous people to realise their full legal entitlements. It also introduces a danger that civil or family law issues can escalate to criminal acts, resulting in charges and a perpetuation of the cycle of overrepresentation.<sup>79</sup>

Service delivery suffers not only in terms of the number of clients possible to service, but also in the quality of services delivered. Discussed above is ATSILS “complete inability” to attract experienced practitioners, and the correspondingly high attrition rates, especially in regional locations.<sup>80</sup> In 2003, ATSIC reported low staff morale as well as high staff turnovers.<sup>81</sup>

*Legal aid and access to justice* recommended that funding to ATSILS be increased as a matter of urgency, and that issues of language, culture, literacy, remoteness and incarceration rates – and the impact of these on the costs of service delivery – should be factored into the degree of increase.<sup>82</sup>

### **3.4 Funding Comparison with Legal Aid Commissions (LACs)**

It is recognised that ATSILS provide legal services at a significantly lower cost than LACs<sup>83</sup> while maintaining comparable levels of client satisfaction. Yet the workload

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<sup>74</sup> See SEALS submission to *Access of Indigenous Australians to Law and Justice Services* (2005) at 2.21.

<sup>75</sup> Ibid at 2.28-30.

<sup>76</sup> Ibid., See NTLAC quoted at 3.20.

<sup>77</sup> Ibid at 2.49, 3.22.

<sup>78</sup> Ibid see ALRM submission at 5.86: this submission notes that as a result of the inability to brief out, parties are often picked up by the Legal Services Commission. See also ibid at 5.82.

<sup>79</sup> Ibid at 2.41 and SEALS submission quoted at 2.23.

<sup>80</sup> *Legal aid and access to justice* (2004) at 5.14.

<sup>81</sup> Ibid at 5.13. See also *Evaluation of the Legal and Preventative Services Program* (2003) at 3.5.9

<sup>82</sup> *Legal aid and access to justice* (2004) Recommendation 27.

<sup>83</sup> *Evaluation of the Legal and Preventative Services Program* (2003) at 3.3.

of ATSILS lawyers is significantly higher: 52 hours/week compared with LAC practitioners' 42 hours. It continues to be an issue that current funding levels to ATSILS provides a cheap form of legal representation for Indigenous people.

An ATSIC 2001 review reported a \$12 million annual funding shortfall in ATSILS funding when compared with LAC benchmarks. In 2003, ATSIC estimated the shortfall to have increased to \$25.6 million.<sup>84</sup>

The authors were provided with data from the North Australian Aboriginal Justice Agency (NAAJA) comparing funding between that organisation and the Northern Territory Legal Aid Commission (NTLAC). A comparison between figures for the NTLAC 2005-6 and NAAJA 2006-7 show that the NTLAC budget is \$7,665,489 compared to the NAAJA budget of \$4,822,612. **Thus NTLAC has a 59% greater budget than NAAJA.**

NTLAC employs 45 staff compared to NAAJA's 53 staff. However NTLAC spends \$559,343 more on staff salaries than NAAJA. Staff figures include all staff (lawyers, field officers, administrative and financial). As an average a NTLAC staff costs \$71,612 pa compared to an NAAJA average of \$50,249 pa.

In terms of workload, the NTLAC deals with more duty lawyer matters, telephone information clients, family law and civil law clients, than NAAJA. However, by far the most significant difference is in relation to criminal law matters where NAAJA deal with three times the number of criminal matters compared to NTLAC. Across all these categories combined, NAAJA has a greater number of clients/matters than NTLAC (7,462 compared to 6878).

As noted NTLAC's budget exceeded that of NAAJA by more than \$2.8 million, roughly \$1.3 million of which was spent briefing out cases to third party practitioners (compared with NAAJA's \$90,000 spent briefing out). The total number of matters handled by each legal service, including those briefed out, were roughly the same. These figures indicate the comparatively enormous workload that is maintained by NAAJA practitioners on far lower salaries and with far fewer resources.

A further indication of this disparity in resources is the money spent on client costs (ie medical certificates and associated costs, psychological assessments, court fees, etc) in criminal matters. NTLAC expended \$871,357 compared to NAAJA's \$60,000 – and this amount was spent on one third the number of criminal cases run by the NTLAC. As an average, court costs for criminal matters by the NTLAC were \$762 per matter, compared to \$17 per matter by NAAJA.

There are very important questions about equity arising from the apparent 'cost effectiveness' of the ATSILS. It is unsurprising that the 2003 *Evaluation of the Legal and Preventative Services Program* found that "ATSILS practitioners work in a more stress filled, demanding environment than their LAC counterparts, and are very dissatisfied with their comparatively lower remuneration"<sup>85</sup>. Given the "myriad studies and research that undeniably demonstrate the abysmal levels of disadvantage

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<sup>84</sup> Ibid at 1-2.

<sup>85</sup> Office of Evaluation and Audit (2003) *Evaluation of the Legal and Preventative Services Program*, ATSIC, Canberra. 4.6.3.

suffered by Indigenous people in Australia, it is incredible that an Indigenous organisation continue to be funded well below the levels of mainstream services”.<sup>86</sup>

### **3.5 Potential benefits to be achieved through additional funding**

Expanding the capacity of ATSILS is required simply to keep up with the relatively rapid Indigenous population growth: over 455,000 at the 2006 Census, up more than 10% from 410,000 at the 2001 Census. The young age structure of the Indigenous population also has implications for legal services given that 15-19 years olds followed by 20-24 years have the highest rates of criminal offending.<sup>87</sup>

Currently, ATSILS are compromised in both the extent and quality of services they can provide. The ramifications of this for Indigenous communities, whose relationship with the criminal justice system is already so fraught, are obvious. The impact on practitioners working in ATSILS in the current funding environment is also significant: “They continue to be disheartened when what they perceive to be their first hand experiences of the difficulties in providing services to the communities; and their informed opinions as to how to reduce the difficulties, are not seen to be acted upon”<sup>88</sup>.

An increase in the provision of legal services, particularly for non-criminal matters has the capacity to assist with economic development in remote indigenous communities. At present Indigenous people in remote communities do not have access to adequate information let alone advice or representation about a range of civil law matters, such as housing, consumer rights, credit and debt, employment law, negligence, corporations law and so on. They have no effective access to authorities who might otherwise be able to assist, such as the Banking Ombudsman, Office of Consumer Affairs & Fair Trading (or ACCC or ASIC), Child Support Review Office, the Residential Tenancies Tribunal, Social Security Appeals Tribunal, Prices Surveillance Authority, and so on.<sup>89</sup>

Increased funding to ATSILS could address some of the following issues:

- Employment of more legal practitioners with a view to reducing the extremely heavy ATSILS lawyer workloads which currently severely impact on the quality of legal services provided to clients.
- Increase in salaries to ATSILS solicitors to provide remuneration at least commensurate with LAC levels reduce staff turnover and to make possible the employment of experienced practitioners.
- Increase in provision of legal aid for civil and family law cases, which are more costly to run than, and are often sacrificed in favour of, criminal matters.
- The establishment of more effective Chinese Walls, where appropriate<sup>90</sup>, to enable representation of more than one party to a conflict. This would involve

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<sup>86</sup> Submission of the Victorian Aboriginal Legal Service to Senate Legal and Constitutional References Committee, *Legal aid and access to justice*, June 2004, Canberra, 5.17.

<sup>87</sup> Australian Institute of Criminology (2007) *Australian crime : facts and figures 2006*. Canberra.

<sup>88</sup> *Fly in/Fly out Justice – an imperfect journey* (2006) at 3.

<sup>89</sup> Submission of the Top End Women’s Legal Service to *Legal aid and access to justice* (2004) at 1.

<sup>90</sup> It may not be desirable to attempt to represent more than one party in more remote or smaller communities where the perception of conflict may be inescapable.

physical and technological separation of files, and a capacity to run criminal and family matters in discrete locations.

- Further provision of training and opportunities for professional accreditation for Aboriginal Field Officers, who enable ATSILS to provide accessible services in a way that mainstream providers cannot;
- Increased capacity to provide support and advice during police interviews with clients after their arrest;<sup>91</sup>
- Increased ability to engage in programs in communities promoting awareness of available legal services and conducting other preventative work to contribute to breaking offending cycles;<sup>92</sup>
- Increased service provision to Indigenous people under arrest and in custody, and under sentence;
- Improved capacity to work with other Indigenous justice initiatives including Murri, Koori and Nunga courts, circle sentencing courts and community justice groups.
- Given that deaths in custody are still a major issue, increased funding could be used to support the appearance by an ATSILS practitioner at each coronial inquiry concerning an Aboriginal death.<sup>93</sup>

More generally, it can be argued that increased funding to ATSILS may directly impact in reducing Indigenous over-representation through improved legal representation of Indigenous clients. Secondly it can be argued that improved access to legal services for Indigenous people, particularly in remote communities, and particularly in relation to civil law, is likely to assist in the necessary infrastructure for economic development.

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<sup>91</sup> 83% of Indigenous prisoners interviewed by the OEA did not have anyone present during these interviews. Of those who did, 40% reported that the support person was from an ATSILS: *Evaluation of the Legal and Preventative Services Program* (2003) at 4.6.2.

<sup>92</sup> See *Evaluation of the Legal and Preventative Services Program* (2003) at 3.7.3 -4.

<sup>93</sup> This has been estimated at a cost of \$105,000/yr for the Northern Territory. See C Howse, *Model State Coroners Act Amendments relating to Aboriginal death* (2007), unpublished.

## **The ability of Indigenous people to access justice**

**EXTRACTED FROM:** Cunneen, C. and Schwartz, M. (2008) *Civil and Family Law Needs of Aboriginal People in New South Wales*. Report to the New South Wales Legal Aid Commission, Sydney, Unpublished.

### **Methodology**

This research examines Aboriginal people's legal requirements, how well they are currently met, and what can be done to improve access to and quality of services. It is a study of policy and practice in a practical context, which lends itself particularly to a qualitative research framework. The qualitative approach enabled an exploration of aspects of people's lives that civil and family law touches, about clients' experiences of legal services, and of the factors that inhibit use of those services. This research method enabled a relatively small number of interviews to provide information-rich data to facilitate insight into less quantifiable matters such as cultural, historical, environmental and other issues that impact on legal needs and the use of services, and into the attitudes and experiences of individuals towards those services. The sampling method for stakeholder interviews and focus groups was purposive sampling (Sarantakos 2005: 164): focus group participants were selected by the Aboriginal focus group coordinator in each site, and the researchers purposefully selected key participants to ensure information rich interviews.

Quantitative data provided by Legal Aid NSW has also been utilised to evaluate the extent to which current civil and family law services are utilised by Aboriginal people in New South Wales. This use of quantitative data has added depth and breadth to the research analysis by providing empirical evidence as to the extent of access to services and the nature of the services being accessed.

The data that was received and analysed from Legal Aid NSW was, in the areas of civil and family law, by Indigenous and non-Indigenous status for 2007: minor assistance provided, applications for aid and grants of aid. Also requested was data relating to the usage by Aboriginal clients of the LawAccess NSW telephone advice service. This information was, however, unavailable.

#### *1.3.1 Identification and Selection of Research Focus Sites*

Eight locations were chosen as focus sites where the qualitative research would take place. The selection of sites was made in consultation with Legal Aid NSW and sites were chosen for geographical distribution across the state, as well as to provide some representation of remote, rural, regional and urban communities.

Given that issues of practical access to services were important considerations in the research, the eight focus sites were chosen with reference to the



Accessibility/Remoteness Index of Australia Plus (ARIA +)<sup>94</sup>. The definition of *very remote* is a place that is “locationally disadvantaged with little accessibility of goods, services and opportunities for social interaction”. The rural, regional and urban communities are based on moderately accessible, accessible and highly accessible access to goods and services. The research focus sites were:

Remote: **Bourke and Goodooga** (both classified as *very remote*).

Rural: **Tabulam and Moree**.

Regional: **Wagga and Dubbo** (Wagga and Dubbo are covered under the Legal Aid NSW CLSD program).

Urban: **Penrith** (including Mt Druitt) and **Redfern/Waterloo**.

### *1.3.2 Focus Groups: location and composition*

The qualitative research centred around focus groups held in each focus site. In each community, two focus groups were held, one for men and one for women. There were sixteen focus groups in total.

The focus groups were fundamental in gathering information about:

- the nature and extent of legal needs;
- levels of satisfaction with and effectiveness of current service delivery models;
- limitations of the current system;
- potential for effective change, where necessary.

To ensure the most optimum discussion forum, the men’s groups were facilitated by a male interviewer and the women’s groups by a female.

A local Aboriginal person was employed in each focus group community to arrange for an appropriate venue for the consultation and to ensure attendance by community members. In some locations one person was employed to coordinate the men’s focus group and another for the women’s, as appropriate. The researchers corresponded with the coordinators on a number of occasions leading up to the focus groups to discuss the research, expectations for the focus groups and practical arrangements.

Focus groups were sound recorded. Attendees were paid \$50 to cover any expenses arising from their participation and refreshments were provided.

It was envisaged that the focus groups would comprise a minimum of six members, with an optimum attendance of ten people per group.<sup>95</sup> Table 1.1 shows that in total

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<sup>94</sup> ARIA+ is widely accepted as Australia's most authoritative geographic measure of remoteness. Indexes of remoteness are derived from measures of road distance between populated localities and service centres. These road distance measures are then used to generate a remoteness score for any location in Australia, with values ranging from 0 (high accessibility) to 15 (high remoteness).

<sup>95</sup> Between five and ten people is the optimum size for gathering information in this manner (Sarantakos 2005: 196).

there were 153 participants out of a possible 160. The male : female ratio overall was close to even (49.7 per cent male and 50.3 female per cent female participants).

**Table 1.1**  
**Location and Gender of Focus Group Participants**

Location	Focus Group Participants					
	Male		Female		Total	
	No	per cent	No	per cent	No	per cent
Bourke	12	57.1	9	42.9	21	100.0
Dubbo	7	41.2	10	58.8	17	100.0
Goodooga	9	45.0	11	55.0	20	100.0
Moree	9	60.0	6	40.0	15	100.0
Mt Druitt	9	47.4	10	52.6	19	100.0
Redfern	11	52.4	10	47.6	21	100.0
Tabulam	9	45.0	11	55.0	20	100.0
Wagga	10	50.0	10	50.0	20	100.0
Total	76	49.7	77	50.3	153	100.0

Table 1.2 shows that participants represented a spread of age groups from 18-24 years to those 55 years and older. The female participants tended to be older than the male participants with 41.6 per cent of the women participants being 45 years or older compared to 27.6 per cent of male participants.

**Table 1.2**  
**Age Range of Focus Group Participants**

Age	Focus Group Participants					
	Male		Female		Total	
	No	per cent	No	per cent	No	per cent
18-24	19	25.0	13	16.9	32	20.9
25-34	10	13.2	14	18.2	24	15.7
35-44	25	32.9	18	23.4	43	28.1
45-54	9	11.8	17	22.1	26	17.0
55+	12	15.8	15	19.5	27	17.6
Unknown	1	1.3	-	0.0	1	0.7
Total	76	100.0	77	100.0	153	100.0

A Participant Information Statement and Consent Form was provided to all Focus Group participants outlining the purpose of the research; the voluntary nature of participation and the ability to withdraw from the consultation at any time; an assurance of the confidentiality and anonymity of individuals in participating in the research; and the contact details of the researchers for any complaints or questions concerning the conduct of the research.

### *1.3.3 Focus Groups: process and discussion areas*

An information sheet distributed to focus group co-ordinators explained the structure of the focus groups as follows:

We will start with a questionnaire that will help explain exactly what we mean when we talk about civil/family law issues, and there will be opportunity for participants to talk about their experiences with the legal services that deal with civil/family law issues, including giving an opinion about whether these services do a good job and how they could do things better.

The focus group was semi-structured to provide participants with the opportunity to raise issues they considered important to them and to allow open discussion to explore new themes as they emerged. This approach allowed people to answer questions on their own terms but still provided structure for comparability (May 2001). The discussion included a range of common questions to allow comparison and to ensure that a focus was maintained on key themes central to the research (Patton 1990).

The focus group questionnaires nominated specific areas of civil and family law and asked participants to identify whether any legal issues or problems had presented themselves in those areas over the last few years<sup>96</sup>; whether legal advice or assistance was sought; what the source of the legal assistance was; and whether they were satisfied with it. In this way, participants were able to identify how many legal incidents they had experienced and thus to give a picture of their legal needs. The questionnaires also provided information concerning the nature and frequency of legal assistance that participants were likely to seek, and the level of satisfaction with the current state of civil/family law legal services. The focus group facilitator read through all the questions aloud as they were being completed by the participants, to overcome potential literacy problems.

The guided discussion that constituted the second part of the focus group allowed participants to expand on the legal issues that they had experienced. Participants also identified barriers to accessing legal services and proposed the changes that they thought would be effective in overcoming the shortfalls that they had identified.

#### *1.3.4 Stakeholder Interviews*

Stakeholder interviews were used as a source of data collection to determine the experiences, perspectives and understandings of those providing legal or legal support services. Stakeholders were selected on the basis of their direct role in civil and family law service provision (or associated support services) to Aboriginal clients. The majority of stakeholders interviewed were those providing services in the focus sites. They included:

- a) Legal Aid NSW (family and civil law solicitors, office managers and Indigenous staff);
- b) Aboriginal and Torres Strait Islander Legal Services (ATSILS);
- c) Family Violence Prevention Legal Services (FVPLS)<sup>97</sup>;
- d) Local court registrars;
- e) Aboriginal court workers in local courts;

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<sup>96</sup> The 'last few years' was selected rather than a specific time frame in recognition of the well documented differences in Aboriginal concepts of time.

<sup>97</sup> For the purposes of this research, situations where family violence gives rise to family law, property law or other civil law issues, were treated as criminal matters.

- f) Domestic Violence Court Assistance Schemes;
- g) Community Legal Centres;
- h) Aboriginal Medical Services;
- i) Community justice groups and elders groups;
- j) Alternative dispute resolution practitioners;
- k) Specialist legal services eg disability, tenancy services;
- l) Aboriginal community organisations such as men's groups, women's refuges, neighbourhood centres and other working groups.

Selected organisations providing state-wide services were also interviewed, including:

- a) Legal Aid NSW head office;
- b) Wirringa Baiya Women's Legal Centre;
- c) Women's Legal Resources Centre;
- d) Combined Community Legal Centres Group NSW.

The key questions for interviews with stakeholders concerned their perception of Aboriginal legal needs and the use and limitations of the current service provision model. Areas of discussion included:

- a) The most common types of non-criminal matters that Aboriginal people access the service for;
- b) The perceived nature and extent of the civil/family law needs of Aboriginal people;
- c) Current relationship of the service with Legal Aid and their understanding of Legal Aid policies that bear on the provision of civil and family law services to Aboriginal people;
- d) Perceived gaps in or barriers to current service delivery and proposed changes to increase access or effectiveness for Aboriginal clients.

Interviews were sound recorded. Participant Information Statement and Consent Forms were provided.

### *1.3.5 Identification of Stakeholders*

Stakeholders were assured of their anonymity when they were interviewed for this research. To maintain that confidentiality we have identified stakeholders in a general way according to their service and provided their site location.

- Aboriginal court support staff, community justice group members, circle sentencing convenors, Indigenous Family Violence Prevention Legal Service staff, Domestic Violence Court Assistance Scheme staff are referred to as *Aboriginal legal support workers*. If the person is non-Aboriginal, then *legal support worker*;
- Non-Indigenous organisations providing support in the community (eg financial counsellor, etc) are referred to as *community organisation worker*. If the person is Aboriginal, then they are referred to as an *Aboriginal community organisation worker*.

- Community legal centre lawyers and private solicitors are referred to as *Legal practitioners*;
- Those working at Aboriginal and Torres Strait Islander Legal Services are referred to as *Aboriginal Legal Service staff members*. This includes solicitors and support staff.
- Legal Aid staff are referred to as *Legal Aid solicitors* or *Aboriginal Legal Aid staff members* (the latter includes both solicitors and support staff).

Given that there were multiple interviews with different Aboriginal and non-Aboriginal stakeholders in each location, the interviews have been numbered. So for example, *Aboriginal legal support workers 2 Bourke* refers to the second interview done with Aboriginal people working in a justice-related field in Bourke.

## CHAPTER TWO

### ABORIGINAL USE OF LEGAL AID CIVIL AND FAMILY LAW SERVICES

The purpose of this chapter is to discuss the current use made by Aboriginal people of the civil and family assistance provided by Legal Aid NSW. Legal Aid NSW provided data on applications by Aboriginal and non-Aboriginal people for legal aid in civil law and family law matters for 2007. This data included:

- Applications for civil aid;
- Grants of civil aid;
- Provision of minor assistance for civil aid;
- Applications for family aid;
- Grants of family aid; and
- Provision of minor assistance for family aid.

We have analysed applications and grants of aid by Indigenous status but also by gender, highlighting some of the important differences in the use of legal aid services by Aboriginal men and Aboriginal women.

#### 2.1 Legal Aid for Civil Law Matters

The following discussion of legal aid for civil law matters distinguishes between applications for aid, successful grants of aid and minor assistance. In the first section we discuss the applications by Aboriginal and non-Aboriginal people for 2007<sup>98</sup>.

##### *2.1.1 Applications for Civil Aid*

Table 2.1 shows the number of applications for grants of Legal Aid in various categories of civil law by Indigenous status. It shows that 4.6 per cent (169) of the total number of applications (3506) came from Aboriginal clients. According to the 2006 Census, Aboriginal and Torres Strait Islander people comprised 2.2 per cent of the New South Wales population. Aboriginal people have a rate of applications for civil law assistance at 114 per 100,000 of their respective population, compared to a non-Indigenous rate of 52.6 per 100,000.<sup>99</sup>

Table 2.1 shows that for Aboriginal people the three most common civil law areas for which applications were made for legal aid in 2007 were in mental health (19.5 per cent), personal injury/accidents (16.6 per cent) and in miscellaneous civil matters (12.4 per cent). These constituted 48.5 per cent of all applications for aid by Aboriginal clients. Consumer issues represented another 10.7 per cent of cases.

