

Report 403

Access of Indigenous Australians to Law and Justice Services

Joint Committee of Public Accounts and Audit

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Foreword

The Committee's inquiry into the provision of law and justice services to Indigenous Australians was adopted and commenced during the Fortieth Parliament when the Committee was under the capable stewardship of the then Chairman, Mr Bob Charles MP and Deputy Chair, Ms Tanya Plibersek MP.

I acknowledge the valuable and useful evidence gathered during this time and also the two on-going members of the Sectional Committee, the current Deputy Chair, Ms Sharon Grierson MP and Senator John Hogg who have provided an important continuity to the inquiry.

The Committee received 44 submissions and 51 exhibits from all sectors involved in the provision of legal services to Indigenous Australians. I would extend my appreciation to all of those who provided insight, from various perspectives, into the issues of the delivery of quality services in, at times, difficult circumstances.

The Committee took evidence in Canberra, Sydney, Darwin, Alice Springs, Adelaide, Dubbo, Yuendumu and Perth over the eight months of the inquiry. On behalf of the committee I thank those people who appeared for their time and the valuable insight into the issues.

On re-adopting the inquiry the new Sectional Committee undertook a brief but extensive program of evidence gathering that took us across Australia visiting metropolitan, regional and remote locations. This provided an opportunity for me, and other Committee members new to the inquiry to acquaint ourselves with issues raised by the terms of reference. The Committee felt it important to have heard the concerns in face to face forums with users of legal services as well as the providers at the coal face.

In particular, taking evidence enabled the Committee to explore community based responses to problems of Indigenous access to the law and justice system to a level not previously investigated.

As Chair of the Joint Committee of Public Accounts and Audit I take this opportunity to express my sincere appreciation to the community at Yuendumu who hosted a Committee visit. I was personally inspired by the determination of the community to sustain principles of customary law while acknowledging and operating within a common law framework. The outcomes achieved by the community, stand as a testament to the co-operation of the two systems.

I also thank the people who travelled from Ali-Curung to speak with the Committee during our visit to Yuendumu, officers of the Northern Territory Department of Justice who facilitated the Committee's visit and the Northern Territory Attorney-General the Hon Peter Toyne MLA who attended.


Hearing evidence on matters such as the death of a young person in custody or specific instances of family violence was difficult for members and we appreciate the courage and candour of witnesses who related these tragic events. While stories relating personal tragedy are the most difficult evidence to receive, it is this evidence that serves to recall to us the importance of accessible law and justice services.

As a result of this inquiry into the provision of law and justice services to Indigenous Australians there are 17 recommendations for the government to consider. During the conduct of the inquiry and in the compilation of this report there were a diversity of views expressed by members of the committee, but it is important to note there was a consensus in the concerns raised in the recommendations of the committee.

Finally, I thank members of the secretariat, in particular Glenn Worthington, who sustained the inquiry across the two Parliaments

A handwritten signature in blue ink, appearing to read 'Bob Baldwin', with a long horizontal flourish extending to the right.

Bob Baldwin MP
Chair



Membership of the Committee (Fortieth Parliament)

Chair Mr Bob Charles MP

Deputy Chair Ms Tanya Plibersek MP

Members	Senator Richard Colbatch (from 14/02/02, until 25/05/03)	Mr Steven Ciobo MP
	Senator Stephen Conroy (from 5/02/03, until 10/09/03)	Mr John Cobb MP
	Senator John Hogg (until 5/02/03, from 10/09/03)	Mr Petro Georgiou MP
	Senator Gary Humphries (from 25/02/03)	Ms Sharon Grierson MP
	Senator Kate Lundy (from 19/11/02, until 1/04/04)	Mr Alan Griffin MP
	Senator Claire Moore (from 1/07/02, until 19/11/02 and from 1/04/04)	Ms Catherine King MP
	Senator Andrew Murray	Mr Peter King MP
	Senator Nigel Scullion	The Hon Alex Somlyay MP
	Senator John Watson	

Members of the Sectional Committee (Fortieth Parliament)

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Deputy Chair Ms Tanya Plibersek MP

Members Senator John Hogg

Mr John Cobb MP

 Senator Nigel Scullion

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Membership of the Committee (Forty First Parliament)

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	Senator Gary Humphries	Ms Anna Burke MP
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		Mr Ken Ticehurst MP

Members of the Sectional Committee (Forty First Parliament)

Chair Mr Bob Baldwin MP

Deputy Chair Ms Sharon Grierson MP

Members Senator John Hogg

Mr Russell Broadbent MP

Senator Claire Moore

Mr Ken Ticehurst MP

Committee Secretariat (Forty First Parliament)

Secretary Mr Russell Chafer

Inquiry Secretary Dr Glenn Worthington

Administrative Officer Ms Penne Humphries



Terms of reference

As part of its statutory responsibility to examine reports from the Auditor-General, the Joint Committee of Public Accounts and Audit is expanding its review of *Audit Report No. 13, 2003-2004, AT SIS Law and Justice Program* – including its four components of Legal Aid; Law and Justice Advocacy; Family Violence Prevention; and Prevention, Diversion and Rehabilitation – to inquire and report on issues including:

- a) the distribution of the resources of Indigenous legal aid services between criminal, family and civil cases;
- b) the coordination of Indigenous legal aid services with Legal Aid Commissions through measures such as memoranda of understanding;
- c) the access for Indigenous women to Indigenous-specific legal services; and
- d) the ability of Law and Justice program components to recruit and retain expert staff.

The Committee will take into account the 2004 tender for Indigenous legal aid services.



List of abbreviations

AGD	Attorney-General's Department
ALRM	Aboriginal Legal Rights Movement
ALSWA	Aboriginal Legal service of Western Australia
ANAO	Australian National Audit Office
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSILS	Aboriginal and Torres Strait Islander Legal Service
ATSISS	Aboriginal and Torres Strait Islander Services
CAALAS	Central Australian Aboriginal Legal Aid Service
CAAFLU	Central Australian Aboriginal Family Legal Unit
CAWLS	Central Australian Women's Legal Service
CLC	Community Legal Centre
DIMIA	Department of Immigration and Multicultural Affairs and Indigenous Affairs
FaCS	Department of Family and Community Services
FVPLS	Family Violence Prevention Legal Service
KALS	Kamilaroi Aboriginal Legal Service

LAC	Legal Aid Commission
LCA	Law Council of Australia
LSC	Legal Services Commission
MRALS	Many Rivers Aboriginal Legal Service
NAALAS	Northern Australian Aboriginal Legal Aid service
NACLCLC	National association of Community Legal Centres
NPY	Ngaanyatjarra Pitjantjatjara Yankunytjatjara
NSWLAC	Legal Aid Commission of New South Wales
NTLAC	Northern Territory Legal Aid Commission
OEA	Office of Evaluation and Audit
PBS	Portfolio Budget Statement
SEALS	South Eastern Aboriginal Legal Service
SRACLS	Sydney Regional Aboriginal Corporation Legal Service
TEWLS	Top End Women's Legal Service
VALS	Victorian Aboriginal Legal Service
WALAC	Legal Aid Commission of Western Australia
WALS	Western Aboriginal Legal Service
Warndu	Warndu Wathilli-Carri Ngura Aboriginal Family Violence Legal Service
WLS	Women's Legal Service



List of recommendations

Introduction

Recommendation 1

That the Attorney-General's Department put in place measures to ensure that questions taken on notice to the Joint Committee of Public Accounts and Audit are either responded to within requested timeframes or that reasons are provided showing why responses will be delayed together with a proposed alternative date by which responses will be received by the Committee. (Para. 1.27)

Funding and Distribution of Resources in Aboriginal and Torres Strait Islander Legal Services by Case Type

Recommendation 2

That based on available data and need, all future contracts between the Attorney-General's Department and providers of services that are currently delivered by Aboriginal and Torres Strait Islander Legal Services designate specific requirements of family, civil and criminal case loadings and provide adequate funding to meet these requirements. (Para 2.47)

Indigenous Women and Access to Legal Services

Recommendation 3

That the Attorney-General's Department ensure that Family Violence Prevention Legal Services focus on the provision of family and civil law services to Indigenous Australians, *particularly through the legal representation of clients*. (Para. 3.85)