In comparing the two groups, mental health was also the largest category for non-Aboriginal applications (15.1 per cent). However the next major categories were consumer issues (13.9 per cent) and veterans' affairs (12 per cent). Other matters

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<sup>98</sup> All data in relation to use of Legal Aid NSW relates to calendar years rather than financial years.

<sup>99</sup> All population figures used in this chapter are based on estimated residential populations from the 2006 Census (see DAA 2008: 11-14).

where there were a greater percentage of Aboriginal applications compared to non-Aboriginal applications included discrimination and harassment, employment, and civil matters arising from crime. Those areas with comparatively few Indigenous matters included social security, immigration, and administrative law.

**Table 2.1**

**Applications for Civil Aid by Indigenous Status and Category of Matter.  
Legal Aid NSW 2007**

Category of Matter	Aboriginal		Non-Aboriginal	
	No	%	No	%
Administrative Law	5	3.0	303	8.6
Civil Matters Arising From Crime	8	4.8	63	1.8
Civil Miscellaneous	21	12.4	365	10.4
Civil Obsolete	0	0.0	10	0.3
Civil Other – Commonwealth	1	0.6	1	0.0
Civil Other – State	4	2.4	15	0.4
Consumer	18	10.7	487	13.9
Debt (non-consumer)	0	0.0	13	0.4
Discrimination & Harassment	13	7.7	140	4.0
Employment	5	3.0	49	1.4
Environment / Neighbours	0	0.0	12	0.3
Human Rights / Civil Liberty	0	0.0	23	0.7
Immigration	0	0.0	143	4.1
Landlord / Tenant	9	5.3	164	4.7
Matters Following Death	13	7.7	168	4.8
Mental Health	33	19.5	528	15.1
Personal Injury & Accidents	28	16.6	189	5.4
Phone/Counter Enquiry General Law	0	0.0	9	0.3
Professional Negligence	4	2.4	39	1.1
Public Interest	0	0.0	13	0.4
Real Property	5	3.0	185	5.3
Social Security	2	1.2	165	4.7
Veterans	0	0.0	418	12.0
Wills/Estates	0	0.0	4	0.1
Total	169	100	3506	100

Table 2.2 provides more detailed analysis of the major categories for Aboriginal applications: mental health, personal injury and accidents, and civil miscellaneous.

**Table 2.2****Applications for Civil Aid by Indigenous Status and Most Common Type of Matter. Legal Aid NSW 2007**

Type of Matter	No	%
<b>Mental Health</b>		
Civil Commitment	1	3.0
Financial Management	4	12.2
Forensic Patient	24	72.7
Guardianship	3	9.1
Mental Health Appeals	1	3.0
Total	33	100.0
<b>Personal Injury &amp; Accidents</b>		
Assault (Civil)	4	14.3
Other Personal Injury	1	3.6
Personal Injury	5	17.9
Personal Injury - Motor Vehicle	1	3.6
Victims Compensation	17	60.7
Total	28	100.0
<b>Civil Miscellaneous</b>		
Common Law Negligence	1	4.8
Government Depts / Instrumentalities (Civil Law)	4	19.0
Other Civil Matter – State	12	57.1
Other Matters Miscellaneous – State	4	19.0
Total	21	100.0

Table 2.2 shows that nearly three quarters of mental health matters (72.7 per cent) were related to forensic patients – that is people whose requirement for Legal Aid assistance arose via their contact with the criminal justice system because of their mental health status.

In the personal injury and accidents category, 60.7 per cent of matters related to victim's compensation and a further 14.3 per cent to civil claims arising from assaults. Thus 75 per cent of matters where civil assistance was sought under the personal injury category related specifically to assault matters.

Legal Aid NSW practitioners in several regional locations have identified the following issues as some that may fall within the 'Civil Miscellaneous' category: restitution orders; advice on how to take out and enforce AVOs; disputes with family members; disputes with community members; governance advice for organisations<sup>100</sup>.

<sup>100</sup> Two other explanations for the frequency of use of the 'civil miscellaneous' category were suggested by Legal Aid NSW staff. One suggestion was that it is used, particularly in some regional offices, for circumstances where advice or assistance is given to Aboriginal clients for matters that do not fall strictly within the Legal Aid guidelines, but where it was judged that assistance should be granted in any case for the purposes of building relationships with that community. The other suggestion was that recording matters as 'civil miscellaneous' may reflect that the data is being



### 2.1.2 Applications for Civil Aid by Gender

There are important gendered differences in terms of the use of Legal Aid. Table 2.3 shows that 96 of the 169 applications by Aboriginal people for legal aid in 2007 were made by Aboriginal women. This comprised 57 per cent of the total number of Aboriginal applications. Aboriginal women have a rate of applications for civil law assistance at 129.4 per 100,000 of their respective population, compared to an Aboriginal male rate of 98.6 per 100,000.

Interestingly, the gendered nature of non-Aboriginal applications for civil law aid is the reverse to Aboriginal applications. In 2007, non-Aboriginal women represented 39.8 per cent of all non-Aboriginal applicants and non-Aboriginal men were 60.2 per cent. Thus Aboriginal women are the majority of Aboriginal applications for civil aid, and non-Aboriginal men are the majority of non-Aboriginal applications.

**Table 2.3**

**Aboriginal Applications for Civil Aid by Gender and Category of Matter.  
Legal Aid NSW 2007**

Category of Matter	Male		Female	
	No	%	No	%
Administrative Law	2	2.7	3	3.1
Civil Matters Arising From Crime	3	4.1	5	5.2
Civil Miscellaneous	9	12.3	12	12.5
Civil Other – Commonwealth	0	0.0	1	1.0
Civil Other - State	0	0.0	4	4.2
Consumer	7	9.6	11	11.5
Discrimination & Harassment	7	9.6	6	6.3
Employment	0	0.0	5	5.2
Landlord / Tenant	1	1.4	8	8.3
Matters Following Death	6	8.2	7	7.3
Mental Health	22	30.1	11	11.5
Personal Injury & Accidents	11	15.1	17	17.7
Professional Negligence	2	2.7	2	2.1
Real Property	0	0.0	2	2.1
Social Security	0	0.0	2	2.1
<b>Total</b>	<b>70</b>	<b>100</b>	<b>96</b>	<b>100</b>

N=166. 3 missing 'male' cases

Not only do Aboriginal women have a higher rate of application for legal aid for civil law matters, but Table 2.3 points to some important differences in the type of civil aid applications between Aboriginal men and women. Applications for civil aid relating to mental health were 18.6 percentage points higher for Aboriginal men – the greatest difference across any category. One might assume this is directly related to legal aid

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recorded by Legal Support Officers at first contact with clients, who may not have a specific enough sense of the matter to be able to categorise it more appropriately than as 'miscellaneous'. This then may not be revisited by the practitioner who sees the client. Cf Recommendation 17 by Dimos (2008) which picks up on this issue:

Recommendation 17: It is recommended that the civil law program develop standards for data recording, to ensure that all services are consistently captured and accurately recorded.

for forensic patients arising from contact with the criminal justice system. Landlord / tenant matters and employment were areas where there were proportionately more applications by Aboriginal women than men. Generally speaking, the applications by Aboriginal women were spread more widely across the range of civil law matters than those by Aboriginal men.

### *2.1.3 Successful Grants of Legal Aid for Civil Law Matters*

Table 2.4 shows the number of grants of aid in 2007 to Aboriginal and non-Aboriginal clients. This means that the client has successfully applied for a grant of aid, having met the relevant eligibility tests.<sup>101</sup>

Table 2.4 shows that Aboriginal recipients of Legal Aid NSW grants accounted for 5.1 per cent of the total 2488 civil aid grants made in 2007. It also shows that the most common types of matters for which Legal Aid grants were made to Aboriginal clients were mental health, consumer, and personal injury/accidents matters. Together, these matter types constituted 54 per cent of all grants of civil law aid to Aboriginal clients. Although 'civil miscellaneous' was a major category for Aboriginal applications for aid (see 2.1.1), applications relating to consumer issues were more likely to be granted.

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<sup>101</sup> For civil law matters, these tests include:

- the types of matters for which legal aid is available, and
- the tests which must be applied before a grant of legal aid is made to an applicant including:
  - a means test
  - a merit test,
- the availability of funds test, and, where applicable,
- the special disadvantage test.

See Legal Aid NSW Policy Online Section 6.2,

<http://legalaid.nsw.gov.au/asp/index.asp?pgid=758&cid=993&policyid=1&chapterid=3&sectionid=4303> accessed on 26 October 2008. Where a client is granted legal aid, this may be either an unlimited grant (extending for the entire legal proceedings), or a limited grant (up to a specified stage of the proceedings): see Legal Aid NSW Policy Online Ch 13.1

<http://legalaid.nsw.gov.au/asp/index.asp?pgid=758&cid=993&policyid=1&chapterid=29&sectionid=1178> accessed on 26 October 2008.

**Table 2.4**  
**Successful Grants for Civil Aid by Indigenous Status and Category of Matter.**  
**Legal Aid NSW 2007**

Category of Matter	Aboriginal		Non-Aboriginal	
	No	%	No	%
Administrative Law	<5*	<4.0	171	7.2
Civil Matters Arising From Crime	6	4.8	38	1.6
Civil Miscellaneous	11	8.7	121	5.1
Civil Obsolete	0	0.0	10	
Civil Other – state	<5	<4.0	<5	<0.2
Consumer	16	12.7	316	13.3
Debts (non-personal)	0	0.0	<5	<0.2
Discrimination & Harassment	11	8.7	73	3.1
Employment	<5	<4.0	19	0.8
Environment/Neighbours	0	0.0	<5	<0.2
Human Rights / Civil Liberty	0	0.0	28	1.2
Immigration	0	0.0	132	5.6
Landlord / Tenant	6	4.8	100	4.2
Matters Following Death	8	6.3	100	4.2
Mental Health	34	27.0	488	20.7
Personal Injury & Accidents	18	14.3	80	3.4
Phone/Counter enquiry general law	0	0.0	<5	<0.2
Professional Negligence	<5	<4.0	14	0.6
Public Interest	0	0.0	10	0.4
Real Property	5	4.0	116	4.9
Social Security	<5	<4.0	132	5.6
Veterans	0	0.0	399	16.9
Wills / Estates	0	0.0	<5	<0.2
<b>Total</b>	<b>126</b>	<b>100.0**</b>	<b>2362</b>	<b>100.0**</b>

\* Where the number <5 has been used the exact figure was not provided by Legal Aid New South Wales for reasons of confidentiality.

\*\*The percentage column will not add-up to 100 per cent because of the missing numbers <5. In these cases we have indicated that the relative percentage will be less than 4 per cent in the case of Aboriginal matters and less than 0.2 per cent in the respective non-Aboriginal matters.

While consumer and mental health issues also came in the top three most common civil law matters for which aid was granted for non-Aboriginal applicants (comprising 34 per cent of all grants of aid to that group), the second most common legal issue for which a grant of aid was made to non-Aboriginal clients was for veterans' affairs (16.9 per cent).<sup>102</sup> There were no grants of aid made to Aboriginal people for veterans' matters. Generally speaking, the grants of aid to non-Aboriginal clients were spread more widely across the range of civil law matters than those for Aboriginal clients.

The number of grants for civil aid in 2007 cannot be directly measured against the number of applications in 2007 because an application in 2007 might not be dealt with until 2008, while some of the grants made in 2007 will relate to applications made in

<sup>102</sup> These matters were made up overwhelmingly of appeals against decisions pertaining to eligibility and entitlements (288 out of 399).

2006. However, we noted above in section 2.1.1 that Aboriginal *applications* for civil aid comprised 4.4 per cent of all applications in 2007. We noted here that Aboriginal *grants* for civil aid comprised 5.1 per cent of all grants made in 2007. This does suggest that Aboriginal applications for civil aid are more likely to be successful than non-Aboriginal applications.

Table 2.5 provides more detailed analysis of the major categories for Aboriginal grants: mental health, personal injury and accidents, and consumer.

**Table 2.5**  
**Grants for Civil Aid by Indigenous Status and Most Common Type of Matter.**  
**Legal Aid NSW 2007**

Type of Matter	No
<b>Mental Health</b>	
Forensic Patient	28
Guardianship	3
Financial Management	1
Mental Health Appeals	1
Civil Commitment	1
Total	<b>34</b>
<b>Personal injury and accidents</b>	
Victims Compensation	12
Personal Injury	1
Assault (Civil)	3
Other Personal Injury	1
Personal Injury - Motor Vehicle	1
Total	<b>18</b>
<b>Consumer</b>	
Consumer Debt	3
Money Owed By Applicant	2
Consumer Contracts, Sale Of Goods	5
Credit Act / Consumer Credit Code	1
Consumer Protection	3
Insurance Contracts	1
Money Owed To Applicant	1
Total	<b>16</b>

Although the numbers are small, Table 2.5 shows that the most common mental health matters relate to forensic patients, most consumer matters involved personal debt issues (at least 7 out of 16), and the most common personal injury matters arose out of assaults (15 out of 18). Again it is worth noting that the mental health and personal injury matters comprised largely criminal justice or crime related matters.

#### *2.1.4 Grants of Civil Aid by Gender*

Table 2.6 shows that of the 126 civil law grants of aid made to Aboriginal clients in 2007, the majority (59 per cent) were made to Aboriginal women. The gender breakdown is the opposite for grants to non-Aboriginal people. In 2007, non-Aboriginal women received 38 per cent of grants (909 out of 2362). The fact that Aboriginal women comprised 57 per cent of applications in 2007 and 59 per cent of grants in 2007 also suggests that Aboriginal women are slightly more likely to be successful in their applications for civil aid than Aboriginal men.

**Table 2.6**  
**Aboriginal Grants for Civil Aid by Gender and Category of Matter.**  
**Legal Aid NSW 2007**

Category of Matter	Male		Female	
	No	%	No	%
Administrative Law	1	1.9	2	2.7
Civil Matters Arising From Crime	2	3.8	4	5.4
Civil Miscellaneous	3	5.8	8	10.8
Civil Other - State	0	0.0	3	4.1
Consumer	6	11.5	10	13.5
Discrimination & Harassment	6	11.5	5	6.8
Employment	0	0.0	3	4.1
Landlord / Tenant	0	0.0	5	6.8
Matters Following Death	3	5.8	5	6.8
Mental Health	23	44.2	11	14.9
Personal Injury & Accidents	4	7.7	14	18.9
Professional Negligence	0	0.0	1	1.4
Real Property	3	5.8	2	2.7
Social Security	0	0.0	1	1.4
Total	51	100.0	74	100.0

N=125. 1 missing 'male' case

The matters for which grants of civil aid were made to Aboriginal clients differed by gender. The most common matter type for Aboriginal men was in the area of mental health (44.2 per cent; 19 of these 23 were for matters relating to forensic patients). Personal injury/accidents was the most common matter type for which Aboriginal women received grants of aid (10 of those 14 being in relation to victims compensation). Mental health was the next most common legally aided civil law issue for women (at 14.9 per cent). Similar to applications for civil aid, grants of aid for Aboriginal women tended to be spread more widely across the range of civil law matters than those by Aboriginal men.

## 2.2 The Provision of Minor Assistance for Civil Law Matters

Minor assistance is an extension of an advice service and usually involves a legal practitioner assisting a client with writing a letter or with filling out court documents. It is normally a 30-minute session and is at the discretion of the legal practitioner providing the minor assistance.<sup>103</sup>

<sup>103</sup> Legal Aid NSW Policy Online, *13: Types of Grants: 13.6.3 Minor Assistance*  
<http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=758&cid=993&policyid=1&chapterid=29&sectionid=1183>

Table 2.7 sets out the number of matters for which minor assistance was provided in 2007 by Indigenous status. The data shows that a total of 2230 people (130 Aboriginal and 2100 non-Aboriginal) received minor assistance from Legal Aid NSW in 2007. Aboriginal people comprised 5.8 per cent of the total number of clients receiving minor assistance. The rate for Aboriginal civil minor assistance was 87.7 per 100,000 of the respective population compared to a non-Aboriginal rate of 31.5 per 100,000.

**Table 2.7**

**Civil Minor Assistance by Indigenous Status and Category of Matter.  
Legal Aid NSW 2007**

Category of Matter	Aboriginal		Non-Aboriginal	
	No	%	No	%
Administrative Law	6	4.6	188	9.0
Civil Matters Arising From Crime	3	2.3	5	0.2
Civil Miscellaneous	39	30.0	355	17
Consumer	24	18.5	254	12.1
Discrimination & Harassment	9	6.9	11	0.5
Employment	8	6.2	33	1.6
Environment / Neighbours	0	0.0	23	1.1
Landlord / Tenant	5	3.8	46	2.2
Matters Following Death	7	5.4	44	2.1
Mental Health	4	3.0	24	1.1
Personal Injury & Accidents	14	10.8	48	2.3
Phone/Counter Enquiry General Law	1	0.8	48	2.3
Professional Negligence	4	3.1	14	0.7
Public Interest	1	0.8	0	0.0
Real Property	3	2.3	35	1.7
Veterans	2	1.5	972	46.3
Total	130	100.0	2100	100.0

Table 2.7 shows that the most common matters for which Aboriginal clients received minor assistance were for miscellaneous civil matters, consumer issues and personal injury and accidents. Together, these areas comprised almost 60 per cent of matters for which minor assistance was provided. In contrast, veterans' affairs made up 46.3 per cent of minor assistance matters where the client was non-Aboriginal (and only 1.5 per cent where the client was Aboriginal).

These most common matter groups for civil minor assistance provided to Aboriginal clients are further broken down as follows:

**Table 2.8**  
**Civil Minor Assistance by Indigenous Status and Most Common Type of Matter.**  
**Legal Aid NSW 2007**

Type of Matter	No
<b>Civil Miscellaneous</b>	
Government Depts / Instrumentalities (Civil Law)	6
Motor Vehicle Property Damage	4
Other Civil Matter - State	12
Other Matters Miscellaneous – State	17
Total	39
<b>Consumer</b>	
Consumer Contracts, Sale Of Goods	3
Consumer Debt	6
Contract Dispute	3
Contracts Review Act	1
Credit Act / Consumer Credit Code	1
Insurance Contracts	2
Money Owed By Applicant	7
Money Owed To Applicant	1
Total	24
<b>Personal Injury &amp; Accidents</b>	
Assault (Civil)	3
Personal Injury	2
Personal Injury - Motor Vehicle	1
Public Liability Claim	1
Victims Compensation	7
Total	14

Twenty nine of the civil miscellaneous matters are unspecified in nature in the data provided (see 2.1.1 above).<sup>104</sup> Of the 24 consumer matters, 14 related to personal debt (58 per cent) and 10 of the 14 personal injury matters were assault related.

### *2.2.1 Provision of Civil Minor Assistance by Gender*

Table 2.9 shows that of the 130 Aboriginal clients who received civil law minor assistance from Legal Aid NSW in 2007, 62 per cent were women and 38 per cent were men. In contrast, the breakdown is the opposite for minor assistance rendered to non-Aboriginal people. In 2007, non-Aboriginal women accessed 33.5 per cent of minor assistance (703 out of 2,100) compared with 66.5 per cent provided to non-Aboriginal men (1,396).

<sup>104</sup> Note that there is a comparable percentage of such matters for non-Aboriginal clients.

Aboriginal women have a rate for civil minor assistance at 109.2 per 100,000 of their respective population, compared to an Aboriginal male rate of 66.2 per 100,000.

**Table 2.9**

**Aboriginal Civil Minor Assistance Gender and Category of Matter.**

**Legal Aid NSW 2007**

Category of Matter	Male		Female	
	No	%	No	%
Administrative Law	4	8.2	2	2.5
Civil Matters Arising From Crime	1	2.0	2	2.5
Civil Miscellaneous	19	38.8	20	24.7
Consumer	5	10.2	19	24.5
Discrimination & Harassment	2	4.1	7	8.6
Employment	2	4.1	6	7.4
Landlord / Tenant	1	2.0	4	4.9
Matters Following Death	5	10.2	2	2.5
Mental Health	1	2.0	3	3.7
Personal Injury & Accidents	4	8.2	10	12.3
Phone/Counter Enquiry General Law	1	2.0	0	0.0
Professional Negligence	0	0.0	4	4.9
Public Interest	0	0.0	1	1.2
Real Property	2	4.1	1	1.2
Veterans	2	4.1	0	0.0
Total	49	100.0	81	100.0

The ‘civil miscellaneous’ category was the largest proportion of minor assistance for both Aboriginal men and women. A quarter of all minor assistance for Aboriginal women were consumer matters compared to only 10.2 per cent for men. Similar to grants of aid for Aboriginal women, minor assistance for Aboriginal women tended to be spread more widely across the range of civil law matters than those by Aboriginal men.

## **2.3 Legal Aid for Family Law Matters**

The following discussion on legal aid for family law matters distinguishes between applications for aid, successful grants of aid and minor assistance. In the first section we discuss the applications by Aboriginal and non-Aboriginal people for 2007.

### *2.3.1 Applications for Family Law Aid*

Table 2.10 shows that there were 3385 applications by Aboriginal people and 40721 for legal aid in family law matters in 2007. Aboriginal applications accounted for 7.7 per cent of the total number of applications. Aboriginal people have a rate of applications for family law aid at 2284.4 per 100,000 of their respective population, compared to a non-Indigenous rate of 610.6 per 100,000.

Table 2.10 shows that the vast majority of Aboriginal applications were for matters involving children (50.3 per cent) and care and protection issues (41.0 per cent). These represented 91.3 per cent of all Aboriginal applications – slightly higher than



applications in these areas by non-Aboriginal clients (89.7 per cent). It is also noteworthy that although care protection matters were the second largest group for both Aboriginal and non-Aboriginal applications, Aboriginal applications were 13.1 percentage points higher than non-Aboriginal applications.