Recommendation 4

That the Attorney-General's Department acknowledge that urban Indigenous populations also require family violence, family and civil law services and locate Family Violence Prevention Legal Services accordingly. (Para 3.87)

Recommendation 5

That the Attorney-General's Department ensure that Indigenous men are provided full access to all Family Violence Prevention Legal Services. (Para. 3.93)

Retention of Expert Staff

Recommendations 6

That the Attorney-General's Department, in consultation with National Legal Aid and the National Aboriginal and Torres Strait Islander Legal Services Secretariat, develop a comparative scale of remuneration between Aboriginal and Torres Strait Islander Legal Services (ATSILSs) and Legal Aid Commissions and review funding of providers of services currently delivered by ATSILSs as appropriate. (Para. 4.54)

Recommendation 7

That the Department of Treasury grant Fringe Benefit Tax supplementation to Family Violence Prevention Legal Services. (Para. 4.56)

Recommendation 8

That the Attorney-General's Department, in consultation with the National Aboriginal and Torres Strait Islander Legal Services Secretariat and National Legal Aid, develop and implement a formal exchange program whereby solicitors from providers of services that are currently delivered by Aboriginal and Torres Strait Islander Legal Services and Legal Aid Commissions are afforded opportunities to work, for a specified period, within the other organisation. (Para. 4.59)

Recommendation 9

That the Department of Education, Science and Training, in consultation with the Attorney-General's Department, the National Aboriginal and Torres Strait Islander Service Secretariat and the National Network of Indigenous Women's Legal Services, explore the feasibility of implementing a system of bonded scholarships where successful applicants on being accepted to the bar are required to provide a specified period of service to a designated provider of services currently delivered by Aboriginal and Torres Strait Islander Legal Services or Family Violence Prevention Legal Services. (Para. 4.62)

Recommendation 10

That the Department of Education, Science and Training ensure that places are available for the training and development of paralegal community support workers who are employed with providers of services that are currently delivered by Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services. (Para. 4.64)

Coordination of Legal Aid Services to Indigenous Australians**Recommendation 11**

That the Attorney-General raise the matter of Commonwealth and state/territory funding for providers of services currently delivered by Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services with his state and territory counterparts with a view to gaining some level of state/territory contribution for these services. (Para. 5.39)

Recommendation 12

That the Attorney-General's Department, in consultation with National Legal Aid and the National Aboriginal and Torres Strait Islander Legal Services Secretariat, develop and require providers of services currently delivered by Aboriginal and Torres Strait Islander Legal Services (ATSILSs) to implement a memorandum of understanding between them and Legal Aid Commissions (LACs) that includes:

- sharing each others duty solicitors;
- the provision of representation and advice by one organisation to the other's clients;
- the use of office space and facilities in ATSILSs by LAC solicitors for Indigenous clients when these clients are referred from ATSILSs to LACs;

- protocols requiring ATSILSs solicitors to introduce clients to LAC solicitors in the event that clients are referred from ATSILSs to LACs;
- access of ATSILSs solicitors to LAC technology, such as video-conferencing, in order to facilitate remote client contact;
- access of LAC solicitors to Aboriginal Field Officers employed with ATSILSs when required to communicate with clients;
- mutual sharing of vehicles for remote travel; and
- access of ATSILSs and LAC staff to in-house training programs run by the other organisation. (Para. 5.44)

Recommendation 13

That the Attorney-General's Department rationalise funding of Indigenous legal services by incorporating Indigenous Women's Projects, that are currently administered through mainstream Community Legal Centres, into the Family Violence Prevention Legal Services program. (Para. 5.46)

Tendering Out of Aboriginal and Torres Strait Islander Legal Services

Recommendation 14

That in centralising providers of services that are currently delivered by Aboriginal and Torres Strait Islander Legal Services, the Attorney-General's Department ensures that these services establish and maintain governance mechanisms that allow representation of and responsiveness to the views of the communities in their service area. (Para. 6.63)

Recommendation 15

That in awarding tender bids, the Attorney-General's Department ensure that the current levels of paralegal community legal workers employed by Aboriginal and Torres Strait Islander Legal Services is not diminished. (Para 6.65)