**Table 2.10**

**Applications for Family Aid by Indigenous Status and Category of Matter.  
Legal Aid NSW 2007**

Category of Matter	Aboriginal		Non-Aboriginal	
	No	%	No	%
Care And Protection	1391	41.0	11372	27.9
Child Representation	44	1.3	361	0.9
Child Support	69	2.0	755	1.9
Children	1701	50.3	25152	61.8
Contempt	9	0.3	201	0.5
Family Law Other	123	3.6	1727	4.2
Injunctions	0	0.0	18	0.0
Phone/Counter Enquiry	0	0.0	2	0.0
Property	6	0.2	85	0.2
Property & Maintenance	39	1.2	1013	2.5
Spouse Maintenance	3	0.1	35	0.1
Total	3385	100.0	40721	100.0

Table 2.11 provides more detailed analysis of the major categories for Aboriginal applications for family law aid: children and care and protection.

The ‘children’ category in Table 2.11 relates to matters under the Family Law Act. The majority of the applications involve the residence of children (64.6 per cent) now referred to as ‘live with’ under the Family Law Act amendments of 2006. The second major type of matter relates to contact with the child (23.9 per cent) now referred to as ‘spend time with’.

**Table 2.11**

**Applications for Family Law Aid by Indigenous Status and Most Common Type of Matter. Legal Aid NSW 2007**

Type of Matter	No	%
<b>Children</b>		
Contact	8	0.5
Hague Convention (Child Abduction)	2	0.1
Independent Children's Lawyer	17	1.0
Live With	1098	64.6
Location / Recovery Order	117	6.9
Parenting Plan	6	0.4
Relocation Application (Child)	4	0.2
Residence	7	0.4
Specific Issues	36	2.1
Spend Time With	406	23.9

Total	1701	100.0
<b>Care And Protection</b>		
Abuse	1	0.1
ADR For Care Proceedings	6	0.4
Alternative Parenting Plan (By Consent)	1	0.1
Appearances On Instructions	162	11.6
Application To Vary/Rescind	63	4.5
Assessment Order	24	1.7
Breach Of Undertaking / Supervision	5	0.4
Children's Independent Legal Representative	269	19.3
Consent Orders (Care Plan)	22	1.6
Emergency Care And Protection Order / Extend ECPO	76	5.5
Final Care Orders	275	19.8
Interim Care Application	113	8.1
No Adequate Provision	275	19.8
Variation / Rescission	99	7.1
Total	1391	100.0

In Table 2.11 the three major types of matters under care and protection are final care orders (19.8 per cent), no adequate provision (neglect) (19.8 per cent) and acting as the child's independent legal representative (19.3 per cent).

### 2.3.2 Applications for Family Law Aid by Gender

Table 2.12 shows that 60 per cent of the total applications made by Aboriginal people for family legal aid in 2007 were made by women. There was a similar percentage of applications for family law aid made by non-Aboriginal women (62 per cent or 25141 of a total of 40721 non-Aboriginal applications).

**Table 2.12**

**Aboriginal Family Aid Applications by Gender and Category of Matter.  
Legal Aid NSW 2007**

Category of Matter	Male		Female	
	No	%	No	%
Care And Protection	566	42.2	825	40.5
Child Representation	25	1.9	17	0.8
Child Support	18	1.3	51	2.5
Children	660	49.3	1033	50.8
Contempt	2	0.1	7	0.3
Family Law Other	58	4.3	65	3.2
Property	0	0.0	6	0.3
Property & Maintenance	11	0.8	28	1.4
Spouse Maintenance	0	0.0	3	0.1
Total	1340	100	2035	100

N=3375. Missing Cases = 10.

There was little difference on the basis of gender across the various categories of matters for which aid was sought. Aboriginal men and women sought legal aid for similar issues: primarily children and care and protection.

### 2.3.3 Successful Grants for Family Law Aid

Table 2.13 shows the number of grants of family legal aid in 2007 to Aboriginal and non-Aboriginal clients, where the client has successfully applied for a grant of aid and met the relevant eligibility tests.<sup>105</sup>

**Table 2.13**  
**Successful Grants for Family Law Aid by Indigenous Status and Category of Matter. Legal Aid NSW 2007**

Category of Matter	Aboriginal		Non-Aboriginal	
	No	%	No	%
Care And Protection	1325	45.1	10750	31.5
Child Representation	43	1.5	351	1.0
Child Support	55	1.9	561	1.6
Children	1391	47.4	20621	60.4
Contempt	5	0.2	145	0.4
Family Law Other	91	3.1	1153	3.4
Injunctions	0	0.0	8	0.0
Property	4	0.1	46	0.1
Property and Maintenance	19	0.6	496	1.5
Spouse Maintenance	2	0.1	22	0.1
Total	2935	100.0	34153	100.0

Table 2.13 shows that Aboriginal recipients of Legal Aid grants accounted for 7.9 per cent of total family law grants made in 2007. The most common categories of matters for which grants were made to Aboriginal clients were for care and protection and child related matters. Together, these matter types constituted 92.5 per cent of all grants of family aid to Aboriginal clients. The proportion was similar for non-Aboriginal clients (91.9 per cent). However, care and protection formed a greater proportion of Aboriginal successful grants than was the case with non-Aboriginal grants (45.1 per cent compared to 31.5 per cent) and children matters under the Family Law Act were 13 percentage point lower for Aboriginal grants (47.4 per cent compared to 60.4 per cent).

As we noted with grants for civil aid in 2007, family law grants cannot be directly measured against the number of applications in 2007 because an application in 2007 might not be dealt with until 2008, while some of the grants made in 2007 will relate to applications made in 2006. However, we noted above in section 2.3.1 that Aboriginal *applications* for family law aid comprised 7.7 per cent of all applications

<sup>105</sup> For Legal Aid policy on family law grants of aid see Legal Aid NSW Online Policy, 5.2.1 *Family law matters for which Legal Aid NSW will grant legal aid*, <<http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=758&cid=993&policyid=1&chapterid=23&sectionid=3727>>, accessed on 29 October 2008. Commonwealth family law matters have most stringent tests.

in 2007. We noted here that Aboriginal *grants* for family law aid comprised 7.9 per cent of all grants made in 2007. This suggests that Aboriginal applications for family law aid are as successful, or perhaps slightly more successful, compared with non-Aboriginal applications.

The categories of matters most common in grants of family law aid to Aboriginal clients were children and care and protection matters. Table 2.14 shows these categories in more detail.

As we noted with applications for family aid, family law matters relating to residence and contact with children were the major matters for which legal aid was granted for Aboriginal clients (64.1 per cent and 23.2 per cent respectively). Legal aid for recovery orders comprised 7.5 per cent in the 'children' category. Under care and protection, final care orders, no adequate provision (neglect) and the child's independent legal representative comprised just on 60 per cent of the matters.

**Table 2.14**  
**Grants for Family Law Aid by Indigenous Status and Most Common Type of Matter. Legal Aid NSW 2007**

Type of Matter	No	%
<b>Children</b>		
Live With	891	64.1
Spend Time With	323	23.2
Independent Children's Lawyer	17	1.2
Location / Recovery Order	105	7.5
Specific Issues	32	2.3
Contact	7	0.5
Residence	7	0.5
Parenting Plan	6	0.4
Relocation Application (Child)	3	0.2
Total	1391	100.0
<b>Care And Protection</b>		
Children's Independent Legal Representative	259	19.5
No Adequate Provision	264	19.9
Final Care Orders	270	20.4
Appearances On Instructions	157	11.8
Emergency Care And Protection Order / Extend ECPO	73	5.5
Interim Care Application	110	8.3
Variation / Rescission	95	7.2
Application To Vary/Rescind	44	3.3
Assessment Order	24	1.8
Consent Orders (Care Plan)	19	1.4
Breach Of Undertaking / Supervision	5	0.4
ADR For Care Proceedings	4	0.3
Alternative Parenting Plan (By Consent)	1	0.1
Total	1325	100.0

### 2.3.4 Grants for Family Law Aid by Gender

Table 2.15 shows that 1760 successful applications by Aboriginal people for family legal aid in 2007 were made by women compared to 1167 for men. Aboriginal women had 60.1 per cent of successful Aboriginal applications. This was similar to the proportion of successful applications by non-Aboriginal women (61.5 per cent or 20,919 out of a total of 13,105 non-Aboriginal applications).

**Table 2.15**  
**Aboriginal Family Aid Grants by Gender and Category of Matter.**  
**Legal Aid NSW 2007**

Category of Matter	Aboriginal Male		Aboriginal Female	
	No	%	No	%
Care And Protection	532	45.6	793	45.1
Child Representation	25	2.1	16	0.5
Child Support	13	1.1	42	2.4
Children	548	47.0	837	47.6
Contempt	2	0.2	3	0.2
Family Law Other	41	3.5	50	2.8
Property	0	0.0	4	0.2
Property & Maintenance	6	0.5	13	0.7
Spouse Maintenance	0	0.0	2	0.1
Total	1167	100	1760	100.0

Table 2.15 shows that the categories of family law grants were similar for Aboriginal men and Aboriginal women.

## 2.4 The Provision of Minor Assistance for Family Legal Aid Matters

As noted previously, minor assistance is an extension of an advice service and usually involves a legal practitioner assisting a client with writing a letter or with filling out court documents. It is normally a 30-minute session.

Table 2.16 shows that minor assistance was provided to 180 Aboriginal people and 2819 non-Aboriginal people in 2007. Aboriginal recipients of minor assistance in family law accounted for 6 per cent of all clients. Aboriginal people have a rate of minor assistance for family law at 121.5 per 100,000 of their respective population, compared to a non-Indigenous rate of 42.3 per 100,000.

**Table 2.16**  
**Family Minor Assistance by Indigenous Status and Category of Matter.**  
**Legal Aid NSW 2007**

Category of Matter	Aboriginal		Non-Aboriginal	
	No	%	No	%
Care And Protection	17	9.4	75	2.6
Child Representation	0	0.0	3	0.1
Child Support	51	28.0	739	26.2

Children	66	37.0	771	27.4
Contempt	0	0.0	3	0.1
Divorce	4	2.2	321	11.4
Family Law Other	34	19.0	493	17.5
Family Law Obsolete	2	1.1	99	3.5
Injunctions	0	0.0	6	0.2
Phone/Counter Enquiry	4	2.2	200	7.1
Property	2	1.1	106	3.8
Spouse Maintenance	0	0.0	3	0.1
Total	180	100.0	2819	100.0

Table 2.16 shows that the most common types of matters for which family law minor assistance was provided to Aboriginal clients concerned children, child support and 'other' family law matters. Together, these constituted 84 per cent of all minor assistance to Aboriginal clients.

These most common matter groups for family minor assistance provided to Aboriginal clients are further broken down as follows:

**Table 2.17**  
**Family Minor Assistance by Indigenous Status and Most Common Type of Matter. Legal Aid NSW 2007**

Type of Matter	No	%
<b>Children</b>		
Live With	22	33.3
Location / Recovery Order	4	6.1
Parenting Plan	1	1.5
Specific Issues	2	3.0
Spend Time With	37	56.1
Total	66	100.0
<b>Child Support</b>		
Appeal From SSAT Decision	3	5.9
Child Support Declaration	37	72.5
Child Support Forum	2	3.9
Child Support Kit	1	2.0
CSA Change Of Assessment	3	5.9
Parentage Testing	5	9.8
Total	51	100.0
<b>Family Law Other</b>		
Family Law Other - Commonwealth	34	100.0
Total	34	100.0

The matters involving children concerned overwhelmingly residence (33.3 per cent) and access issues (56.1 per cent). The majority of child support inquiries pertained to

seeking a declaration of paternity for child support purposes (37 out of 51 or 72.5 per cent).

Table 2.18 shows that 128 of the total of 180 Aboriginal people receiving minor assistance from Legal Aid NSW in 2007 were women. Thus Aboriginal women were 71.1 per cent of all Aboriginal people receiving minor assistance. For family law aid by non-Aboriginal clients in 2007, non-Aboriginal women represented 65.6 per cent of minor assistance clients.

**Table 2.18**  
**Aboriginal Family Minor Assistance by Gender and Category of Matter.**  
**Legal Aid NSW 2007**

Category of Matter	Male		Female	
	No	%	No	%
Care And Protection	5	9.6	12	9.4
Child Support	8	15.4	43	33.6
Children	30	57.7	36	28.1
Divorce	2	3.8	2	1.6
Family Law Other	4	7.7	30	23.4
Family Law Obsolete	1	2.0	3	2.3
Property	1	2.0	1	0.8
Total	52	100	128	100

Table 2.18 shows that there were differences between Aboriginal men and women on the nature of the minor assistance which was sought. Men were more likely than women to seek assistance in relation to children under the Family Law Act – presumably mainly residence and access (57.7 per cent for men compared to 28.1 per cent for women). Aboriginal women were much more likely than men to seek assistance about child support (33.6 per cent compared to 15.4 per cent) and to seek advice on family law ‘other’ matters (23.4 per cent compared to 7.7 per cent).

## **2.5 Conclusion**

The profile of Aboriginal civil law applications, grants and minor assistance differed in various ways from non-Aboriginal aid in this area. Two striking differences were the different gender profile with Aboriginal women being the majority among Aboriginal clients, while men were the majority among non-Aboriginal clients. A second difference was in the type of matters for which assistance was sought. For example, mental health matters were more pronounced among Aboriginal clients and veteran affairs among non-Indigenous clients.

The main findings from this section of the research in relation to civil law show that in 2007:

- Aboriginal people comprised 4.6 per cent of civil aid applications, 5.1 per cent of grants of civil aid and 5.8 per cent of clients receiving minor assistance for civil aid. The rate of Aboriginal applications for civil aid and minor assistance per 100,000 of population was more than twice the non-Aboriginal rate.

- The most common civil law applications for Aboriginal people were, in order, mental health (19.5 per cent), personal injury/accidents (16.6 per cent), miscellaneous civil matters (12.4 per cent) and consumer issues (10.7 per cent). The most common grants of civil legal aid were for mental health (27 per cent), personal injury/accident (14.3 per cent) and consumer (12.7 per cent).
- Many of the mental health (forensic patient) and personal injury matters (victim's compensation and civil assault) were generated through crime or contact with the criminal justice system.
- Aboriginal women were the majority of Aboriginal applicants for civil aid (57 per cent), for grants of civil aid (59 per cent) and of Aboriginal clients receiving minor assistance for civil aid (62 per cent).
- Mental health was a major category for Aboriginal male applications for civil aid (30 per cent) and for grants of civil aid (44.2 per cent). Aboriginal women's applications for civil aid and grants of civil aid were spread across a broader range of civil law areas. For Aboriginal women personal injury was the most frequent category for applications (17.7 per cent) and grants of civil aid (18.9 per cent).

The main findings from this section of the research in relation to family law show that in 2007:

- Aboriginal people comprised 7.7 per cent of family aid applications, 7.9 per cent of grants of family aid and 6 per cent of clients receiving minor assistance for family aid. The rate of Aboriginal applications for family aid and minor assistance per 100,000 of population was more than three times (applications) and twice (minor assistance) the non-Aboriginal rate.
- The most common family law categories of applications for Aboriginal people were, in order, 'children' (primarily, residence and contact) (50.3 per cent), and care and protection (41 per cent). The most common grants of family legal aid were for 'children' (47.4 per cent) and care and protection (45.1 per cent). The most common categories for minor assistance were for 'children' (37 per cent), child support (28 per cent) and family law 'other' (19 per cent).
- Care and protection matters and 'children' matters under the Family Law Act were the dominant categories in both Aboriginal and non-Aboriginal grants of family law aid. However, care and protection formed a greater proportion of Aboriginal successful grants than was the case with non-Aboriginal grants (45.1 per cent compared to 31.5 per cent) and 'children' matters under the Family Law Act were 13 percentage points lower for Aboriginal grants (47.4 per cent compared to 60.4 per cent).
- The categories of family law grants were similar for Aboriginal men and Aboriginal women clients. However, there were gender differences with minor assistance. Aboriginal women were much more likely than men to seek



assistance about child support and Aboriginal men were more likely than women to seek assistance in relation to children under the Family Law Act.

## CHAPTER THREE

### LEGAL NEEDS ANALYSIS : FAMILY, HOUSING, NEIGHBOURS AND EDUCATION

In this chapter we discuss four areas of legal need: family, housing, neighbours and education. The analysis is based on the information collected from the survey and discussion in the focus groups, as well as through the interview material collected from various stakeholders.

#### 3.1 Family Law

The following discussion is broadly divided between issues arising around children and issues about property which may have arisen after a divorce or separation. The major area of concern for Aboriginal people concerns children, either in terms of residence and contact arising from partner separation, or in relation to removal of children by DOCS.

Interviews with stakeholders confirmed that access to children, custody issues between partners and care and protection were major matters. A significant issue was the lack of knowledge and access to family law.

Some of the main issues I see particularly with family law is that we don't access it...which then gives not many of our people legal status in family law. Historically the legal system has never been in favour of women and children and Aboriginal people, so I think that's one of the main reasons, and I guess we mostly keep our family business internal as well... in family breakdowns, mum and dad just decide among themselves, which isn't appropriate, because dad may decide he'll just come and take the kids, or the old people step in if the parents aren't doing well, and then they've got no legal support, and basically the child has no legal status (*Aboriginal legal support workers 1, Dubbo*).

If we have a dispute [with family law] we try to work it out ourselves. We don't want to bring in lawyers because it costs money. Where are these blackfellas going to get money for lawyers? (*Tabulam Men's FG participant*).

##### 3.1.1 Children

Focus group participants were asked whether over the last couple of years, they had any problems concerning residence (custody) or contact arrangements (access) in relation to their children or grandchildren. Overall 17.2 per cent of participants identified an issue relating to custody or access. Table 3.1 shows that Aboriginal women were more likely (20.8 per cent) to identify these issues than men (13.5 per cent).

**Table 3.1**  
**Number and Percentage of Focus Group Participants Who Identified Family Law Issues Relating to Custody and Access to Children**

	Focus Group Participants					
Family Law	Male		Female		Total	
	No	%	No	%	No	%
Yes	10	13.5	16	20.8	26	17.2
No	64	86.5	61	79.2	125	82.8
<b>Total</b>	<b>74</b>	<b>100.0</b>	<b>77</b>	<b>100.0</b>	<b>151</b>	<b>100.0</b>

Excludes 2 missing cases

Focus group participants were also asked whether they had had any problems in relation to children being taken into care, or problems about fostering, adoption or guardianship. Overall 16.2 per cent of participants identified an issue relating to care matters. As shown in Table 3.2 Aboriginal women were more than twice as likely (22.5 per cent) to identify such an issue than men (9.9 per cent).

**Table 3.2**  
**Number and Percentage of Focus Group Participants Who Identified a DOCS Related Matters**

	Focus Group Participants					
DOCS Matters	Male		Female		Total	
	No	%	No	%	No	%
Yes	7	9.9	16	22.5	23	16.2
No	64	90.1	55	77.5	119	83.8
<b>Total</b>	<b>71</b>	<b>100.0</b>	<b>71</b>	<b>100.0</b>	<b>142</b>	<b>100.0</b>

Excludes 11 missing cases

Some 20 participants (15 women and 5 men) indicated the nature of the problem. As shown in Table 3.3, the most frequently mentioned issue related to custody matters, followed by assistance from DOCS and access issues. Matters related to the extended family were also evident (grandchildren, nephews and nieces and broader kinship).

**Table 3.3**  
**Nature of Family Law / DOCS Problems**

	No
Custody	6
Assistance from DOCS	4
Access	4
Custody of grandchildren	3
Nephews/ Nieces Placed in Care	2
Kinship Care	1

There was wide-ranging dissatisfaction among focus group participants concerning their interactions with DOCS:

I'll get a bomb and put it underneath them and blow them up (*Dubbo Women's FG participant*).

DOCS – you don’t mess with them – they’ve got a lot of power. They don’t tell you about the allegations. They just say they are coming to check (*Moree Men’s FG participant*).

I think they forget who they give the kid to sometimes (*Dubbo Women’s FG participant*).

Stakeholder interviews indicated that the removal of children by DOCS was a major concern in various communities.

Since I returned to Walgett, all I’m hearing is that DOCS are taking kids (*Aboriginal legal support workers 1 Walgett*).

DOCS remove the children far from the family, and family find it hard to get to the child by public transport – in remote places there is no direct route (*Aboriginal legal support worker 2 Bourke*).

Many stakeholders commented on the apparent lack of legal advice or representation for parents in cases where their children are being removed.

DOCS sends a letter to a mother to come to court and she appears without representation, not realising that she is there to answer an application to take her kids. She has no legal support then in that proceeding (*Aboriginal legal support worker 2 Bourke*).

It would be good if there was an Aboriginal liaison officer here so the family could come and tell them ‘there’s an aunty who can take the kid’, to avoid children being moved to a different town. Otherwise there is no alternative presented to the magistrate other than the recommendation by DOCS about what should happen (*Aboriginal legal support workers 1 Walgett*).

What we need is if we can get people aware of their rights and get some advice from a solicitor beforehand. Instead, what happens is that the kids are going into care with very little fight. There is no one there to stand up for the mother to say ‘yes, I’ve made mistakes, but how about some support services to help me become a better mother?’ (*Aboriginal legal support worker 2 Bourke*).

There was a view that parents do whatever DOCS tell them:

They accept what’s going on, they are very much in the dark... We as Aboriginal people still regard DOCS as a power that we can’t reckon with. We as a group of people are still scared of DOCS and we won’t take them on...

When people are dealing with DOCS, because of the intimidation factor, a lot of people just don’t know where they can go if they believe something went wrong there, because DOCS is an organisation that is like, ‘well, this is the way it’s going to go’. They are not aware that they have the right, if need be, to fight the decision that has been made. Regardless of the outcome, people should be aware that they have the right to question the decision (*Aboriginal legal support workers 1 Penrith/Mt Druitt*).

### 3.1.2 Accessing Legal Advice

Stakeholder interviews confirmed that there are difficulties accessing information about family law issues.

They come to us but we don't really know much about it. Because it is a touchy subject, isn't it? Criminal law stuff, we spin out a lot of that stuff because we do it all the time (*Aboriginal legal support workers 1 Walgett*).

Our clients find it difficult understanding the forms, difficult understanding the process (*Aboriginal legal support workers 1 Dubbo*).

I think Aboriginal people have lost a lot of our children to family law, because we just haven't gone to court, if it is against a non-Aboriginal person, they're more powerful, they've got more money, so we've lost our children, and then it appears that we didn't really want our children (*Aboriginal legal support workers 1 Dubbo*).

Analysis of the surveys indicated that very few people sought legal advice in relation to the issues around family law and DOCS associated matters (14.9 per cent). Although the numbers were small, Table 3.4 shows that Aboriginal women were more likely to seek legal assistance than men (23.3 per cent compared to 8.6 per cent).

**Table 3.4**  
**Number and Percentage of Focus Group Participants Who Sought Legal Advice**

Legal Advice	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	5	8.6	10	23.3	15	14.9
No	53	91.4	33	76.7	86	85.1
Total	58	100.0	43	100.0	101	100.0

Excludes 52 missing cases

Of the 15 individuals who indicated they sought legal advice, 13 specified who they had received the advice from:

- Aboriginal Legal Service (8)
- Legal Aid (3)
- Private solicitor (2)

Nine of the 14 who sought legal advice were satisfied with the advice. Although the numbers are very small, it is worth noting that two of the three people who sought advice from Legal Aid NSW were not satisfied with the advice they received. The particular issues that arise for Aboriginal people approaching Legal Aid for family law advice was outlined by one Aboriginal Legal Aid staff member:

With family law matters involving DOCS, that's a difficult one. Because it's a government department, and it does not seem, for a lot of Indigenous people, that you can go to one government department and say that another

government department did something. That idea is very much entrenched. They don't realise that just because one government department tells them one thing doesn't necessarily mean that Legal Aid Commission is going to back that other government department (*LAC Aboriginal staff member 5*).

A number of focus group participants expressed frustration at the lengthiness and outcomes of custody proceedings, although this did not necessarily translate into dissatisfaction with their legal representative:

I'm seeking custody of my five grandchildren through DOCS. They're slow...very slow. I've been to court five or six times, trying to get more visit rights at the moment (*Dubbo Women's FG participant*).

I got a court order. My son died and I had to fight my daughter in law for access to my grandkids, she's a white girl. And I got my court order that I have them every second weekend and part of school holidays. She took off 15 months ago and I've had no contact with the children...we've just found her and I went to court in January asking for a recovery order. They refused me, the magistrate. If that had been a black fella and they had breached an order they would be behind bars...two Christmases have come and gone and I still have gifts sitting there. It's very very slow (*Dubbo Women's FG participant*).

The case study below indicates some of the current difficulties in accessing appropriate legal advice and assistance.

#### **CASE STUDY**

[The case study involves] a family who had DOCS come in and tell them that they needed to get new furniture. But the family did not understand that this was a condition that, if not fulfilled, would lead to them losing their kids. They didn't understand the implications that a suggestion by DOCS to get some new furniture would turn up in an affidavit as a failure and a reason to take the children. Challenging the DOH to come and fix the premises could have been something that we [the service provider] could have done. They failed to tell Centrelink that they had taken one of the kids out of child care and put them into school, so money was going to the wrong place and was actually owed to the family.

At the moment, legal aid is only available once you hit the court process, what we need is a coordinated effort by community workers, social workers, legal workers to proactively address all the issues, where the client is actually advised what the risks of non-compliance with DOCS suggestions are. Waiting until DOCS has already formulated its affidavit of failures, where something is already in court, and this in an environment where intervention is coming in earlier and adoption out is an option earlier, without this holistic approach, we are going to have another stolen generation.

Implementing change involves being proactive, going out with families, to schools, agencies. Someone to do the negotiating and advocacy for them (*Legal practitioner 1 Redfern*).

### 3.1.3 Divorce and Separation

Focus group participants were asked whether they had been through a divorce or separation over the last couple of years, and as a result of separation whether they were involved in any dispute over property, money or superannuation.

**Table 3.5**  
**Number and Percentage of Focus Group Participants Divorced or Separated**

Divorced or Separated	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	6	8.6	8	11.8	14	10.1
No	64	91.4	60	88.2	124	89.9
<b>Total</b>	70	100.0	68	100.0	138	100.0

Excludes 15 missing cases

Table 3.5 shows that 14 participants (10.1 per cent) had been through a divorce or separation recently. There were slightly more women than men (11.8 per cent compared to 8.6 per cent). Of those that had separated or divorced, only four indicated that there had been a dispute over property, money or superannuation. Two of these four had sought legal advice: one from a private lawyer and one from Legal Aid NSW.

Property issues arising from a divorce or separation did not emerge as an issue in discussions with stakeholders.

## 3. 2 Housing and Tenancy

Housing problems emerged as a major issue in the focus groups discussions and interviews with stakeholders. While there were numerous complaints from participants about the conduct of the Department of Housing or Aboriginal housing bodies, in some places, like Goodooga, the issues were of an even more basic nature:

Our problem is that we don't know who to pay rent to. There is an Aboriginal housing organisation but at the moment it is just sitting there...we need to find some way of getting housing back under control...No one is paying rent right now, as of a couple of months ago. So if something happens to those houses, we would have to fix that ourselves...can you help us? Because we don't know how to go about doing these things (*Goodooga Women's FG participant*).

Focus group participants were asked three questions relating to various housing and tenancy issues. These covered disputes with landlords over matters such as rents, repairs, evictions, relocations etc; disputes involving supported accommodation, such as a hostel, nursing home or a retirement village and covering issues such as fees, services, standards; and whether legal advice has been required for other housing matters, such as buying and selling, seeking council approval for building applications, etc.

**Table 3.6**  
**Number and Percentage of Focus Group Participants Who Positively Identified Housing and Tenancy Related Issues**

Housing and Tenancy	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Disputes with Landlord	25	32.9	38	49.4	63	41.2
Disputes involving Supported Acc.*	3	5.0	6	10.5	9	7.7
Other legal needs**	4	5.6	3	4.2	7	4.9

N=153; \* excludes 36 missing cases; \*\* excludes 9 missing cases

Table 3.6 shows the results of the three questions which raised issues of potential legal need relating to housing and tenancy. Overall 41.2 per cent of participants identified disputes involving landlords, 7.7 per cent identified disputes involving supported accommodation, and 4.9 per cent identified other legal needs in relation to housing. The percentage of women who identified disputes with landlords was 16.5 percentage points higher than men, and constituted nearly half of all women who participated in the focus groups.

### *3.2.1 Disputes with Landlord*

Some 50 participants provided information on the types of disputes they had with landlords. These are shown in Table 3.7. Some participants indicated more than one issue. The most frequently noted matter was the issue of repairs. Feelings of power inequality between landlord and tenant in the public housing context were strongly evident:

It's amazing – they owe you money, they don't want to give it to you. But you owe *them* money, 'we're going to terminate your rental here because you're a week behind in your rent'... and they have the authority to go in and direct debit you, but we can't go and direct debit *them!* (*Redfern women's FG participants*).

They intimidate [me]. I'm the weakest link, see, they know where my weak point is. In any case, they're much stronger. (*Wagga women's FG participants*).



**Table 3.7**  
**The Reason for Tenant / Landlord Disputes**

	<b>No</b>
Repairs	26
Rent	19
Relocation	7
Eviction	6
Bond	4
Tenancy agreement	1
Water bill	1
Not able to have children housed where I like	1
Not being home when they came to change smoke alarm	1
Damage done after moving	1
Dispute over person residing in house	1
Aboriginal nepotism, and mainstream racism	1
Total	69

Failure of public housing authorities to carry out timely repairs was nominated as a major area of dispute, coupled with a sense of unfairness about the burden placed on tenants to bear costs at the end of their tenancies:

You move out and THEN they do it all up (*Dubbo Women's FG participant*.)

There's problems with both the Department of Housing and the Aboriginal Housing Corporation, getting repairs (*Moree Men's FG participant*).

I have thousands and thousands of dollars to repay because of damages to property, but every time I called DOH during the tenancy to have repairs done, I was told that priority repairs had to be done first. We asked for the carpet to be replaced, eventually we lifted the carpet up ourselves, now I've got to pay for new carpet to be put in through the house (*Dubbo Women's FG participant*).

My daughter moved out of a DOH house just before they decided to move everybody [off the Gordon Estate]. DOH put in a new stove and washing line just before she moved out, now they are charging her for it. She never even got to use it and when she was living there she was calling them and asking for a new stove to be put in. Now there isn't even a house on that land but she is still paying for it. (*Dubbo Women's FG participant*)

Myself and my defacto, we've been living in the house for thirteen years. We've only had one renovation done in thirteen years. It actually got condemned last year. They've got us another accommodation but we've already been waiting two months and we still haven't been able to move in. (*Dubbo Men's FG participant*)

In Dubbo, many of the issues raised related to the demolition of parts of the Gordon Estate – a largely Aboriginal housing estate in Dubbo's west - and the relocation of Department of Housing tenants elsewhere:

They've moved us off the Gordon Estate, 'relocation' they called it, we had to fill in these forms, 'transfer forms' they called it, so that 30 years down the track they can say 'you weren't moved from there'. It's the same shit that was going on here years ago, when they rounded up the darkies and moved them to the missions and that – same thing! Same shit, different smell (*Dubbo Women's FG participant*).

When they decided to demolish the Gordon Estate, there were 250 homes worth. The facilitator at the meeting had the audacity to say that the Federal Government was demolishing it because there was no money for maintenance. I said. "What maintenance? They never ever drove a nail into my home...when I moved into the new estate I was there 45 days and they wanted to come and do a home crime visit with me and I said 'piss off, for 23 years I lived over there, that's why the Gordon Estate got into the mess it was in, because you are too lazy to get out of your office' (*Dubbo Women's FG participant*).

Of the 63 Aboriginal people who identified a dispute with a landlord, some 25.4 per cent of participants indicated that they sought legal advice. Table 3.8 shows that Aboriginal women were more likely to seek advice than Aboriginal men (28.9 per cent compared to 20 per cent). Overall nearly seven in ten people (69.8 per cent) indicated that they did not seek legal advice for their housing and tenancy problem.

**Table 3.8**  
**Number and Percentage of Focus Group Participants Who Sought Legal Advice**

Legal Advice	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
No	19	76.0	25	65.8	44	69.8
Yes	5	20.0	11	28.9	16	25.4
Unknown	1	4.0	2	5.3	3	4.8
Total	25	100.0	38	100.0	63	100.0

Of the 16 individuals who indicated that they sought advice, 12 provided details of who they contacted – which was most commonly a tenancy advisory service (including Aboriginal tenancy services). The results are shown in Table 3.9. Neither Aboriginal legal services nor Legal Aid NSW were among the agencies contacted.

**Table 3.9**  
**Agency Contacted for Assistance with**  
**Housing and Tenancy Issues**

Agency Contacted	No
Tenancy Advisory Service	6
Community Legal Centre	1
Private Solicitor	1
Department of Housing	1
Minister for Housing	1
Department of Fair Trading	1
Local Member	1

Of the 16 people who sought advice, 15 responded to the question of whether the advice was satisfactory. The majority (9) indicated that it was not satisfactory. In the words of one focus group participant,

I moved out on the Friday, handed the keys in on the Monday and over the weekend the house got damaged [by others]. I went to the tribunal to fight the fine, and lost. I was represented through the tenancy service – you’d have thought he worked for the housing commission, not for me; everything they said he agreed with them. I could have done a better job than they did (*Dubbo Women’s FG participant*).

Disputes with DOH emerged from the stakeholder interviews as a major problem, particularly concerning waiting lists for transfers; forced relocation resulting in people having to return to communities and situations that they had consciously left; evictions, rent arrears, repair waiting time and repayments that were made to DOH but did not show up in the system. In Moree it was estimated by an Aboriginal stakeholder that over half of the matters being heard by the Residential Tenancy Tribunal when it visited every fortnight involved Aboriginal people.

Failure to carry out repairs was often referred to:

They (DOH) don’t fix nothing. They haven’t fixed nothing for years in Moree, that’s a fact. People pay their rent all the time and if they get behind in their rent they chuck them out, but they’re not rushing to do their repairs. They haven’t done any repairs in ages (*Aboriginal legal support worker 2 Moree*).

We get a lot of people coming in to say their drains haven’t been emptied, repairs haven’t been made. I know about an old lady here, and it’s freezing cold here, and I know she’s been onto Department of Housing to get a fireplace put in because she’s got no heating in the house, she’s got one little heater (*Aboriginal legal support workers 1 Walgett*).

The lack of knowledge about rights and the ability to negotiate were also seen as problematic.

There are families that are moved in from different towns because it is resettlement town. It starts a feud. It’s a waste of time to go to the Housing

Department and there is no solicitor you can use. There is no one you can go to (*Wagga Men's FG participant*).

Housing comes up all the time. A lot of people don't have support; so a lot of families want to get transferred, they have a lot of trouble with that. They don't know their rights with housing (*Legal support worker 1 Wagga*).

Tenants cause property damage and owe arrears so that the next property they get, they have so much deducted from their pay. If they find that they cannot manage that... and they get into greater debt, and they have a lot of difficulty with negotiation (*Aboriginal legal support workers 1 Dubbo*).

### *3.2.2 Disputes Relating to Supported Accommodation*

As noted above in Table 3.6, nine individuals had disputes relating to supported accommodation. Only five of the nine identified the nature of the dispute. Three indicated multiple issues in relation to fees, services provided and standards of care. One indicated it was in relation to discrimination (bias) and the other noted 'the Protective Commission' – which could have meant that the dispute was with the Office of the Protective Commissioner.

Seven of the nine individuals indicated that they sought legal advice. Only one indicated who provided the advice, and in that case 'other family dealt with [the problem]' and it was satisfactorily resolved.

### *3.2.3 Other Legal Needs Relating to Housing*

As noted above in Table 3.6, seven individuals indicated other legal needs relating to housing. Five responded to the question of who provided the advice. Of those, two indicated private solicitors and one the Aboriginal Legal Service. The other two referred to council approval and development applications.

One focus group participant raised a concern that arises in situations of relationship breakdown between Aboriginal and non-Aboriginal partners. In some cases, the [Aboriginal] woman ends up without housing while "the [non-Aboriginal] partner has ended up with the house and that worries me because they only accessed it because of Aboriginality" (*Redfern Women's FG participant*).

The special needs of people coming out of prison were also raised. Options available for keeping housing during short term prison sentences are often not well understood, leading to homelessness:

They said hand your keys back in and when you get released we will rehouse you within three months. I'm still waiting (*Redfern Women's FG participant*).

## **3.3 Neighbours**

Focus group participants were asked whether they had any disputes with neighbours over such things as fences or boundaries, noise, privacy, animals, etc. Table 3.10 shows that 26.8 per cent of participants identified neighbourhood disputes as an issue.

**Table 3.10**  
**Number and Percentage of Focus Group Participants Who Positively Identified Neighbour Disputes as an Issue**

	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Neighbourhood Disputes	16	21.3	24	32.4	40	26.8

Excludes 4 missing cases. N=149

Aboriginal women were more likely than men to identify a neighbourhood dispute as having been an issue for them (32.4 per cent compared to 21.3 per cent).

Table 3.11 below shows that of the 40 individuals who identified neighbourhood disputes 10 sought legal advice. Women were also more likely to seek advice (29.2 per cent compared to 18.7 per cent). Overall however, the majority of individuals (67.5 per cent) did not seek advice.

**Table 3.11**  
**Number and Percentage of Focus Group Participants Who Sought Legal Advice**

Legal Advice	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
No	10	62.6	17	70.8	27	67.5
Yes	3	18.7	7	29.2	10	25.0
Unknown	3	18.7			3	7.5
Total	16	100.0	24	100.0	63	100.0

Six of the ten who sought advice indicated who they contacted, as shown below in Table 3.12. In one case more than one agency was noted.

**Table 3.12**  
**Agency Contacted for Assistance with Neighbour Issues**

Agency Contacted	No
Police	2
Aboriginal Legal Service	1
Real Estate Agent	1
Department of Housing	1
WATAAS	1
Mediation	1
Total	7

Of the 10 individuals who indicated they sought advice, 9 responded to the question of whether the advice was satisfactory. The majority (5) indicated that it was not satisfactory.

Participants were also asked how the dispute was resolved. Those who had not sought advice generally had more negative outcomes including a criminal conviction, an apprehended violence order, and at least four cases where the participant had moved out of the residence.

Discussion in focus groups confirmed that neighbourhood disputes were often resolved in the absence of legal advice:

We just talk it out, and argue and argue until its finished or the police get called in (*Tabulam Women's focus group*).

### 3.4 Education

Participants were asked whether they had been responsible for a young person attending school, TAFE or university over the last couple of years. Table 3.13 shows that more than a third of the participants (37.4 per cent) were responsible for a young person in an educational institution. The proportion was higher for Aboriginal women (44.6 per cent) than Aboriginal men (30.1 per cent).

**Table 3.13**  
**Number and Percentage of Focus Group Participants Who Were Responsible For a Young Person in Education**

Responsible for Young Person in Education	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	22	30.1	33	44.6	55	37.4
No	51	69.9	41	55.4	92	62.6
<b>Total</b>	<b>73</b>	<b>100.0</b>	<b>74</b>	<b>100.0</b>	<b>147</b>	<b>100.0</b>

Excludes 6 missing cases

Participants were asked whether they had encountered any problems with suspension or expulsion; bullying or harassment; HECS or other fees. Table 3.14 shows that half (50.9 per cent) of the 55 participants who were responsible for a young person reported problems. The percentage was particularly high among women (61.3 per cent) who had responsibility for a young person in education.

**Table 3.14**  
**Number and Percentage of Focus Group Participants Who Reported Problems Relating to Expulsion, Fees, etc.**

Problems Relating to Educational Institution	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	8	36.4	19	61.3	27	50.9
No	14	63.6	12	38.7	26	49.1
<b>Total</b>	<b>22</b>	<b>100.0</b>	<b>31</b>	<b>100.0</b>	<b>53</b>	<b>100.0</b>

Excludes 2 missing cases

The main problems identified by participants are shown in Table 3.15. Suspension and expulsion are clearly the most pronounced problems:

There is racism up there at that school [that my sons attend]. Every time my boys go to school they always come back suspended for two, three weeks. So I just give up, stop sending them to school (*Tabulam Women's FG participant*).

**Table 3.15**  
**Education Issues**

Type	No
Suspension / Expulsion	11
Bullying	6
Harassment	4
HECS	2
Behavioural problems with child	2
General problems with school	2

For some participants, behavioural problems were linked to perceived discrimination or victimisation of the child within the classroom: one example raised was of a child who broke a ruler and spat at a teacher and was brought to court on three charges of assault:

They make him feel bad in the class, as if it is his fault when anything happens. Last year he didn't have a chance to go on any of his excursions. They would set him up and say 'you can go, you can go', but then when the time came he couldn't go. The mother tried to complain to the police but they were no help. She tried to complain via the education department but didn't get very far (*Goodooga Women's FG participant*).

Five of the 27 individuals who indicated a problem at school sought legal advice (four women and one male). Three of those who sought legal advice approached the police, the Education Department, and a local church which has a lawyer available.

Problems with suspension and expulsion were also identified by some stakeholders.

Huge amount of suspension, and Aboriginal children are much more likely to be suspended for the same behaviour. Also, the behaviour leading to the suspension may be the Aboriginal child responding to racism, direct or indirect (*Aboriginal legal support workers 1 Dubbo*).

I didn't even know there was anything you could do about suspension / expulsion. I thought you just had to cop it on the chin. It is a big problem around here (*Aboriginal legal support worker 1 Bourke*).

### **3.5 Conclusion**

#### *Family law*

The evidence suggests that family law matters tend to be worked out by the parties without legal assistance. Disputes usually involve children. Overall 17.2 per cent of

focus group participants identified an issue relating to custody or access. Aboriginal women were more likely (20.8 per cent) to identify these issues than men (13.5 per cent).

Children being taken into care was identified as a significant problem, and Aboriginal women were more than twice as likely (22.5 per cent) to identify such as issue than men (9.9 per cent). There was wide-ranging dissatisfaction among focus group participants concerning their interactions with DOCS.

Many stakeholders commented on the apparent lack of legal advice or representation for parents in cases where their children are being removed. Focus group participants indicated that very few people (14.9 per cent) sought legal advice in relation to the issues around family law and DOCS associated matters. Although the numbers were small, Aboriginal women were more likely to seek legal assistance than men (23.3 per cent compared to 8.6 per cent).

### *Housing and Tenancy*

Housing problems emerged as a major issue in the focus groups discussions and interviews with stakeholders. Overall 41.2 per cent of focus group participants identified disputes involving landlords, primarily the conduct of the Department of Housing or Aboriginal housing bodies. The most frequently noted matter was the issue of repairs, followed by rent.

Of the 63 Aboriginal people who identified a dispute with a landlord, some 70 per cent of individuals indicated they did not seek legal advice. Aboriginal women were more likely to seek advice than Aboriginal men (28.9 per cent compared to 20 per cent).

### *Neighbours*

Some 26.8 per cent of focus group participants identified neighbourhood disputes as an issue that had affected them in recent years. Aboriginal women were more likely than men to identify a neighbourhood dispute as having been an issue for them (32.4 per cent compared to 21.3 per cent), and Aboriginal women were also more likely to seek advice (29.2 per cent compared to 18.7 per cent).

Overall however, the majority of individuals (67.5 per cent) did not seek legal advice. Those who had not sought advice generally had more negative outcomes including a criminal conviction, an apprehended violence order, and at least four cases where the participant had moved out of the residence.

### *Education*

More than a third of the focus group participants (37.4 per cent) were responsible for a young person in an educational institution. The proportion was higher for Aboriginal women (44.6 per cent) than Aboriginal men (30.1 per cent).

Half (50.9 per cent) of the 55 participants who were responsible for a young person reported problems. The percentage was particularly high among women (61.3 per



cent) who had responsibility for a young person in education. The main problem identified by participants was suspension and expulsion.

Five of the 27 individuals (or 18.5 per cent) who indicated a problem at school sought legal advice (four women and one male).