Recommendation 16

That the Australian National Audit Office conduct a performance audit of those areas of the Attorney-General Department's responsible for funding of Family Violence Prevention Legal Services and Community Legal Centres with regard to the same matters covered in the *Audit Report No. 13, 2003-2004*. (Para. 6.67)

Recommendation 17

That the Australian National Audit Office conduct a performance audit of the Indigenous Law and Justice Branch of the Attorney-General's Department at the mid way point of the tender contracts in each jurisdiction with a view to identifying difficulties and recommending improvements in administration and service delivery. (Para. 6.70)



Executive summary

Introduction (Chapter 1)

Indigenous Australians receive legal services through an array of publicly funded mainstream (Legal Aid Commissions (LACs) and Community Legal Centres (CLCs)) and Indigenous specific organisations (Aboriginal and Torres Strait Islander Legal Services (ATSILSs) and Family Violence Prevention Legal Services (FVPLSs)).

From 1 July 2003 the Aboriginal and Torres Strait Islander Services (ATSIS) took over responsibility for administering the Law and Justice Program, which funded ATSILSs and FVPLSs, from the Aboriginal and Torres Strait Islander Commission. On 1 July 2004 responsibility for administering the functions of the ATSIS Law and Justice Program was transferred to the newly established Indigenous Law and Justice Branch in the Attorney-General's Department (AGD). AGD also administers the Commonwealth components of funding for LACs and CLCs.

The inquiry examined the adequacy of access that Indigenous Australians have to legal services. While acknowledging the high level of need for criminal law services in the Indigenous community, the Committee focused on issues of access to family and civil law services particularly by persons in danger of harm.

Distribution of Aboriginal and Torres Strait Islander Legal Services Resources by Case Type (Chapter Two)

ATSILSs operate in a climate of effectively static funding and increasing demand. Evidence suggested that ATSILSs have prioritised cases where a person is in danger of incarceration because the needs of criminal clients are immediate. The prioritisation of criminal law services is at the expense of providing family and civil law services. Furthermore, the arrangements under which ATSILSs have received funding present significant impediments to them introducing or increasing family and civil law services.

The provision of criminal law services is, by its very nature, an urgent client requirement. However, family and civil law services should be available through Indigenous specific providers. This may require a reconsideration of the form in which funding is provided to ATSILSs. Rather than providing funding in blocks where the provider is left to determine the distribution of criminal, family and civil law services, the expected level of services delivered in each service area should be specified and funds dedicated specifically to each area.

ATSILSs' prioritisation of services to persons at risk of detention has impacted in a particularly acute way upon women and children who are often the persons at risk of physical harm as the result of criminal acts.

Indigenous Women and Access to legal Services (Chapter Three)

The immediate legal requirements of persons in danger of detention means that ATSILSs are often restricted in providing family or civil law services (beyond referrals) to persons in danger of harm because they are already representing the alleged offender and thus find themselves in a conflict situation.

The Committee acknowledges the importance and high quality of the work done by ATSILSs in criminal representation of persons in danger of incarceration, whether men or women. However, it is of the view that within the overall provision of legal aid the rights of accused parties should not be focused upon to the extent that they exclude the rights and safety of persons in danger of violence or the rights of injured parties to compensation.

The primary instrument for ensuring access to legal services of Indigenous persons in danger of harm is through FVPLSs. FVPLSs provide support and legal services. The Committee accepts the importance of treating family violence holistically but is concerned to ensure that the primary character and function of FVPLSs is the provision of legal services.

The provision of legal services by FVPLSs should be complemented through clear lines of communication between these services and providers of victim support services under the Indigenous Family Violence Partnership Program and Family Violence Regional Activities Program administered by the Department of Family and Community Services.

The Committee has not suggested that FVPLSs withdraw from providing support services such as counselling for victims of family violence but rather that the focus of these organisations as providers of legal services be affirmed and acknowledged in their funding and required outputs.

As providers of legal services to Indigenous people whose safety is at threat, FVPLSs should not be confined to regional and remote Australia but rather, like ATSILSs, be located in all areas of significant need. Furthermore, FVPLSs should

not be identified as gender specific legal services but be available to all Indigenous people in danger of harm.

Retention of Expert Staff (Chapter Four)

In order to maintain the highest possible quality of service in an environment of effectively static funding and increasing demand, Indigenous specific legal services must have the capacity to retain expert staff. The Committee is concerned that alleged poor rates of remuneration together with the limited career paths available in ATSILSs in comparison to LACs are creating a crisis in the ability of ATSILSs to retain expert staff.

It is imperative to establish the relative rates of remuneration between legal and management staff in ATSILSs and LACs and to review the remuneration of ATSILSs staff accordingly.

In terms of developing career paths with greater opportunities for professional development, the Committee believes that there is potential for the development and implementation of an exchange program between staff of ATSILSs and LACs at a national level. Such a program would benefit both types of organisations.

The Committee affirms the importance of Aboriginal Field and Court Officers and Community Legal Workers in providing the nexus between the legal staff of ATSILSs and FVPLSs and the clients they service. These networks of support officers enable Indigenous specific legal services to provide accessible services in a way that mainstream providers cannot.

Aboriginal Field Officers need to be supported and encouraged in gaining training and opportunities to professional development.

While it is of little consolation to ATSILSs, it should be acknowledged that Indigenous organisations do provide a very valuable training for solicitors who pass through them. These solicitors are not lost to the justice system and should be acknowledged as resources in the provision of legal services to Indigenous people regardless of their current employer.

Coordination of Legal Aid Services to Indigenous Australians (Chapter Five)

Another strategy to increase the capacity of Indigenous specific providers is ensuring adequate levels of coordination and cooperation between these providers and their mainstream counterparts.

The coordination of all providers of legal services to Indigenous people is of vital importance, particularly the coordination of Indigenous specific and mainstream providers of similar types of law services – that is providers that are primarily criminal or family and civil law services.

ATSILSs and LACs are primarily providers of criminal law services to Indigenous people, and FVPLSs and CLCs are primarily providers of family and civil law services.

While the Committee is aware of memoranda of understanding between ATSILSs and LACs in New South Wales, Victoria and Western Australia and operational protocols between ATSILSs and LACs in the Northern Territory and South Australia, the arrangements appear to be varied and to work with various degrees of effectiveness.

The development on a national scale of a set of areas in which coordination and cooperation between Indigenous specific and mainstream providers of legal services is required would contribute to the provision of services to Indigenous Australians.

The Committee was concerned at the myriad of programs and services that provide legal services to Indigenous women. Perhaps the most apparent area for potential overlap is the FVPLSs and the Indigenous Women's Projects run out of designated CLCs.

Tendering Out of Aboriginal and Torres Strait Islander Legal Services (Chapter Six)

The Committee acknowledges that moving from a grants based funding regime to a contractual output focused funding arrangement for the provision of legal services to Indigenous Australians is desirable. A tendering out process is one method of achieving this aim.

However, the Committee has reservations in relation to the way in which the tendering out process was developed, particularly the concern and frustration among ATSILSs and other providers of legal services to Indigenous Australians, such as LACs, which appears to have been generated by a lack of responsiveness and information from ATSIIS to these service providers.

On the strength of figures provided by AGD, the Committee is not convinced that proposed savings on service overheads will be a significant outcome of the proposed minimisation of legal service providers under the terms of the tender.

While the stated preference for a single provider may be appropriate in Victoria and Western Australia (where there was previously only one provider per state), in jurisdictions where there are other arrangements and different circumstances, a centralisation of providers may cause significant disruption to services. The results of the Queensland tender and the level of services delivered by a significantly smaller number of providers should be taken into account before multiple centralisation is required in other jurisdictions.

The importance of services that are owned by and embedded in the communities they service is demonstrated by the great successes that Indigenous organisations such as ATSILSs and, more recently FVPLSs, have had in making the justice system more accessible to Indigenous Australians.

An essential part of the services provided by ATSILSs involves community based paralegal staff who provide support for clients. The Committee expects that a functional network of Aboriginal Field and Court Officers would be an essential part of a successful tender bid.