## CHAPTER FOUR

### LEGAL NEEDS ANALYSIS : EMPLOYMENT, STOLEN WAGES AND DISCRIMINATION

In this chapter we discuss three areas of legal need: employment, stolen wages and discrimination.

#### 4.1 Employment

Employment related legal needs were identified by some stakeholders as a priority area for Aboriginal clients:

Employment is a huge issue. There are a lot of people who might enter into very casual work arrangements...and you've got very little redress in those sort of situations if the employment falls through, or if you get injured or something like that. People get discouraged from pursuing the issue or they don't know how to do it...and it is something that seems to fall through gaps in the system at the moment (*Aboriginal Legal Service staff member 3*).

Focus group participants were asked whether, over the last couple of years, they had any disputes in their work over things like pay, superannuation, unfair dismissal, working hours, award conditions, leave, union membership, bullying, harassment or other working conditions.

**Table 4.1**  
**Number and Percentage of Focus Group Participants With Identified Employment Disputes**

Employment Disputes	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	17	22.7	14	19.2	31	20.9
No	58	77.3	59	80.8	117	79.1
<b>Total</b>	75	100.0	73	100.0	148	100.0

Excludes 5 missing cases

Table 4.1 shows that overall, 20.9 per cent of participants indicated that they had employment issues. The proportion of men identifying employment issues was slightly higher than women (22.7 per cent compared to 19.2 per cent).

In some areas like Tabulam and Goodooga, employment conditions under CDEP were a particular problem.

Most people are working on CDEP here. People don't know about leave, about annual leave (*Tabulam Men's FG participant*).

Table 4.2 shows the type of employment problems identified by the participants. Some participants indicated more than one employment problem. The most common problem related to disputes over pay, followed by bullying, harassment and intimidation in the workplace.

**Table 4.2**  
**Employment Problems**

	No
Pay	7
Bullying, Harassment and Intimidation	5
Working Hours	4
Unfair Dismissal	4
Working Conditions	3
Superannuation	3
Long Service and Other Leave	2
Contract Dispute	1

Nine participants indicated that they sought legal advice for their employment issues, which comprised 29 per cent of the 31 individuals who indicated they had an employment-related problem. Although the numbers are small, the number of Aboriginal women who sought legal advice was slightly higher than the number of men (5 compared to 4), and this was despite the fact that fewer women indicated an employment-related dispute (see Table 4.1).

Eight of the nine participants who sought legal advice provided information on who they used for their advice: four used private solicitors, two used their union, and one each used Legal Aid NSW and the Department of Industrial Relations. Five of the nine participants indicated that the advice was satisfactory.

I had a compensation matter about employment. I didn't go to WALs because I knew they didn't handle it. I went to the community legal centre but it fell on deaf ears. It was like, who are you? I was better off going to see a private firm and they were willing to act for me (*Dubbo Men's FG participant*).

## 4.2 Stolen Wages and Stolen Generations

Participants were asked whether they had been directly affected by government policies relating to Stolen Wages, Trust Funds or Stolen Generations. Table 4.3 shows that 15.6 per cent of participants indicated that they had been directly affected by these policies. The proportion of Aboriginal women affected was higher than Aboriginal men (19.2 per cent compared to 12.2 per cent), which was partly influenced by the older age of Aboriginal women participants.

**Table 4.3**  
**Number and Percentage of Focus Group Participants Affected by Stolen Wages, Trust Funds or Stolen Generations.**

Stolen Wages, Stolen Generations	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	9	12.2	14	19.2	23	15.6
No	65	87.8	59	80.8	124	84.4
Total	74	100.0	73	100.0	147	100.0

Excludes 6 missing cases

Participants were asked whether they had received any advice relating to the Aboriginal Trust Funds Repayments Scheme (ATFRS). Some comments from focus group participants highlighted the lack of information and perceived lack of support in lodging claims in some communities:

Never heard of stolen wages (*Dubbo Women's FG participant*).

They came out here to let people know about the Stolen Wages. But they pick one organisation and that organisation doesn't let the community know that they are here. There was no-one there. Everyone missed it (*Moree Men's FG participant*).

They say they're going to have a big meeting and something is going to come out of that meeting, but it never does (*Dubbo Women's FG participant*).

I don't think many knew about it. Because no one came out here and talked about it. There was [only] something in Lismore (*Tabulam Women's FG participant*).

Men and women in the Goodooga focus groups had had no information about the scheme and wanted some, as several attendees felt that they may hold successful claims.

Table 4.4 shows that the vast majority of participants (92.9 per cent) had not received advice concerning the ATFRS.

**Table 4.4**  
**Number and Percentage of Focus Group Participants Who Had Advice Relating to ATFRS**

Advice on ATFRS	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	5	6.8	5	7.5	10	7.1
No	69	93.2	62	92.5	131	92.9
<b>Total</b>	74	100.0	67	100.0	141	100.0

Excludes 12 missing cases

Five of the ten people who had received information on the ATFRS indicated who they had received the information from. The providers of information were:

- Dubbo Local Aboriginal Lands Council
- Link-Up
- AFTRS
- Women's Legal Service
- Family members.

Eight people indicated on the questionnaires they were pursuing a claim under the scheme.

Stolen wages was not an issue addressed by many of the stakeholders, which probably reflected the similar lack of knowledge of remedies from focus group participants. One community-based service noted,

We have a few claims; we work pretty closely with PIAC. We did a session with the elders out here. People have either been to a session or they haven't – the roadshow has been through some places and not others (*Aboriginal legal support workers 2 Walgett*).

### 4.3 Discrimination

Racial discrimination has emerged as a major issue in this study, especially in some of the research locations. Many interviewees spoke of discrimination as a kind of 'fact of life' that Aboriginal people had come to expect:

The main problem is race discrimination. We are seen as a lower form of the community. They see us as people who are more likely to commit a crime, as not reliable. I see that a lot in the employment sector. And in the supermarkets (*Wagga Men's FG participant*).

The rednecks run this town...I've been discriminated in many places around here because of my colour. I just ignore them and think, "well that's your problem not mine" (*Dubbo Women's FG participants*).

Discrimination? I could take you over to the cemetery now and show you: the blackfellas this side, whitefellas that side. Whitefellas up the top, blackfellas down the bottom (*Tabulam Men's FG participant*).

As one group of Aboriginal women noted in a stakeholder meeting,

[There is] discrimination by Centrelink staff and real estate agents on the basis of Aboriginality and sexual preference [example provided of a gay couple with a child trying to access payments]... Supermarkets is another one where we face discrimination all the time...they follow you around. I've been to Coles on a Sunday afternoon in my weekend clothes...and the person in front of me never got their bag checked, but they've pulled every item out of my bag and cross-checked it with my docket... I never argue, I just think 'whatever'... but that sort of thing, or when you are in a shop and you are being served later... that discrimination is entrenched in the system, there is nothing you can do about it...

Focus group participants were asked whether over the last couple of years, they had had any problems with racial discrimination or other types of discrimination. Table 4.5 shows that more than one quarter (28.1 per cent) of both males and females identified discrimination as an issue they had faced recently.

**Table 4.5**  
**Number and Percentage of Focus Group Participants Who Identified Discrimination as an Issue**

Discrimination	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	20	27.4	21	28.8	41	28.1
No	53	72.6	52	71.2	105	71.9
<b>Total</b>	73	100.0	73	100.0	146	100.0

Excludes 7 missing cases

Some 32 of the 41 individuals who indicated discrimination was an issue also provided information on the nature and /or the location of the discrimination. Table 4.6 shows that racial discrimination was the main type of discrimination identified, and that pubs and clubs were the main problems, followed by real estate agents.

**Table 4.6**  
**Discrimination: type and location**

Type	No
Racism / Racial Discrimination	12
Marital status	2
Sexuality	1
Religion	1
<b>Location</b>	
Pubs and clubs	11
Real Estate agents	6
Shopping centres / Shops	5
Employment	5
Local Council	2
Medical centre	1
Police	1

#### Pubs, clubs and shops

Focus group participants spoke of discrimination in shops as commonplace:

Sometimes you think you are making a mountain out of a molehill. You get all steamed up and then you lose the momentum. I felt that I was being discriminated at. I was being a customer. I questioned the way people were treating me (*Mt Druitt Men's FG participant*).

You walk into a shop and you hear 'security to aisle one, or two'. I just turn around and walk out (*Dubbo Men's FG participant*).

There are problems with discrimination, especially with the clubs up here – the bowling club. The bowling club is the main one that is a problem. Whitefellas go straight in. It's the same with jobs around. The whitefellas get them. With the Shire, they employ their family (*Bourke Men's FG participant*).

In shops you watch white people go through the checkout with their handbags, and then a black fella walks through and you hear “excuse me, can I check your handbag?” (*Dubbo Women’s FG participant*).

#### **CASE STUDY**

A focus group participant was approached by a white employee in a pub who said ‘I’ll have to ask you to leave; no offence but I think I can smell your B.O... maybe if you go home and have a shower and come back...’ The participant knew the manager, who apologised. Not satisfied with this, the participant has approached the CLC in Moree who are following it up for her. She went to Moree because the CLC was recommended to her by a friend. (*Dubbo Women’s FG*)

#### Real Estate Agents

Discrimination in the private rental market was of great concern in some focus group locations:

Real estate agents are very bad...you go round and look at 50 or 100 houses, you won’t get one. Every time you go to have a look there are about 6 white families that go along and one little black one, me... you can spend five or six months looking for a place (*Dubbo Women’s FG participant*).

There is discrimination in the private rental market. As soon as they look at you, if you are a blackfella, they won’t accept three references (*Wagga Men’s FG participant*).

#### Employment

A participant in the women’s focus group in Goodooga spoke of the frustration experienced in feeling that she was discriminated against when seeking employment as a teacher:

I’ve got my certificates, I’ve got my experience. I’ve been around children all my life; I’ve taught children with autism, children with severe cerebral palsy – why can’t I even get an interview to find out what experiences I’ve had? I’m the only person in town with a qualification and I can’t get a job! I feel like I’m being discriminated against but I can’t put my finger on how. To me, it is personally a great insult (*Goodooga Women’s FG participant*).

The experience is exacerbated by the dynamics of living in a small community:

Employment goes to the families. When they are in positions, they employ the rest of the family and take up all the jobs, and that’s why we can’t get a job. They don’t even interview other people (*Goodooga Women’s FG participant*).

Discrimination in employment was also raised in other focus groups:

Go round Dubbo and count how many Aboriginal people are employed. None!  
You can count them on your fingers (*Dubbo Women's FG participant*).

### Other discrimination contexts

Me and my partner are not allowed into the Western Plains medical centre because we're addicts (*Dubbo Women's FG participant*).

Participant went to get a prescription for her elderly mother from Western Plains Medical. Prescription was accidentally put through the wash that night, went back to the doctor the following day and an employee said "what are you doing with these, taking them over West side and selling them?"  
The offender had been sacked by 10am the following morning when the participant returned to the centre (*Dubbo Women's FG*).

Participant often needs to defend her mentally ill cousin from hostile remarks from shop assistants, "and then they wanted to bar me because I was screaming my head off. And then the girl took two weeks off work because she was stressed out – I mean, what are you stressed out about? All I did was put you in your place and tell you you're not perfect...I didn't know I could get legal advice about that...now that I know, I'm going to see her manager" (*Redfern Women's FG*).

I used to get my money out and wave it at the cabs, so that the cabs would stop (*Redfern Women's FG participant*).

Shops, pubs and clubs, real estate and employment were also areas of discrimination that stakeholders identified:

You walk into a shop and all of a sudden you hear 'Security to section [whatever]', and you think to yourself, 'but who's here? I never noticed anyone, why have they noticed him, unless it's me...' That's young people right through to old people that cop that sort of discrimination (*Aboriginal legal support workers 1 Dubbo*).

Supermarkets – being tagged on walking into a shop and followed by the security guard. These are now private spaces – you can be banned from a shopping centre where the Medicare office is or the cheap supermarket or the chemist, because you were manifesting a level of anxiety due to your mental illness, and they decided you were likely to be shoplifting, and then it escalates (*Legal practitioner 1 Redfern*).

When seeking employment, if you have a dark skinned person and a light skinned person, the dark skinned person can have all the credentials, the *best* credentials, but chances are they are not going to get employed... or when it is an Aboriginal position that is being advertised, they ask that you have a good driving record – well, I've been asked you know, you must have a drivers' licence, but never a clean driving record. How can you verbalise that that is discrimination? (*Aboriginal legal support workers 1 Dubbo*).



Table 4.7 shows that of the 41 individuals who indicated a problem with discrimination, only seven (17.1 per cent) sought legal advice. Although the numbers are small, Aboriginal women were more likely to seek advice than men.

**Table 4.7**  
**Number and Percentage of Focus Group Participants Who Sought Legal Advice**

Legal Advice	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	2	10.0	5	23.8	7	17.1
No	18	90.0	16	76.2	34	82.9
Total	20	100.0	21	100.0	41	100.0

The seven individuals who sought legal advice identified the following organisations as their source:

Aboriginal Legal Service	2
Local police	2
Legal Aid	1
Private solicitor	1
Human Rights (HREOC)	1

Only one person indicated that she was satisfied with the advice received.

It seems like discrimination all over again. They don't listen to you (*Mt Druitt Women's FG participant*).

There have been discrimination complaints put in. I put one in. I used Legal Aid in Dubbo. I just rang them up (*Bourke Men's FG participant*).

A case study from one legal practitioner shows a successful outcome after legal advice.

#### **CASE STUDY**

The family bought a stroller from Kmart Bondi Junction and were walking with it in Kmart Broadway. The baby was about 8 days old, and the stroller was snatched away by staff, with the baby in it, and the only indicator that they were suspicious is that they were Aboriginal, and they have a new stroller. The family eventually got an apology and a store credit. (*Legal practitioner 1 Redfern*)

## **4.4 Conclusion**

### *Employment*

Overall, 20.9 per cent of participants indicated that they had employment issues. The proportion of men identifying employment issues was slightly higher than women (22.7 per cent compared to 19.2 per cent).

The most common problem related to disputes over pay, followed by bullying, harassment and intimidation in the workplace. Some 29 per cent of the 31 individuals

who indicated they had an employment- related problem also indicated they sought legal advice.

### *Stolen Wages and Stolen Generations*

Some 15.6 per cent of participants indicated that they had been directly affected by policies relating to Stolen Wages and Stolen Generations. The proportion of Aboriginal women affected was higher than Aboriginal men (19.2 per cent compared to 12.2 per cent), which was probably influenced by the older age of Aboriginal women participants.

The vast majority of participants (92.9 per cent) had not received advice concerning the AFTR scheme.

### *Discrimination*

Racial discrimination has emerged as a major issue in this study, especially in some of the research locations. More than one quarter (28.1 per cent) of both males and females identified discrimination as an issue they had faced recently. Racial discrimination was the main type of discrimination identified, and pubs and clubs were the main problems, followed by real estate agents.

Of the 41 individuals who indicated a problem with discrimination, only seven (17.1 per cent) sought legal advice. Although the numbers are small, Aboriginal women were more likely to seek advice than men.



## CHAPTER FIVE

### LEGAL NEEDS : SOCIAL SECURITY, CREDIT DEBT AND CONSUMER ISSUES

In this chapter we discuss three areas of legal need: social security, credit and debt and consumer issues. Again we draw on the focus group discussion and questionnaire results and interviews with stakeholders.

#### 5.1 Social Security and Centrelink

[The] general approach seems to be to ignore it and hope it goes away or try to deal with it yourself with the relevant agency. There are very varying relationships with Centrelink from town to town – sometimes when there is an effective Aboriginal staff worker this makes a big difference to people's ability to resolve issues (*Aboriginal legal support workers 1 Dubbo*).

This observation was borne out by comments from focus group participants.

I've always found them extremely helpful...you hear a lot of people complain about them, but I've never had any problems (*Wagga Women's FG participant*).

This sentiment, however, was said to apply to the general staff, while there was some dissatisfaction with the ease of access to existing Aboriginal staff.

Focus group participants were asked whether they were receiving any type of allowance specifically for Indigenous people such as ABSTUDY, CDEP or the Indigenous Cadetship program. Participants were also asked whether they were receiving any other type of allowance through Centrelink such as Youth Allowance, Newstart Allowance, Austudy, sickness or disability allowances, age pension, widow pension, Veteran Affairs pension, parenting payment, child care payment, baby bonus, or carer payment.

**Table 5.1**  
**Number and Percentage of Focus Group Participants Who Were Receiving A Benefit or Allowance**

	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
<b>Aboriginal Specific Allowance</b>						
<b>Yes</b>	32	42.7	19	28.4	51	35.9
<b>No</b>	43	57.3	48	71.6	91	64.1
<b>Total*</b>	75	100.0	67	100.0	142	100.0
<b>General Allowance</b>						
<b>Yes</b>	50	66.7	63	85.1	113	75.8
<b>No</b>	25	33.3	11	14.9	36	24.2
<b>Total**</b>	75	100.0	74	100.0	149	100.0

\* Excludes 11 missing cases. \*\* Excludes 4 missing cases

Table 5.1 shows that nearly 36 per cent of Aboriginal participants in the focus groups were receiving an Indigenous specific allowance. The proportion was higher among males (42.7 per cent) compared to females (28.4 per cent). In addition three quarters of the focus group participants (75.8 per cent) stated they were receiving some other type of benefit. The proportion was higher among females (85.1 per cent) compared to males (66.7 per cent).

Although many Aboriginal people surveyed were in receipt of payments, accessing specific payments can be difficult.

Big issue in Dubbo is accessing emergency/crisis payments – discrimination as a woman and an Aboriginal when you are trying to access that early payment, when you have to go for a funeral or other emergency. Very little sensitivity (*Aboriginal legal support workers 1 Dubbo*).

Focus group participants were asked whether, over the last couple of years, they had any disputes with Centrelink. Table 5.2 shows that approximately one in three men (32.9 per cent) and one in four women (26.3 per cent) identified having dispute with Centrelink over the last couple of years.

**Table 5.2**  
**Number and Percentage of Focus Group Participants Who Identified a Dispute with Centrelink**

Centrelink Issues	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	24	32.9	20	26.3	44	29.5
No	49	67.1	56	73.7	105	70.5
<b>Total</b>	73	100.0	76	100.0	149	100.0

Excludes 4 missing cases

In some areas isolation and lack of transport is a cause of problems with Centrelink.

The problem with social security is getting into town. If you miss an interview they cut you off. We still have to go in for interviews even though we are on CDEP. People here don't have transport to get into town (*Tabulam Men's FG participant*).

Table 5.3 shows that of the 44 people who identified having a dispute with Centrelink, five sought legal advice. When asked who provided the advice one person indicated the Aboriginal Legal Service and two indicated Centrelink itself.

**Table 5.3**  
**Number and Percentage of Focus Group Participants Who Sought Legal Advice**

Legal Advice	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	2	8.3	3	15.8	5	11.6
No	22	91.7	16	84.2	38	88.4
<b>Total</b>	24	100.0	19	100.0	43	100.0

Excludes 1 missing case

The survey results and focus group discussions indicate that few people seek legal advice.

Social security – it's just like years ago when we used to get picked up and were told to plead guilty (*Dubbo Men's FG participant*).

Stakeholders confirmed that often advice is sought from Centrelink itself.

People get pressured into saying that they are still living with someone to maintain that person's payment (eg rental assistance), and then get into trouble with Centrelink. People go to Welfare Rights in Sydney or the CLC to get help. But often people go to Centrelink and are told that they have to pay a certain amount of dollars per week and they accept that (*Aboriginal legal support workers 1 Dubbo*).

## 5.2 Credit and Debt

Focus group participants were asked whether over the last couple of years they had any problems with paying a bill or loan or other debt where the lender had threatened or taken legal action. Table 5.4 shows that 34.9 per cent of the participants identified debt-related problems. The percentage was similar for both males and females, and was more than one in every three participants.

**Table 5.4**  
**Number and Percentage of Focus Group Participants Who had Debt Problems**

Debt Problems	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	26	34.7	26	35.1	52	34.9
No	49	65.3	48	64.9	97	65.1
<b>Total</b>	75	100.0	74	100.0	149	100.0

Excludes 4 missing cases

Participants were also asked whether they had any problems or disputes over their Credit Reference Rating or as a guarantor for someone else's loan, or in relation to possible bankruptcy.

They put a bad credit rating on me. I rang them up and asked them why they had put me on it when I had paid the debt off. You pay the loans off - when you pay it they don't tell you about the last payment – they didn't tell me about it (*Dubbo Men's FG participant*).

Table 5.5 shows that 19 per cent of participants identified problems relating to their Credit Reference rating, as a guarantor for a loan or in relation to possible bankruptcy.

**Table 5.5****Number and Percentage of Focus Group Participants Who had Credit Rating, Loan or Bankruptcy Problems**

Debt Problems	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	12	17.1	14	20.9	26	19.0
No	58	82.9	53	79.1	111	81.0
<b>Total</b>	70	100.0	67	100.0	137	100.0

Excludes 16 missing cases

Interviews with stakeholders confirmed that credit and debt problems were extensive and varied, covering matters such as:

- Personal debts
- Utilities
- Mobile phone contracts
- High pressure sales for items like computers
- Used cars and associated finance
- Funeral funds
- Bankruptcy
- Credit problems that have become insurmountable because of a failure to deal with them due to letters not being opened, changes of address and literacy issues
- Cars registered in the name of a person not driving it, who then incurs the fines in relation to it.

There was also a cultural dynamic associated with the accumulation of some debt.

The sharing of family properties and identities, and support for one another, and ‘what’s yours is mine’ and things of that nature, which means that people have fines arising for a vehicle they have never driven, they have never had a licence, but the vehicle is registered in their name, and so they’ll have this raft of fines that they could not possibly have incurred, but they have never responded, never sent in the documents saying I wasn’t the driver (*Legal practitioner 1 Redfern*).

Many of the debts are long standing:

A lot of the older fellas that got into debt when they were younger, they still can’t get their drivers’ licence because of their debts (*Aboriginal legal support workers 1 Walgett*).