Future Directions: Community Based Prevention and Diversion Initiatives (Chapter Seven)

Community based prevention and diversion responses empower communities by providing:

- a voice in the criminal justice proceedings which would otherwise be completely foreign to the communities and individuals who are subject to them; and
- an opportunity for communities to develop and implement strategies for dealing with problems themselves.

Preventative and diversionary programs are essential components of the provision of legal services to a sector of the Australian community that suffers such a disproportionate incarceration rate as the Indigenous population.

Community based initiatives are, by their very nature, various rather than uniform. The success of one or a particular combination of initiatives will work very successfully in some communities but when the same arrangements are implemented elsewhere they could actually hinder the objective.

Evidence indicated that an essential factor in successfully implementing community based initiatives is a strong foundation of community consultation. The importance of community consultation and acting on the information gathered was nowhere more apparent than in the efforts of the governments of Western Australia and the Northern Territory to implement community based justice initiatives.

The Committee supports the circle sentencing, community law and justice committee and community policing initiatives that it encountered and encourages all stakeholders, government departments and agencies, legal service providers and indeed the communities themselves, to continue to explore the possibilities that lie in this direction.

While the Committee is aware of the importance of tailoring community justice initiatives to the local requirements and practices of each community, there is a very real need to ensure that the community decision making procedures, such as

circles and community law and justice committees, properly reflect the views of the entire community.

Although it is a matter for state and territory governments, the Committee believes that the evidence it has received does not support the extension of circle sentencing procedures to matters involving family violence or sexual assault.

Introduction

Legal Services Available to Indigenous Australians

- 1.1 Indigenous Australians receive legal services through an array of publicly funded mainstream and Indigenous specific organisations.

Mainstream Service Providers

Legal Aid Commissions

- 1.2 Legal Aid Commissions (LACs) provide legal representation and advice to disadvantaged groups within the community and as such the vast majority of Indigenous Australians qualify as their potential client base.
- 1.3 LACs are funded primarily by state or territory governments to provide legal services to all Australians subject to a means test. Since 1997 Commonwealth funds received by LACs have been tied to provision of legal services on Commonwealth law matters, primarily in the area of family law.

Community Legal Centres

- 1.4 Community Legal Centres (CLCs) provide legal services primarily in the form of advice, but on occasion as representation, and are of two types. Generalist CLCs provide legal services to all Australians. Specialist CLCs provide legal services to targeted groups such as women or Indigenous women or on specific issues such as tenancy rights, family law or employment and industrial matters.
- 1.5 Different CLCs have different funding arrangements. Some are funded solely by state or territory governments, some solely by the Commonwealth Government and some receive both state and Commonwealth funds.
- 1.6 Some CLC programs such as Indigenous Women's Projects are particularly pertinent to promoting the access of Indigenous women to mainstream legal services.¹

Indigenous Specific Service Providers

- 1.7 Indigenous specific providers of legal services are owned by and based in the communities they service. The community character of Indigenous specific providers involves more than exhibiting an awareness of local Indigenous cultures, it refers to Indigenous ownership of these services.² Indigenous legal services are community owned organisations in that their boards of directors are elected by Indigenous people within the service area.
- 1.8 Community ownership is reflected in the embeddedness of Indigenous specific legal services in the communities they service. They have increased the access of Indigenous people to legal services through networks of field and court workers who live in the target communities.
- 1.9 Field and court workers provide on the ground knowledge of what is happening within communities and are often more approachable as a first point of contact because of their familiarity with clients and their situations. As well as establishing a first point of contact, these workers provide a continuing line of communication between legal service solicitors and their clients, for instance, ensuring court attendance by accused offenders who have been granted bail or by parties who have laid charges.