Some of the fines occur over many years and some clients don’t understand that they can still be pursued for fines incurred a long time ago. People may not know what to do and given all the other issues in their lives, what we’ve observed is that debts and fines tend to be at the bottom of the pile. They’re just one more thing they just can’t deal with, it’s not the most immediate thing to deal with... Because of fluctuating addresses, or jail terms, fines lurk for years and people may not even know about them until years later (*Legal practitioner 1 Redfern*).

[There was an] Abstudy ‘scam’: if you went to TAFE you could get Abstudy and an additional \$250 loan per fortnight from the Commonwealth Bank, but no one explained that it was a loan and would have to be paid back after 5 years as a tax, but with interest accumulating month by month. It was a Centrelink initiative, and if you hadn’t got the loan you kept getting letters inviting you to apply until you took it (*Aboriginal legal support workers 1 Dubbo*).

There are also particular groups of Aboriginal people who have specific problems in relation to debt. Aboriginal prisoners are one distinct group:

One issue that comes up are problems with debt. We have had a quite few clients from Yetta Dhinnikal gaol [near Brewarrina] in relation to debt issues arising from personal loans. They can’t repay them while they are in gaol and interest may be building up. That is definitely one thing that has been popping up. I went out there for the open day and talked to the inmates. It is a recurring problem particularly for Aboriginal males. Most of the debts tend to be personal loans with banks or credit unions (*Legal Practitioner 1 Dubbo*).

The main problems identified by focus group participants in relation to credit and debt are shown in Table 5.6.

**Table 5.6**  
**Credit and Debt Issues**

Type	No
Telephone Bills	9
Credit Reference Rating	7
Late payment- Threatened with legal action	6
Credit Card Debt	3
Guarantor on loan	3
Bankruptcy	1
Debt recovery	1
Debt to Bank	1
Rental Arrears	1

One stakeholder noted that:

Because people may have bad credit ratings they can’t go to major retailers and get products, so they are vulnerable to ‘You Beaut’ offers where people pay exorbitant interest over a long period of time. TVs, washing machines, computers. Centrelink have cancelled a lot of direct debits and the Office of Fair Trading are taking an interest in it. Centrelink are being proactive in this because of an Aboriginal worker in Centrelink (*Aboriginal legal support worker 1 Moree*).

Only five focus group participants (three men and two women) indicated they sought legal advice for their problem. Three indicated that the advice was sought from Legal Aid NSW, Aboriginal Legal Service and private solicitor.



A lot of people just let it go – they don't get legal advice. They get these loans and there's no way they pay it back (*Dubbo Men's FG participant*).

Dealing with the SDRO was also an issue mentioned by several stakeholders.

I [court worker] do a lot of state debt recovery stuff to put all the debts in one and I follow up with those people. And nine times out of ten they get their license back and get on with their lives...it's not part of my role, but it's become our role (*Aboriginal legal support workers 2 Dubbo*).

Lots of people only have mobiles so calling the SDRO to make arrangements can be too expensive. [We] let clients use their phones for these purposes (*Legal practitioner 1 Redfern*).

If there is a debt problem that arises, or any civil matter, we usually get onto legal aid, there is a brochure out the front, we get them to call the 1800 number on it. If it's criminal it goes to ALS, but if it's civil, to Legal Aid (*Aboriginal legal support workers 1 Bourke*).

It was also noted that there was an inequity with fines because of the general poverty in which Aboriginal people live:

If I get a parking fine, I pay it – that's the cost of parking in the city... it hurts, I don't want to do it, but hey, it's not going to cause me to not eat this week. On the other hand, if this group of clients get a fine, it *would* mean not eating, it *would* mean not being able to get medication, so the degree of penalty is so much harsher (*Legal practitioner 1 Redfern*).

There was some reference to Legal Aid in the context of credit and debt matters. However, this was rare.

If there is a debt problem that arises, or any civil matter, we usually get onto Legal Aid; there is a brochure out the front, we get them to call the 1800 number on it. If it's criminal it goes to ALS, but if it's civil, to Legal Aid (*Aboriginal legal support workers 1 Bourke*).

### 5.3 Consumer Issues

Focus group participants were asked four separate questions relating to consumer issues which covered banks, financial institutions, insurance, scams and any other types of consumer problems. In the first question participants were asked whether over the last couple of years they had any problems accessing superannuation, or had any dispute with a bank or financial institution (for example, over account balances, bank fees or other matters). Table 5.7 shows that 19.9 per cent of participants indicated a dispute of this nature. The percentage was higher for women (22.7 per cent) than men (17.1 per cent).

**Table 5.7**  
**Number and Percentage of Focus Group Participants Who had Issues Disputes Relating to Superannuation or Bank Fees**

Bank or Super Disputes	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	13	17.1	17	22.7	30	19.9
No	63	82.9	58	77.3	121	80.1
<b>Total</b>	76	100.0	75	100.0	151	100.0

Excludes 2 missing cases

Participants were also asked whether over the last couple of years they had any problems with insurance (eg a dispute over a claim or premium, or not being able to get insurance in the first place). Table 5.8 shows that 6.1 per cent indicated a dispute relating to insurance. There was little difference between the male and female responses.

**Table 5.8**  
**Number and Percentage of Focus Group Participants Who had Issues Disputes Relating to Insurance**

Insurance Disputes	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	5	6.7	4	5.5	9	6.1
No	70	93.3	69	94.5	139	93.9
<b>Total</b>	75	100.0	73	100.0	148	100.0

Excludes 5 missing cases

Participants were asked whether over the last couple of years they had any problems with any types of ‘scams’ involving activities such as funeral funds, door to door sales. Table 5.9 shows that 13.1 per cent of participants indicated a problem with a scam. The percentage of Aboriginal men indicating this issue was higher than Aboriginal women (16.2 per cent compared to 9.9 per cent).

**Table 5.9**  
**Number and Percentage of Focus Group Participants Who had Problems with a Commercial Scam**

Commercial Scams	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	12	16.2	7	9.9	19	13.1
No	62	83.6	64	90.1	126	86.9
<b>Total</b>	74	100.0	71	100.0	145	100.0

Excludes 8 missing cases

Many participants in the men’s focus groups identified problems with Aboriginal funeral funds.

Yeah I had a problem with the funeral fund. They sent me the letters and I had about \$15,000 in the fund. I missed a couple of payments and then they cut me off. I asked for the \$15,000 – where’s that gone? They won’t tell me where

that went. We got no rights about it. We know people that have passed away that have been paying in for years and years and they reckon they got no records of this. They couldn't give the family the money to cover the people who had passed on (*Tabulam Men's FG participant*).

I had a problem with the Aboriginal funeral fund. They wouldn't pay for my sister's husband. He was in it for 10 years and he died of cancer. They wouldn't pay for anything. They said he missed one payment (*Mt Druitt Men's FG participant*).

A lot of people in Moree have been in the funeral fund. If you get off the dole and then miss your payment – that's it. Doesn't matter if you have been in it for four or five years. That's it, you're gone (*Moree Men's FG participant*).

I had about \$2900 in the Aboriginal funeral fund and I asked for my money out of it. All I got was \$900. They kept \$2000. (*Bourke Men's FG participant*)

Funeral funds were also identified by legal stakeholders in Lismore.

The funeral benefits scheme is very active up here and a lot of people get into trouble with that. It specifically targets Aboriginal people. It is a rip off. It is exploiting Aboriginal people because of the cultural importance of burial. Payday lending is another one (*Legal Practitioner 1 Lismore*).

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When asked about any consumer scams that they had come across, one focus group participant said, "There was some people going around selling vacuums. And that happened to a lot of people, that they came around and said that they only cost so much money, but they ended up having to pay more than they bargained for. And when they sent the vacuums back, they didn't want the vacuums. They let it go on their credit rating, and it made their credit rating bad. They would go round to the houses door to door." When asked what people did about the situation, the response was: "It just mucks their finance up" (*Tabulam Women's focus group participant*).

Participants were also asked whether they had any other type of problem where they paid for something and did not get what they paid for. Table 5.10 shows that 12.5 per cent of participants indicated they had other types of consumer issues.

**Table 5.10****Number and Percentage of Focus Group Participants Who had Other Consumer Issues**

Other Consumer Issues	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	8	10.8	10	14.3	18	12.5
No	66	89.2	60	85.7	126	87.5
<b>Total</b>	74	100.0	70	100.0	144	100.0

Excludes 9 missing cases

In response to the previous four questions, participants were asked to briefly identify the nature of any problem. Some 21 participants responded. As shown in Table 5.11, the most common response was a reference to a faulty product or the wrong product being purchased or delivered. Disputes over bank fees were the next most frequent category.

**Table 5.11****Other Consumer Issues**

Type	No
Faulty or Wrong Product	9
Bank fees (including dishonour fess)	4
Door to Door Sales	2
Pay TV dispute	2
Funeral Fund	1
Internet scam	1
Insurance repayments	1
Unlicensed vendor	1

Seven individuals (four males and three women) indicated they sought legal advice. Of these, two indicated they contacted Legal Aid, two the Department of Fair Trading and two indicated contacting a private solicitor. All six indicated that the advice provided was satisfactory.

**5.4 Conclusion***Social Security and Centrelink*

Some 36 per cent of Aboriginal participants in the focus groups were receiving an Indigenous specific allowance. The proportion was higher among males (42.7 per cent) compared to females (28.4 per cent).

In addition three quarters of the focus group participants (75.8 per cent) stated they were receiving some other type of Centrelink benefit. The proportion was higher among females (85.1 per cent) compared to males (66.7 per cent)

Approximately one in three men (32.9 per cent) and one in four women (26.3 per cent) identified having dispute with Centrelink over the last couple of years.

Of the 44 people who identified having a dispute with Centrelink, five (11.6 per cent) sought legal advice.

### *Credit and Debt*

Some 34.9 per cent of the participants identified debt-related problems. The percentage was similar for both males and females, and was more than one in every three participants.

Some 19 per cent of participants identified problems relating to their Credit Reference rating, as a guarantor for a loan or in relation to possible bankruptcy.

Telephone bills and Credit Reference Rating were two frequently mentioned problems.

Only five focus group participants (three men and two women) indicated they sought legal advice for their problem.

### *Consumer Issues*

Some 19.9 per cent of participants indicated a dispute or problems accessing superannuation, or with a bank or financial institution. The percentage was higher for women (22.7 per cent) than men (17.1 per cent).

Some 6.1 per cent of participants indicated a dispute relating to insurance. There was little difference between the male and female responses.

Some 13.1 per cent of participants indicated a problem with a 'scam' such as a funeral fund or door to door sales. The percentage of Aboriginal men indicating this issue was higher than Aboriginal women (16.2 per cent compared to 9.9 per cent). Many participants in the men's focus groups identified problems with Aboriginal funeral funds.

Overall, seven individuals (four males and three women) indicated they sought legal advice.

## CHAPTER SIX: LEGAL NEEDS : VICTIMS COMPENSATION, ACCIDENTS, INJURIES AND WILLS AND ESTATES

In this chapter we discuss three areas of legal need: victims compensation, accident and injury and wills and estates.

### 6.1 Victims Compensation

While victimisation for violent offences is relatively frequent, knowledge about victims compensation is not as widespread as might be expected. In some instances there is also informal and anecdotal knowledge-sharing between community members about victims compensation entitlements which is not always accurate:

When my son got shot I was told he can't get it. I was told I would have to sue the boy and his father to get compo. When my son got shot [the person who gave this information] was there for support... he was a community worker...he didn't go to a lawyer to check it out (*Tabulam Women's FG participant*).

Focus group participants were asked whether, over the last couple of years, they had been the victim of a violent crime. Table 6.1 shows that 28.9 per cent of participants reported being victimised. The proportion of women victimised was slightly higher than men (30.7 per cent compared to 27.0 per cent).

**Table 6.1**  
**Number and Percentage of Focus Group Participants Who Have Been the Victim of a Violent Crime**

Victimisation	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	20	27.0	23	30.7	43	28.9
No	54	73.0	52	69.3	106	71.1
<b>Total</b>	69	100.0	68	100.0	137	100.0

Excludes 4 missing cases.

Table 6.2 below shows that the majority (55.8 per cent) of those who reported being the victim of a violent crime did not know about the victims compensation scheme. As one focus group participants stated:

A lot of people don't know how to go about it...they think they just leave it for the police, in the courts. But police don't give them that kind of information (*Goodooga Women's FG participant*).

None of us knows how to go about the compensation. Most people aren't aware of victims comp. I went to the courthouse (*Tabulam Men's FG participant*).

Aboriginal women were more likely to be aware of the scheme than men (47.8 per cent compared to 35 per cent).

**Table 6.2**  
**Number and Percentage of Victims Who Were Aware of the Victims Compensation Scheme**

Aware of Compensation Scheme	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	7	35.0	11	47.8	18	41.9
No	12	60.0	12	52.2	24	55.8
<b>Total</b>	19	100.0	23	100.0	42	100.0

Excludes 1 missing case.

Stakeholder interviews confirmed a lack of awareness of victims compensation.

There's not a lot of awareness of availability of the scheme, although the women's legal service in Bourke is now increasing awareness of it (*Aboriginal legal support workers 1 Bourke*).

The majority of people probably wouldn't know about the scheme. Only if you have been through the court system, otherwise you wouldn't know (*Aboriginal legal support workers 1 Dubbo*).

Focus group participants who had been the victim of a violent crime were also asked whether they pursued victims compensation. Table 6.3 shows that only one in four victims (26.8 per cent) pursued compensation. Although the numbers are small, Aboriginal women were more likely to pursue compensation than Aboriginal men (33.3 per cent compared to 20 per cent).

**Table 6.3**  
**Number and Percentage of Victims Who Pursued Victims Compensation**

Pursued Compensation	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	4	20.0	7	33.3	11	26.8
No	16	80.0	14	66.7	30	73.2
<b>Total</b>	20	100.0	21	100.0	41	100.0

Excludes 2 missing cases.

## 6.2 Accident and Injury

### 6.2.1 Motor Vehicle Accidents

Focus group participants were asked whether over the last couple of years, they had been involved in a car accident where there was damage to either their vehicle or the other vehicle. Table 6.4 shows that 14.2 per cent of the participants indicated they had been involved in an accident. It was a similar percentage for both males and females.

**Table 6.4****Number and Percentage of Focus Group Participants Who Were Involved in a Car Accident Over the Last Couple of Years**

	Focus Group Participants					
Motor Vehicle Accident	Male		Female		Total	
	No	%	No	%	No	%
Yes	10	13.7	11	14.7	21	14.2
No	63	86.3	64	85.3	127	85.8
<b>Total</b>	73	100.0	75	100.0	148	100.0

Excludes 5 missing cases

Table 6.5 shows that of those were involved in an accident 12 were insured. Men were more likely to be insured than women.

**Table 6.5****Number and Percentage of Participants Involved in an Accident Who were Insured**

	Focus Group Participants		
Insured	Male	Female	Total
	No	No	No
Yes	7	5	12
No	3	5	8
<b>Total</b>	10	10	20

Excludes 1 missing cases

Five individuals were required to pay for damage. Six reported being injured in the accident and four sought legal advice.

*6.2.2 Work-Related and Other Injuries*

Participants were asked whether they had suffered any work-related injury. Table 6.6 shows that 13.3 per cent reported work-related injuries. Men (22.7 per cent) reported much higher rates than women (3.2 per cent).

**Table 6.6****Number and Percentage of Focus Group Participants Who Reported Work-Related Injuries**

	Focus Group Participants					
Work-related Injuries	Male		Female		Total	
	No	%	No	%	No	%
Yes	15	22.7	2	3.2	17	13.3
No	51	77.3	60	96.8	111	86.7
<b>Total</b>	66	100.0	62	100.0	128	100.0

Excludes 25 missing cases

Participants were also asked if they had been injured outside of the home, for example in a shopping centre, club or as a result of a medical treatment. Table 6.7 shows that 17.8 per cent of participants reported other injuries outside of the home.



**Table 6.7**  
**Number and Percentage of Focus Group Participants Who Reported Injuries Outside the Home**

Injuries Outside the Home	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	14	20.3	10	15.2	24	17.8
No	55	79.7	56	84.8	111	82.2
Total	69	100.0	66	100.0	135	100.0

Excludes 18 missing cases

Participants were asked whether any of these injuries required medical treatment. Table 6.8 shows that 23.1 per cent responded that the injuries did require treatment.

**Table 6.8**  
**Number and Percentage of Focus Group Participants Who Reported Injuries Requiring Medical Treatment**

Injuries Requiring Medical Treatment	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	14	23.7	11	22.4	25	23.1
No	45	76.3	38	77.6	83	76.9
Total	59	100.0	49	100.0	108	100.0

Excludes 45 missing cases

Participants were asked whether they sought legal advice in regard to compensation. Twelve individuals (seven men and five women) stated that they sought legal advice, and ten of these indicated who provided the advice:

Private solicitor	5
Police	1
Legal Aid Commission	1
Women's Legal Service	1
Court registrar	1
Trade Union	1

The majority (8) indicated that the advice was satisfactory.

### 6.3 Wills and Estates

Very few Aboriginal people have wills. It is one of those issues which is perhaps not prioritised but can result in considerable family and community tension. There was a perception among focus group participants that wills are only useful where there is significant amount of money or property to be distributed. The usefulness of a will for clarifying other posthumous wishes such as burial place or guardianship of children, was not generally understood:

I got nothing to leave anyway. I'm right (*Dubbo Women's FG participant*).

First in, first served! (*Dubbo Women's FG participant*).

Aboriginal people like us we really haven't got a lot. When someone in the family dies people more or less share. No need for a will I don't think (*Goodooga Women's FG participant*).

However, this was not a uniform view:

I've got no money to give them but there are certain things that I'd like some of my kids to have...then there's no arguments (*Redfern Women's FG participant*).

That was a big dispute with Uncle, went on for two or three weeks. He didn't have a will. He said he wanted to be buried here in Moree. His mum was buried here. He wanted to be buried with his mum. The community said he should be buried out there. It split a lot of the family here (*Moree Men's FG participant*).

Focus group participants were asked whether they had completed a will. Table 6.9 shows that only 6.1 per cent of the participants indicated they had completed a will. Thus 93.9 per cent of participants had not completed wills.

**Table 6.9**  
**Number and Percentage of Focus Group Participants Who Have Completed a Will**

Completed Will	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	3	4.0	6	8.2	9	6.1
No	72	96.0	67	91.8	139	93.9
Total	76	100.0	73	100.0	148	100.0

Excludes 5 missing cases

Twice the number of women compared to men had completed wills. The older age of the female women participants might have partly accounted for this difference (see Table 1.2). However, closer analysis of the data showed that only one of the 15 women aged 55 and over had completed a will. Thus women irrespective of age were more likely to have completed a will than men.

Stakeholder interviews confirmed that few wills were completed. "I've been here six years I haven't seen one" (*Aboriginal legal support workers 1 Walgett*).

Six of the nine focus group participants who had completed a will also indicated that they received advice. Five of the six indicated who provided the advice. Three cases involved private solicitors, one the Aboriginal Legal Service, and one, a solicitor who was a friend of the participant.

While most have not completed a will, there was a clearly identified legal need in this area.

People would fill out wills if they could do it for free. If they knew how to do it. That would be a good course to run in the community. If you could help

people fill it out, you'd probably get half the community to come and do it. With DOCS the way they are you are better off having it in your will where your kids should go (*Wagga Men's FG participant*).

You would get some interest in filling out a will if someone came out and helped. No one really understands all about the wills, or the legal way about it (*Tabulam Men's FG participant*).

I'm worried about that. It's a huge issue, a huge issue, and we know nothing about it. If people had information and assistance they would do one. It could be part of what happens when people sign up for a funeral fund. Especially if people have children from different marriages (*Aboriginal legal support workers 1 Dubbo*).

Focus group participants who had not completed a will were asked whether they would like legal advice to complete one. Table 6.10 shows that almost half the men and more than two thirds of the women who had not completed wills would like legal assistance to do so.

**Table 6.10**  
**Number and Percentage of Focus Group Participants Who Would Like Assistance Completing a Will.**

Assistance Required	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	34	47.9	39	69.6	73	57.5
No	37	52.1	17	30.4	54	42.5
<b>Total</b>	71	100.0	56	100.0	127	100.0

Excludes 12 missing cases.

Participants were asked who they would approach for advice on completing a will. Some 47 participants responded and the results are shown below in Table 6.11 Some participants indicated more than one source for assistance and advice.

**Table 6.11**  
**Who Would You Approach for Advice on Completing a Will?**

	No
Lawyer (non-specific)	18
Aboriginal Legal Service	10
Relatives	9
Legal Aid Commission	7
Friends	3
Community Legal Service	3
Court	1
Myself	1
Do not know	2

Stakeholders also identified the need for information to be provided about wills, but which was appropriate for the particular community.

There are fights over who gets what property and money, and people say it would be better if there was a will to sort it out. We want to set something up here but the courthouse isn't the right place, people don't feel comfortable here. We'd like a legal service to come out and do information sessions and provide help (*Aboriginal legal support workers 1 Bourke*).

There is a need to look at cultural criteria that may be important to Aboriginal people but that don't fit into the mainstream approach to wills. Births Deaths and Marriages did a birth certificates drive which was very successful -300 people in a couple of days (*Aboriginal legal support workers 2 Dubbo*).

Participants were also asked whether they had been an executor for a deceased estate. Table 6.12 shows that only 6.6 per cent of participants had been named as an executor in a will.

**Table 6.12**  
**Number and Percentage of Focus Group Participants Who Have Been an Executor for a Deceased Estate**

Named Executor	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	4	5.6	5	7.7	9	6.6
No	68	94.4	60	92.3	128	93.4
<b>Total</b>	72	100.0	65	100.0	137	100.0

Excludes 16 missing cases.

Participants were asked whether they had been involved in any disputes over a deceased estate. Table 6.13 shows that 9.5 per cent of participants had been involved in such a dispute. Aboriginal women were slightly more likely to be involved in a dispute than Aboriginal men (11.8 per cent compared to 7.2 per cent).

**Table 6.13**  
**Number and Percentage of Focus Group Participants Who Have Been Involved in a Dispute over a Deceased Estate**

Dispute over Estate	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	5	7.2	8	11.8	13	9.5
No	64	92.8	60	88.2	124	90.5
<b>Total</b>	69	100.0	68	100.0	137	100.0

Excludes 16 missing cases.

## 6.4 Conclusion

### *Victims Compensation*

Some 28.9 per cent of participants reported being the victim of a violent crime. The proportion of women victimised was slightly higher than men (30.7 per cent compared to 27.0 per cent).

The majority (55.8 per cent) of those who reported being the victim of a violent crime did not know about the victims compensation scheme. Aboriginal women were more likely to be aware of the scheme than men (47.8 per cent compared to 35 per cent).

Only one in four victims (26.8 per cent) pursued compensation. Although the numbers are small, Aboriginal women were more likely to pursue compensation than Aboriginal men (33.3 per cent compared to 20 per cent).

#### *Accident and Injury*

Some 14.2 per cent of the participants indicated they had been involved in a motor vehicle accident over the last couple of years. Of this group, slightly more than half were insured and less 20 per cent sought legal advice.

Some 13.3 per cent reported work-related injuries. Men (22.7 per cent) reported much higher rates than women (3.2 per cent). 17.8 per cent of participants reported other injuries outside of the home.

#### *Wills and Estates*

Only 6.1 per cent of the participants indicated they had completed a will. Twice the number of women compared to men had completed wills.

Almost half the men and more than two thirds of the women who had not completed wills would like legal assistance to do so.

## CHAPTER NINE

### PROPOSALS FOR REFORM

When asked how Legal Aid NSW could improve their service to the Aboriginal community, this excerpt is representative of the type of response from focus group participants:

Employ an Aboriginal person and go to community...get involved in our community and our culture and the things that we do...come into the community centre and talk about what you do...get an understanding of who we are and what kind of people we are...show us a bit of initiative and a bit of oomph mate, and show us that you *do* give a damn, rather than just sitting behind the office and answering the phone. Get out there, get amongst it.  
(*Redfern Women's FG participant*)

These themes and other suggestions for improvement of Legal Aid services are discussed in this chapter. We have divided the discussion into several sections:

- Better equipping existing staff and improving existing services;
- Improving Legal Aid NSW service delivery by creating better connections to the community through outreach
- The employment of field officers and greater use of AVL
- Better community legal education and the establishment of Aboriginal reference groups

#### 9.1 Existing Staff and Services

This section is primarily concerned with how existing legal aid services can be improved.

##### 9.1.1 Current Employment of Aboriginal people in Legal Aid NSW Offices

It was widely agreed that the level of comfort that Aboriginal clients have in Legal Aid offices increases exponentially when Aboriginal staff are employed.

Aboriginal people open up better when they're talking to their own...that makes a big difference...all of a sudden you're a sister (*LAC Aboriginal staff member 3*).

I've found since I've been here that it is useful having an Aboriginal face in the office. Clients come to reception and look past and happen to see me, and say 'come over here' (*LAC Aboriginal staff member 2*).

There is generally an accurate common knowledge in communities as to which organisations have Aboriginal staff.

When we refer someone to a service the first thing they ask is 'do they have a Koori worker?' It makes a big difference to know that there will be another Aboriginal person there...someone that can translate all the legal

terminology...someone that can explain things in layman's terms of what just happened to you, this is what it means. We're not legal people here at the courts, but because we are Aboriginal we have people coming up to us asking us what happened [to them in the courtroom] (*Aboriginal legal support workers 1 Penrith/Mt Druitt*).

I just really see them there at their little desk and that's it. There's no Koori staff around there. (*Aboriginal legal support workers 2 Dubbo*)

It is clear from the interviews that the employment of Aboriginal people in Legal Support Officer positions has provided a worthwhile start to opening Legal Aid offices to Aboriginal clients.

It is important that there are systems in place to support Aboriginal staff – both existing staff and the proposed field officer positions (see below). This would include:

- Clearly defined roles so that staff do not end up working across several roles (eg LSOs working as de facto Aboriginal liaison staff);
- Further training with culturally appropriate and workplace relevant study such as the National Indigenous Legal Advocacy course at Tranby (successful completion should be a minimum requirement for ongoing employment of field officers);
- Appointment of a Legal Aid mentor with formal periodic meeting time to discuss progress and concerns;
- Periodic meeting with immediate supervisor and mentor to discuss performance and opportunities for career development;
- Participation in already established Legal Aid Aboriginal staff network groups;
- Opportunities for Aboriginal staff members to provide briefings on their work to general Legal Aid staff to ensure Indigenous issues are well understood and integrated into Legal Aid policies and practices.

The importance of proper supportive structures was reiterated by one of the interviewees.

It's really important when having Aboriginal staff to try and do things that don't set them up to fail...we have an Aboriginal consultation network which have representative women who are key women in their communities from around the state...and that meets quarterly to discuss issues arising for Aboriginal women around the state and to guide [our organisation] in what they are doing for Aboriginal women, the priorities, and that sort of thing. It is also so that women who are employed within the service have support there as well for them... it is important that they are not sent out there on their own without a proper Aboriginal support structure set up within Legal Aid. (*Aboriginal legal support worker 2 Walgett*)

### *9.1.2 Cultural awareness training for non-Indigenous staff*

We are aware that Aboriginal Services in Legal Aid NSW is currently developing cultural awareness training for staff. The interviews conducted for this research

overwhelmingly support the need for such training, and in an ongoing manner. As one stakeholder working in the legal system noted from her own experience, the lack of sensitivity and stereotyping can be insulting. She received advice from a lawyer that she could not leave town with her children unless she went back to the court, “but he referred to ‘you can’t move to Redfern’ – we wouldn’t want to live in Redfern! There was no deliberate intention to be insulting but it was very insulting” (*Aboriginal legal support workers 1 Dubbo*).

There was a widespread view that cultural awareness workshops should be mandatory for every staff member in Legal Aid NSW, that is, for both legal and non-legal Legal Aid NSW staff.

I think that would be priceless. I think that would generate such a huge assistance for the Legal Aid Commission because it can be so easy to make a judgement that is based on your belief system instead of the belief system that the person is coming from (*LAC Aboriginal staff member 5*).

On a very basic level of belief system, in every Aboriginal community I am aware of, it goes: mother Earth, then your community, then your family, then yourself. And so if any of those other three things come up when you are supposed to be doing a ‘yourself’ thing, they’re not going to do it. Like, aunty died and I have to look after my cousin, or whatever might have happened, and so they’ll feel that this a very good reason why they did not show up, or even show up for court. But the Legal Aid Commission doesn’t take that view. And it may be extended family, which may not seem that urgent from a non-Indigenous perspective, but from an Indigenous perspective it will be very important. So there are culture clashes in that way (*LAC Aboriginal staff member 5*).

There is a need for regular training rather than a one off workshops.

#### **RECOMMENDATION 1**

##### **Cultural Awareness Training**

It is recommended that current initiatives for cultural awareness training for all Legal Aid NSW staff be supported and that training be ongoing.

#### *9.1.3 Special disadvantage test*

In conducting the research it was requested that consideration be given to whether the special disadvantage test needed to be amended to be able to better reflect the needs of Aboriginal people.

The majority of lawyers interviewed (both Legal Aid and non Legal Aid) were not aware of any particular problems that the special disadvantage test posed in relation to potential Aboriginal clients.

I think it depends a bit on the skill of the practitioner, how you put in the application as to whether it goes through or not. I think that in many ways you can get around that stuff (*LAC Aboriginal staff member 3*).



The general view was that the test (or interpretation of the test) already contained considerable room for discretion and that there was not necessarily any need to widen the scope.

If the scope of the test was to be broadened then the general view was that any changes should not refer specifically to Aboriginality. The test could be widened to include significant language or cultural barriers, and significant difficulty accessing legal service due to remoteness.

I think it should have something about remoteness and access to other service providers, and that's not just Indigenous. (*Aboriginal Legal Service staff members 2*)

## **RECOMMENDATION 2**

### **Special Disadvantage Test**

It is recommended that any changes to the Special Disadvantage Test not specifically refer to Aboriginal people but refer to barriers arising from language, culture or lack of access to services due to remoteness.

#### *9.1.4 CLSD*

Here in Dubbo? We don't even know about it (*Aboriginal legal support workers 2 Dubbo*).

There was support for the Cooperative Legal Service Delivery (CLSD) program by those legal practitioners and stakeholders who knew of the program and the meetings.

The CLSD is a good way for a new person coming into the region becoming acquainted with other service providers. We do joint CLEs. It has had some focus on Aboriginal issues. The wills project came out of the CLSD initiative. There is definitely scope to target Aboriginal issues more (*Legal Practitioner 1 Dubbo*).

It was clear there were practical outcomes that had emerged from the CLSD process such as the wills project run in Walgett, and in providing support for funding outreach initiatives by the community legal centre referred to below.

The CLSD has been useful in arguing for additional funding to run outreaches. I am very supportive of the CLSD. It has morphed over time. It is very active. It has the court staff, community legal centre, Legal Aid, financial counselling service etc. It focuses on where the legal needs are and where the gaps are (*Legal practitioner 1 Lismore*).

It's good to find out what's going on. It is good for us to be involved in it so we know who to refer people to...it is a good network generally (*Aboriginal Legal Service staff members 1*).

However, while legal practitioners were supportive of CLSD, it was also clear that there was a lack of knowledge about the CLSD by Aboriginal organisations and a lack

of attendance at CLSD meetings by Aboriginal legal services and other organisations (at least in the areas focused upon in this research).

While we recognise the potential problems of getting representatives from Aboriginal organisations to attend CLSD meetings, there is a need for better inclusion of Aboriginal organisations in the CLSD process. Perhaps one process for better inclusion would be specific invitations to, and dedicating specific times for, relevant Aboriginal organisations to attend CLSD meetings to discuss particular needs in the community, with an outcome aimed at developing initiatives to service identified needs.

### **RECOMMENDATION 3**

#### **Cooperative Legal Service Delivery (CLSD) program**

While recognising that the CSLD program has led to some improvements in access to legal services by Aboriginal people, it is recommended that CLSD undertake initiatives to better include Aboriginal organisations in the CLSD process.

#### *9.1.5 Improving Legal Aid NSW Offices*

Many Aboriginal people, both in the focus groups and stakeholder interviews, indicated that they are not comfortable going to Legal Aid offices (see Chapter Seven). Staff in Legal Aid recognised how unfriendly their offices were:

It's the way physically our reception rooms look. There's no plants, there's nothing red, yellow or black, there's no Koori Mail... (*LAC Aboriginal staff member 5*).

We have to make our whole office space more friendly and user-friendly and welcoming, rather than just having a specific designated Aboriginal service that's like a pimple on our organisation (*Legal Aid practitioner 2*).

Legal Aid needs to consider what could be done to make their offices more friendly for Aboriginal clients. These need not be particularly resource intensive - such as having copies of the *Koori Mail* or the *National Indigenous Times* in waiting rooms. As we indicated in Chapter Eight, LAC VIC has developed initiatives for increasing community involvement with the organisation and improving their offices such as holding art competitions, the winner of which is hung in the waiting room.

### **RECOMMENDATION 4**

#### **Improving Office Space**

It is recommended that Legal Aid New South Wales office managers, in consultation with the Director, Aboriginal Services, develop strategies to improve office space through, for example, art exhibitions/competitions, copies of the *Koori Mail*, etc.

#### *9.1.6 Flexibility in service delivery*

If it is serious about addressing Aboriginal legal needs, then perhaps one of the greatest challenges for Legal Aid NSW is to develop more flexible procedures for service delivery.

So many Aboriginal services have drop in clinics. We have drop in medical clinics, we have drop in drug and alcohol clinics, we have drop in clinics because of the fact that Koori people don't tend to make appointments and they don't tend to keep them when they do (*LAC Aboriginal staff member 5*).

It's imperative to recognise that keeping appointments may be an issue and to be flexible i.e. have a drop in service for Aboriginal clients, however inconvenient, in recognition of the fact that if you don't see them then, they may never come back... Things start with a bang, anxiety that things have to be dealt with immediately, and then things peter out (*Legal practitioner 1 Redfern*).

Aboriginal clients do get referred from ALS but often they want to see a lawyer straight away and that might be impossible; they have to make appointments. But if they can't see someone straight away that might turn them off coming back to us, but there is nothing we can do. We just don't have enough lawyers for someone to be available every time someone needs to see someone straight away. The only answer is more staff (*LAC staff member 2*).

While we recognise the problems associated with staffing, it seems feasible that protocols could be developed for making a solicitor available to Aboriginal clients on a drop in basis rather than a strict appointment system. This may be through a roster system whereby one solicitor is designated 'drop in solicitor' on a particular day.

There are communication problems, both interpersonal and in maintaining ongoing contact with clients.

Sometimes we are willing to offer some assistance and follow up assistance, but when we need them to sign some authority to get contact with other parties, sometimes we don't get any reply from them, so we have to forget about it, it's very hard for us to follow up ...sometimes they don't have phone contact numbers so we have to write letters...maybe we should work with the ALS in the future to make sure that when they book the appointment they get some sort of contact details, even if it is a friend or family. *Do you use the staff at ALS to help you get in contact with the client?* No, once the clinic is over I come back here and work from here (*LAC practitioner 1*).

Part of the problem with ongoing contact with clients could be resolved through the use of field officers (see below) and part of the problems with interpersonal communication can be alleviated with good cross cultural training. However, beyond this there is also the need for flexibility in the amount of time solicitors spend with Aboriginal clients.

It is the sympathy and respect and understanding that is shown to the client that makes them feel that their matter's heard - and if they lose, they feel that they have lost for a good reason. This is universal across all cultures. If you have heard and sympathised, heard it from their point of view... and then say 'I hear all of that and that is really sad, but the law is XYZ'...that takes a little bit of time, and you have to allocate human time and human compassion to do that. But we have found in terms of our clients being satisfied with the

outcome, even if the outcome is a resounding ‘no, you’re going to lose hands down’, they are more comfortable with their sense of inclusion (*Legal practitioner 1 Redfern*).

We have also indicated in Chapter Seven that Aboriginal people require assistance with the completion of forms.

Again with the literacy problems...the family and civil law forms, they’re big, they’re complicated and they ask for a lot of information...you finally get up the nerve, you find the transport, you get yourself in here and there is all this glass and white people, and you finally get served at the counter and you say ‘yeah DOCS took me kids off me’, and you’re feeling like crap and you’re hoping that the whole frickin office didn’t hear you, but you’ve got this glass thing you’ve got to talk through, and they say ‘here, fill out this’, and you go, ok, how many pages is this? And they want my bank account details, like my account number, you’re kidding me, right? I got an ATM card, I stick that in there, my aunty does all that. And how many kids do I have? Well I got these two with that man... and so this form becomes a big issue, and a lot of them say ‘well, I’ll fill it out later’ and they take it away...but they’re less likely to fill it out (*LAC Aboriginal staff member 5*).

#### **RECOMMENDATION 5**

##### **Greater Flexibility in Service Delivery**

It is recommended that Legal Aid NSW, through the Director, Aboriginal Services, develop strategies for ensuring greater flexibility in service delivery. These strategies should include flexibility in the system for appointments with a trial ‘drop in’ initiative at one or more offices, an allowance for extra time when meeting with Aboriginal clients, and greater assistance for Aboriginal clients in the completion of legal aid forms.

## **9.2 Improving Service Delivery through Connecting to the Community: Outreach**

This section of the chapter is primarily concerned with developing new services by better reaching into Aboriginal communities.

### *9.2.1 Outreach services in community locations*

Outreach is strongly supported by the community. The community was very supportive of the outreaches. The outreaches picked up the significant legal needs (*Legal Practitioner 1 Lismore*).

It is one of the central findings of the research that Legal Aid NSW needs a more extensive outreach program targeted at Aboriginal clients. A more focussed outreach program is needed both in locations where there is an existing Legal Aid office, and in more remote communities where there are fewer services and no current Legal Aid presence:

This is the dilemma: the communities that are the most dysfunctional, the most difficult to reach, are the ones that most desperately need our services (*LAC Aboriginal staff member 3*).

The need for a more effective outreach service was identified by community members, Aboriginal support workers, practitioners and Legal Aid staff. Reflecting on the current approach, Aboriginal Legal Aid NSW staff members stated:

That's where Legal Aid falls down a bit. They need to get out in the community and let people know that they're here... it's going to be a long term things, you're not going to build that rapport in three months, six months, it's probably going to take a couple of years, three or four years, to build that rapport with community. [People are] very suspicious of lawyers, especially the older people...so to build that up again, that's going to take a little while. That's not going to be easy (*LAC Aboriginal staff member 1*).

You need to look at everything that you trial over a really long period of time, because it takes a long time to establish the network and also to be a part of the community (*LAC Aboriginal staff member 3*).

I think there is a lot of commitment but in some ways it is a little bit ad hoc...you need to go out and find out the community's perceptions of Legal Aid, whether they feel that they can take their problems there. Then get key people on board, people who have influence in the community. [Outreach programs] should be centralised, a policy should come out, they should think about how they are going to do it and who should be involved...the current delivery model should be thought out more carefully, it has to be closely monitored and there should be some way of measuring outcomes. If they could tie in with key stakeholders in the community, that would be an improvement (*LAC Aboriginal staff member 1*).

The need to tie outreach into key stakeholders in the community is a point we return to below in the discussion of the need for local Legal Aid NSW offices to have an Aboriginal reference group.

Interviews yielded a lot of discussion about the type of outreach model that should be pursued. Some of the options put forward were as follows:

If Legal Aid want to come out here and do family matters and civil, they need to actually get a worker out here and an office out here full time... Even though you have the visiting solicitor coming in for matters, the community will talk real good to you to your face, but you'll always be that outsider, and you'll never be that first port of call, if you've got no one here. So you haven't got that trust within the community, you haven't got that rapport within the community, it's like 'you know them fellas, they're from Sydney, or they're from down Dubbo', which is outside their area. You've got people here in Bourke that have never been to Brewarrina, let alone Dubbo (*Aboriginal legal support worker 2 Bourke*).

The difficult thing with Indigenous communities is that there are many different communities and there are many different factions within those communities. It's ok to say 'we'll get the community reps in that area...' but you need to access the smaller communities as well. I think a good starting point would be the Land Councils and the Housing Cooperatives, you might also link in with the school, which have Aboriginal Liaison Officers, the universities, and do CLEs there (*LAC Aboriginal staff member 1*).

Workshops would be a good way; it would be best if it were done on Aboriginal ground – at an Aboriginal organization or the CDEP. Not the courthouse (*Aboriginal legal support worker 1 Bourke*).

This latter observation, of the necessity of locating services in Aboriginal organisations, was reiterated time and again:

Services, including CLE, have to be delivered from community organisations, not rely on services run out of Legal Aid offices or relying on posters (*Aboriginal legal support workers 1 Dubbo*).

A lot of Aboriginal people will not come to the courthouse for appointments, so we have most of the (outreach) appointments (*Legal Practitioner 1 Dubbo*).

Continuity of staffing was stressed as key to successful outreach services:

You have to keep in mind that staffing changes also have a big impact – you can go out and do all the outreach and networking within a community, and then you have to go out and do it all again (*Legal practitioner 1 Redfern*).

We know from ALAP work – there was a very low level of community understanding that Legal Aid provided any kind of outreach services at all. We know that it is hard to get branding out there - I get the impression that there is a [Legal Aid] outreach project but it is not operating fully and people are not aware of it. There has to be continuity or the community takes that as a message (*Legal Practitioner 1 Lismore*).

It is also the case that outreach CLE-type services can combine with legal advice and assistance.

One thing that continually keeps popping up is problems associated with wills and powers of attorney and guardianship...as part of the CLSD [several services] did a trip up to Walgett for the elders group where we did a session on wills and then took instructions on wills so Blakes could take them back to Sydney to prepare them. That was very successful – it worked really well (*Legal Practitioner 1 Dubbo*).

A similar point was made in the Dimos (2008) report regarding the capacity to combine CLE with direct advice and legal assistance.

### 9.2.2 Existing Legal Aid Outreach Models

At present there are two types of outreach programs run by Legal Aid NSW: one has involved providing civil and/or family law advice at certain times from an Aboriginal legal service office; the other has involved running advice sessions within particular communities.

The Dimos report (2008) reviews the provision of outreach services by Legal Aid NSW from Aboriginal legal service offices. We do not revisit the issue here. However we do note the same point made is the Dimos report that there is a need for improved communication between ALS and Legal Aid. Typically ALS book the clients into the clinic, but there is no follow up between LAC and ALS about what has occurred with that client.

It's difficult because we don't get any kind of feedback from Legal Aid about how the outreach is going. We don't know whether or not it's actually out there in the community (*Aboriginal Legal Service staff members 1*).

It would be good to get some feedback about whether we were referring people appropriately and they were able to be helped by that service, or did they have to refer them on; did they give them advice and send them on their way or were they taking the matters on for them? ...maybe I'm being a bit negative in my comments about the service because it's hard to know if it is effective. I think that is quite an important point, especially since our clients are coming here for the civil appointments, they have this whole perspective that we are looking after their needs as well...there may be MOUs at a higher level, but there is no set protocol between the offices I don't think (*Aboriginal Legal Service staff members 1*).

We also note that the ALS office may not be the best or only place to provide the service. The Dimos (2008) report also refers to the desirability of considering a range of suitable locations in the community. For example, in Redfern it is likely that a 'drop in' clinic with a solicitor for civil and/or family matters held in the Redfern Community Centre would yield as many clients and minor assistance matters, as an appointment system at the Redfern ALS office.

The outreach program from the Penrith Legal Aid office uses a different model of providing a service in the community at Mt Druitt.

There is a massive need for family law services in the Aboriginal community, but it's just not being accessed by the community for a whole host of reasons. We then thought that we have to take that next step to engage in a more proactive way to provide that service (*LAC practitioners 2*).

The process of establishing the outreach was important and involved community members through the Aboriginal Community Justice Group. There was consultation with community organisations over a three month period. The Community Justice Group are in place as a kind of reference group that the service can report back to.

### 9.2.3 Indigenous Family Violence Prevention and Legal Service Outreach Models

The Bourke and Walgett FVPLS services provide one model for possible outreach services. The Walgett office is staffed by a coordinator, family support worker, receptionist and court worker. There is a local full time coordinator in Bourke. The Bourke and Walgett FVPLS has fly in solicitors for court week, and offers a phone advice service between clients in Bourke and solicitors in Sydney between those times. There are two solicitors based in Sydney who auspice the Walgett and Bourke offices. The program is run through the Women's Legal Services NSW.

The main advantage of the model is seen to be its longer term sustainability.

It's a relatively sustainable model, in terms of funding but also in terms of staffing. A lot of the other legal services don't have a lawyer – they have been recruiting for ages but haven't found anyone, or they have someone relatively inexperienced who is only going to stay a year...

The other advantage is related to position in the community. I frequently have clients say to me 'I wouldn't tell anyone in town, everyone talks'. I think being an outsider inside the community has its advantages. And having the same solicitors for a significant period in the community means that you do have opportunity to build relationships (*Aboriginal legal support workers 2 Walgett*).

If a client wants to speak to a solicitor when one is not available in the Bourke or Walgett offices, they can call a 1800 number and access those lawyers in Sydney. Staff in the Bourke and Walgett offices facilitate this communication, or make an appointment for them for when a solicitor is available face to face, if the client prefers. According to the Walgett office manager, there is not a significant drop off rate when people come in and there is no lawyer immediately available.

When it [advice] takes place over the phone, if there is any clarification that needs to be done, then I do it or my staff members do it – just in terms of bringing things down to a level that the client can understand. Because we assess clients when they come in – just common-sense assessing, whether the client is going to understand what the solicitor is going to say – because the solicitor usually gives us a bit of a run down of what they want to talk to the client about – so we tell them 'this is what they are going to talk to you about', and then we say 'do you want us to sit in with you?', and if they do we do a speakerphone, do a conferencing type of phone call. But if they say 'no, that's ok', then we make the phone call, we talk to the solicitor beforehand, then we hand the telephone to the client, the client will talk to them and then usually the solicitor will talk to us again and say 'I don't know if they understood this part of it, could you go over that with them' and that's what we usually do (*Aboriginal legal support worker 2 Bourke*).

Local staff members are involved in picking up clients for appointments on their appointment day, and if the lawyer is working on the case in Sydney and needs information from the client, the local staff will also access information from the client on the solicitor's behalf.



Having the office [in Walgett] staffed by Aboriginal women, that's what makes the difference... before you can start really helping Aboriginal clients you have to gain their trust, and they're not going to do that just by seeing a white person turn up to talk to them about something, so when we do community education we're always working together with our Aboriginal colleagues in our service (*Aboriginal legal support workers 2 Walgett*).

#### 9.2.4 Court Registrar Outreach Service in Wagga

Another example of an outreach for legal service delivery is the one being developed by the court registrar in Wagga Wagga. The important point in this case is that the outreach is taking place within the same city as the service provider, but in a location that Aboriginal people are likely to access rather than the courthouse.

Every second Thursday morning the court registrar is doing an outreach service at the [Ashmont] community centre from 11-1pm. State debt, births deaths and marriages and legal advice. One of the Legal Aid solicitors could be part of that. If we could get someone from legal aid here regularly then people would get to know that they are available. At least we would have someone here we could talk to about problems... There are two community centres: one at Ashmont and one at Tolland. We are doing the outreach alternative weeks (*Wagga Men's FG participant*).

#### 9.2.5 Developing Legal Aid Outreach Models

Essentially there is a need to consider outreach in those areas where there is a Legal Aid NSW office and those rural and remote areas where there is no office.

For places where there is already a Legal Aid office, in consultation with the proposed Aboriginal reference group (see below), Legal Aid should identify the best place to hold outreach services in that community, and a regular clinic should be held. That clinic should have the following practice principles and cornerstones:

- Ensure the choice of venue does not alienate any sectors of the community. Like the Mt Druitt Legal Aid model, explore the possibility of two venues if necessary.
- Wherever possible provide continuity of service delivery by the same practitioner(s) and field officers
- Provide CLE to community members or community workers on topics of need identified by the community.
- Attend community events for the purposes of raising Legal Aid NSW profile in the community and developing relationships with key community workers.

For places where there is no LAC office, best practice appears to be the FVPLS model in Bourke and Walgett:

- Employment of a local person in a field officer-type role to work (part-time or fulltime depending on location) in the outreach communities, either in a Legal Aid outpost office created for this purpose, or, assuming that this is not resource-viable, co-locating in an existing organisation, depending on the particular community.

- Local field officer will be important in ensuring that clients attend appointments, in explaining matters to clients (acting as an intermediary between client and lawyer) and relaying information/documents for Legal Aid solicitors when the solicitors are not on site.
- Legal Aid solicitors travel in periodically to have client meetings/attend court. The bulk of client meetings however, would be done over the telephone or by AVL.

## **RECOMMENDATION 6**

### **Improving Outreach**

It is recommended that Legal Aid NSW, through the Director, Aboriginal Services, develop strategies for improving outreach both in areas where there are already existing Legal Aid offices and in rural and remote areas where there is at present no Legal Aid service. It is recommended that those strategies adopt the principles and cornerstones for services delivery outlined in this report.

### **9.3 Employing Aboriginal field officers**

Stakeholders and focus group participants expressly identified a preference for Aboriginal employees in Legal Aid to be actively engaged with Aboriginal clients. It was seen that the obstacles faced by Aboriginal people in accessing Legal Aid services would only be overcome through the appointment of specialist Aboriginal workers similar in nature to the roles taken by ALS field officers.

There definitely should be a field officer role, there are definitely benefits there in terms of being a bridge between solicitors and clients...they can link in with the client, get a little bit of a briefing, a little bit of background knowledge, and give that to the solicitor so when you've got the client coming through, you're not fishing as you go along (*LAC Aboriginal staff member 1*).

There definitely needs to be an Aboriginal worker situated in the Legal Aid office [to] support clients by going with them to the Legal Aid office for their meeting there. There needs to be someone trained...a non-Aboriginal woman cannot sit down and really give advice and information to an Aboriginal woman (*Legal support worker 1 Wagga*).

In my view it is a necessity that legal aid have field officers that are Aboriginal that can go out and talk and write down reports in the community (*Redfern Men's FG participant*).

What we need field officers to do is develop that link with the clients and give them that feeling of connection to the service that we just can't do, that is difficult for us to achieve (*LAC practitioners 3*).

Lawyers have to be sure that their client understands what's going on. Sometimes legal professionals are not best placed to do that, and it's better to have an intermediary to translate: someone to reach out to the client and be with the client and to guide them through. People come out of appointments

with lawyers saying, 'I don't understand a bloody thing they're saying'. It's about communication, it always has been (*Aboriginal community organisation worker 1 Redfern*).

The desirability of employing someone in a field officer type role was further highlighted by the fact that some Legal Aid officers are currently calling upon ALS field officers to carry out field officer duties for Legal Aid clients:

People come here and want to swap to Legal Aid from the ALS because they have a problem with the solicitor. I ask them if they would feel more comfortable with the field officer there and they say 'oh yes', so I go back and get the field officer. And they'll do that over and over; the field officer comes from wherever she is to sit there with them (*LAC Aboriginal staff member 4*).

I think there would be a benefit but we have been covered by ALS so far who do have field officers. We call on them from time to time, because many of our clients are referred by them; if we have difficulty contacting clients we will contact the ALS and they'll go out and find them for us (*LAC staff member 3*).

At present, there is a level of frustration among some Aboriginal Legal Aid NSW staff who feel constrained by their limited job description from filling the gaps that a field officer role would fill:

I asked 'have you either looked at our position description or looked at creating new positions, because we're the Aboriginal face of the office, yet you can't go out and do what you need to' (*LAC Aboriginal staff member 2*).

I know that [field officers] seems like a large expense ...but it would be invaluable. There is no way an Aboriginal LSO is going to have the time, energy or emotional capacity to be both a field officer and do a fulltime LSO role (*LAC Aboriginal staff member 5*).

### *9.3.1 Aboriginal Field Officer in Community Legal Centres and Other Legal Aid Offices*

It is important to recognise that Indigenous field officers have been employed by the LAQ (Indigenous liaison officers – see Chapter Eight) and within community legal centres in New South Wales.

We have had a field officer here for twelve months. As a general rule when working with Aboriginal clients and communities it is important to establish rapport and relationship, even before you have clients. Certainly having the Indigenous field officers to assist with both meetings with clients and arranging in advance meetings with different groups such as elders in the community or service providers in the community. They are worth their weight in gold. There are issues here in trying to find clients. To have the field officer assist with that and with cultural appropriateness - that is how you should do things in that community. It is important. And this isn't factored into the Legal Aid policies or practices... (*Legal Practitioner 1 Dubbo*).

Some Aboriginal people can't read or write and they are very reluctant to tell you that they can't read or write, very reluctant. You've got to ask them other questions like whether they went to school, how long they went to school, and get an idea that way. Some times they will say, "I haven't got my glasses can't you read that?" They don't want to appear downgraded in front of a white person. Having the field officer with me meant that I was able to learn a lot. Without a field officer you've got no way of knowing (*Legal Practitioner 1 Dubbo*).

Similarly the experience in another community legal centre also focused on the necessity of Aboriginal staff.

If you have got field officers they can go out and provide continuity even if you don't have a solicitor there. The field officers can have paralegal skills.

It's not negotiable that we have Aboriginal workers with solicitors - Aboriginal legal access workers. Its not analogous to a field officer position because it is more of a liaison position, it not really a 'gofer' position in terms of grabbing clients or organising meetings, and that is because we only had one year of funding. If we had recurrent funding we would have a field officer - that is the preferred position. (*Legal Practitioner 1 Lismore*)

The experience of the community legal centres use of field officers is that they should not be located away from the office from which the solicitors practice.

Field officers shouldn't be living in the town. They should be travelling with the solicitors (*Legal Practitioner 1 Dubbo*).

There are thirteen communities around here that we have identified - so they are not going to be living in the community. As well as the problem of people being on duty 24 hours a day, the stress levels, the need for security... (*Legal Practitioner 1 Lismore*).

However, from the experience of other services like the ALS, FVPLS, and LAQ, it is possible to have at least some part-time field officers placed in strategic locations where they might service a number of small communities.

### 9.3.2 The Role of Field Officers

There is scope for discussion in identifying exactly what the role of the field officer would be: for example, whether it would be a dedicated client-facing role or whether it would also involve some duties in the nature of a paralegal:

Field officer would be great. It would be really really good. Just to have somebody else there; or if I need to see someone and I can't get to them that they could go and pick them up and bring them here. But I would see it as more than that. I would also want them to be able to do legal support work - typing, preparing documents and all that stuff. Because they have to know that back end and the front end (*LAC practitioners 3*).

Whatever the type of role decided upon, the necessity of having clearly defined job descriptions if field officers were employed was noted, “otherwise people have a job description that is about reception duties but end up being a de facto advocate, and so doing two jobs” (*Aboriginal legal support workers 1 Dubbo*). Legal Aid employees similarly noted:

If there was a position as a field officer it would definitely have to have a different statement of duties to the other support staff here; it would have to be kept separate. Because there will be conflict – with who’s doing what and ‘why aren’t you responsible for this when we all are’. So that’s going to be important... if they have different descriptions then everyone knows what their job is and there are no shady parts (*LAC staff members 1*).

Proper selection of the field officers is crucial.

The issue with Indigenous community is that there are different factions in the community...so in terms of selecting that person, a lot of thought would have to go into selecting the right person. I do know that some members in the community feel a bit awkward coming to some of the Aboriginal court workers because there is a history of family conflict – I know you’re never going to get around that, but certainly I think that the integrity and background of the person that you select, you have to really look into that. Especially in relation to family issues, like if there is a break up in the family or allegations of abuse, their reputation has to be really good. I think the concept is good, I think if you’ve got the right person there who is committed to the role, then the benefits are there (*LAC Aboriginal staff member 1*).

The proposed Aboriginal reference group would also have a role in the selection process in employing Aboriginal people as field officers.

The role of a field officer could be implemented in various contexts:

In places where there is a LAC office:

- To act as support person in solicitor/client meetings if the client requested;
- As a key person establishing and assisting outreach work and CLE;
- As a point of contact for Aboriginal clients wanting information about their file (to address the concerns of lack of responsiveness/contact from solicitors).

In places where there is no LAC office:

- If local community people were employed in these sites as suggested above, there would be no need for an additional field officer in those places;
- If an outreach model was established to some communities where there was no ongoing presence in the community, but rather a periodic visit from a LAC solicitor, a field officer would travel with that solicitor to assist in the ways described above.

## **RECOMMENDATION 7**

### **Employing Field Officers**

It is recommended that Legal Aid NSW recruit and employ Aboriginal people to work in a role of field officer; the statement of duties for the position to be developed in consultation with the Director of Aboriginal Services. It is recommended that minimum training for the position be the National Indigenous Legal Advocacy Course (or equivalent).

## **9.4 Expand the use of Audio Visual Links (AVL) for advice**

Generally the view was that greater use could be made of AVL to improve access to civil family law advice. Because of the greater use of AVL in the criminal justice system, many Aboriginal people have had some experience in this form of communication. For example, most Aboriginal legal service offices have AVL capability.

Those who had had experience in using AVL found it a good option without significant drawbacks – as long as the facilities could be found:

We've done that with DOCS matters, have had legal aid over AVL, it's not a problem, only just a matter of where and when – can't be when court is running, since they use the courthouse one, which is the only one in Bourke... People would feel comfortable, as long as the person on the other end was explaining to them really well what was happening and what they had to do, or an Aboriginal court worker could sit in and explain things afterwards (*Aboriginal legal support worker 1 Bourke*).

If you don't make a connection with the Aboriginal person, you won't get nowhere. Once you've made the connection and you've got a rapport, sure, you can use the video. If you have your field officer there and it's all you've got, then I think it's ok (*LAC practitioners 2*).

There was an AVL in the courts, it was being used until recently for client appointments [has now been disallowed by the court] and it was working really well...it's much easier – otherwise they've got to jump in a car and drive all the way to Wellington, or Bathurst, or Goulburn, or wherever they have their clients, just to get instructions... Clients seem happy when they are using it (*Aboriginal legal support worker 1 Walgett*).

Some services already utilise phone conferences or advice sessions with solicitors, and the use of AVL was seen as another option for clients:

I reckon that would be better for [people] round here; compared with the phone, instead of just looking at the desk; so actually seeing the solicitor would probably be better for them...Face to face would be better than AVL, but AVL would be better than just the phone (*Aboriginal legal support worker 2 Walgett*).

Not all stakeholders were supportive of AVL.

Aboriginal people prefer face – to –face. There are communicative problems, we can't get Aboriginal people to come not mainstream offices now, how are we going to do it over the AVL? They have to have field officers with them.  
(*Legal Practitioner 1 Lismore*)

As a minimum requirement the use of AVL will require consideration of the following issues:

- The possibility of using already existing AVL facilities where they are available. We would caution against the use of AVL facilities if they are only available in the courthouse. The location needs to be acceptable to Aboriginal people.
- Practical questions of who will operate the AVL. There are questions of confidentiality. We envisage that the use of AVL will be dependent on the implementation of the outreach recommendation where there is a Legal Aid field officer in attendance who could operate the AVL and also assist with face-to-face explanations at the time of the AVL consultation.
- As a principle clients should not be compelled to use AVL. For some, telephone may be preferable. Clients may not want to be seen and prefer the use of telephone.

It just depends. Some people like to be visualised. But a lot of the after effects of family violence and sexual assault is where they don't want other people looking at them; that also stems from cultural differences as well... so they don't want to be on camera; they think that it's going to hold their image and they don't have any control. So quite often they will prefer to do them over the phone...because no ones' looking at them, and the clients aren't sitting there thinking that they are being judged. (*Aboriginal legal support worker 2 Walgett*)

- It is important that there is an initial face-to-face meeting prior to utilising AVL, if not with the solicitor then with the field officer (depending on the client).

#### **RECOMMENDATION 8**

##### **Increased Use of Audio Visual Links for Legal Advice**

It is recommended that Legal Aid NSW develop the use of AVLs as part of their improvements in outreach services to Aboriginal communities. The use of AVLs should be adopted only when the concerns identified in this report have been satisfied.

## 9.5 Ensuring better understanding by Aboriginal people of civil and family law

As we have indicated in the chapters throughout this report, there is a very poor understanding of civil and family law by Aboriginal people. We recommend a number of strategies to improve this situation.

There is a need to skill and resource Aboriginal staff who work in justice agencies in civil and family law. As we noted previously in this report, Aboriginal people who work in various agencies often do not have the knowledge base to provide assistance on civil and family law matters. In this context we reiterate the recommendation already made in the Dimos (2008) report (Recommendation 29) concerning the need for Legal Aid NSW to directly assist in the provision of these skills and resources, possibly in cooperation with the Attorney-General's Department.

### **RECOMMENDATION 9**

#### **Skills and Resources**

Following Recommendation 29 from the Dimos (2008) report to Legal Aid NSW, we recommend that Legal Aid NSW take a lead role in skilling and resourcing Aboriginal people working in justice agencies on civil and family law.

#### *9.5.1 Civil and family law community legal education*

The need for development of civil and family law community legal education that is targeted to the needs of Aboriginal people has been identified in several sections of this report. Legal Aid NSW has appointed three people responsible for community legal education in the areas of civil, family and criminal law. However, it is noted that they are employed in Head Office. It may be worth considering a CLE regional position/s, or one that is specifically designed to improve Aboriginal community legal education.

If they did a lot more community education awareness programs with Aboriginal workers, ALS and other Aboriginal organisations like court workers, that's going to spread a lot wider than 'this belongs to ALS, this belongs to Legal Aid' – work together to have a much more holistic approach between those services (*Aboriginal legal support workers 2 Dubbo*).

A lot of the NSW government agencies have great schemes operating for civil law issues, but people don't know about it. A lot of civil law issues can be referred to those agencies, if there was someone in Legal Aid, say in head office, who could liaise with all the government agencies so that when they have all these assistance schemes for Indigenous people and communities, people in Legal Aid know how to access that information. We do have a bit of that on the intranet, but I think if there was an Indigenous focus, or more of a thought on how you could bring all those services for Indigenous people together, it would be a good way to do it (*LAC Aboriginal staff member 1*).

There's not enough pamphlets or workshops or information given out there to let people know what they can do in this society. Our people need education on these things. Education is the starting point. You've got to get out into the



communities and tell people what their rights are (*Redfern Men's FG participant*).

Literature and pamphlets have to be culturally appropriate to certain areas – if you write something in this area and take it out to another one, it could be different out there. If you get community involvement in writing up those pamphlets, that would be good too (*LAC Aboriginal staff member 1*).

Equally important is the need to provide targeted education to Aboriginal communities about the Legal Commission itself, and in particular the services which it provides. The proposed field officer position could play an important role assisting with CLEs and promoting the work of Legal Aid NSW.

#### **RECOMMENDATION 10**

##### **Community Legal Education**

It is recommended that targeted community-based promotion strategies on civil and family law services provided by Legal Aid NSW be developed for Aboriginal people. It is also recommended that targeted community legal education on civil and family law be developed for Aboriginal people. Targeted CLE strategies are best developed at the regional level and in response to identified local issues.

#### *9.5.2 Indigenous Telephone Advice line*

One final issue in improving access which is worth further exploration is the use of an Indigenous telephone advice line. As noted in Chapter Eight, LAQ has a designated Indigenous legal advice line.

We are aware that there are various available advice lines in New South Wales in relation to young people (the Legal Aid Youth Hotline), for Aboriginal people in custody (the 24 hour telephone custody notification service operated by the ALS), and LawAccess NSW. As noted previously we were unable to access any data on Indigenous use of the LawAccess service.

It is clear, however, that none of the advice lines are specifically covering civil and family law matters for Aboriginal people. It is an avenue worth further exploration, particularly the possibility of developing with the Aboriginal Legal Services a joint telephone advice line covering criminal, civil and family law.

#### **RECOMMENDATION 11**

##### **Telephone Advice Line**

It is recommended that Legal Aid NSW discuss with the Aboriginal Legal Services (New South Wales/ACT) the desirability and feasibility of establishing a telephone advice line for Aboriginal people which covers criminal, civil and family law issues.

### **9.6 Aboriginal Reference Group**

It appears that one of the core problems facing Legal Aid NSW offices is that there is no process in place through which they can engage local Aboriginal communities. This makes community engagement for service delivery a difficult task.

Other justice agencies have faced similar issues. Police have established local community consultative groups. Department of Juvenile Justice established reference groups or elders group to provide advice to local detention centres. The Penrith Legal Aid office has done something similar through the use of the local Aboriginal Community Justice Group.

Before there can be improved engagement with Aboriginal communities, there needs to be a process in place. The establishment of a local Aboriginal reference group is an important first step in this direction. The reference group could provide advice on better service delivery, on particular legal needs in the area, and other matters as they arise. It is envisaged that the reference group would involve membership from community justice groups, Aboriginal court staff, circle sentencing coordinators, ALS and FVPLS staff, and other local Aboriginal services as appropriate (for example, the AMS, tenancy services, etc).

We are conscious of the problems that arise with demands on Indigenous workers to attend to various meetings and be part of various groups. There may well be a local interagency Aboriginal group or other suitable reference group already in place in a particular location which could be utilised to avoid duplication. The Aboriginal Services Unit and existing Aboriginal staff could provide advice to local managers and senior solicitors on establishing reference groups.

#### **RECOMMENDATION 12**

##### **Aboriginal Reference Group**

It is recommended that Legal Aid NSW offices, in consultation with the Director, Aboriginal Services, establish Aboriginal Reference Groups to provide advice on matters relating to improved service delivery to Aboriginal communities and legal needs in local Aboriginal communities.

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