1 For Commonwealth funding details see AGD, *Exhibit No. 21*.

2 ALRM, *Transcript*, 19 August 2004, pp. 36-7.

- 1.10 Indigenous specific providers of legal services are primarily of two types : Aboriginal and Torres Strait Islander Legal Services (ATSILSs) and Family Violence Prevention Legal Services (FVPLSs)

Aboriginal and Torres Strait Islander Legal Services

- 1.11 In the early 1970s Aboriginal Legal Services began to be established in response to the lack of representation of Indigenous Australians in the criminal justice system. The Commonwealth commenced funding for Aboriginal Legal Aid at \$748 000 in 1972-73 which rose to \$3 746 000 by 1975-76.³
- 1.12 Following the report of the Royal Commission into Aboriginal Deaths in Custody funding for Indigenous Law and Justice was increased dramatically from approximately \$18 million in 1990-91 to \$36 million in 1991-92.⁴
- 1.13 In 2002-03 there were 25 ATSILSs with 96 sub-offices across Australia.⁵ The Aboriginal and Torres Strait Islanders Services (ATSIS) Law and Justice Program funding for Legal Aid was \$42.622 million.⁶

Family Violence Prevention Legal Services

- 1.14 In 1998 the Aboriginal and Torres Strait Islander Commission (ATSIC) piloted a Family Violence Prevention Legal Units program.⁷ At the time of the review of the ATSIS Indigenous Law and Justice Program by the Australian National Audit Office (ANAO) there were 13 Commonwealth funded FVPLSs.
- 1.15 FVPLSs provide a holistic response to family violence:
- If the woman is a victim, they may represent her and then they may also play a role through their other activities by providing counselling services or other referral services...⁸
- 1.16 FVPLSs are Indigenous specific providers of legal services that are often auspiced out of extant incorporated legal service providers such as ATSILSs or CLCs.

3 Department of Aboriginal Affairs, *Annual Report 1988-89*, Appendix 15, p. 214.

4 ANAO, *ATSIS Law and Justice Program, Audit Report No. 13, 2003-04*, Para. 1.2, p. 23.

5 The tendering out of ATSILS particularly in Queensland, the Northern Territory and New South Wales may alter this figure.

6 AGD, *Submission No. 44*, p. 2.

7 NNIWLS, *Policy and Budget Submission, 2004*, p. 7.

8 ATSIS, *Transcript*, 9 June 2004, p. 8.

- 1.17 The 2004-05 Commonwealth Budget announced a doubling of funding for FVPLSs from \$3.2 million in 2004-05 to \$6.5 million in each of the following three years to double the number of FVPLSs from 13 to 26.⁹
- 1.18 The Attorney-General's Department (AGD) informed the Committee that:
On 25 February 2005, the Attorney-General announced arrangements for seven of these [FVPLS] units, and on 2 May [the Attorney-General] announced a further four successful applicants.¹⁰
- 1.19 On 20 May 2005 the Attorney-General announced the twelfth FVPLS and stated in the House of Representatives that:
most of these new units, if not all, will be ready to open their doors from 1 July this year.¹¹

Changes in Commonwealth Administrative Arrangements

- 1.20 From 1 July 2003 ATSIIS took over responsibility for administering the Law and Justice Program from ATSIIC. Under the new arrangement ATSIIC provided policy direction while ATSIIS administered funding as an independent Executive Agency within the Immigration and Multicultural Affairs and Indigenous Affairs Portfolio.
- 1.21 On 1 July 2004 responsibility for administering the functions of the ATSIIS Law and Justice Program was transferred to the newly established Indigenous Law and Justice Branch in AGD.
- 1.22 At a public hearing on 9 June 2004, ATSIIS took several questions on notice to which it failed to respond until over eight months later at a private briefing on 17 March 2005. The Committee acknowledges that this eight month period includes the dissolution of the House of Representatives on 31 August 2004, which resulted in the lapse of this inquiry until its re-adoption by the Committee on 8 December 2004. nevertheless an eight month delay in responding to questions on notice is unacceptable.
- 1.23 The initial failure to respond to the Committee's questions on notice by the requested date of 7 July 2004 or to advise why responses were not forthcoming occurred despite adequate continuity in terms of personnel

9 The Hon Peter Costello MP and Senator the Hon Nick Minchin, *2004-05 Budget Paper No. 2*, p. 225.

10 AGD, *Submission No. 44*, p. 2.

11 The Hon Philip Ruddock MP, *New Release 096/2005*, 20 May 2005 and Hansard, 25 May 2005, p. 52.

who moved from administering the Law and Justice Program at AT SIS to AGD.

- 1.24 The movement of responsibility for a program from one portfolio to another does not abrogate the responsibility of responding to this Committee's questions.
- 1.25 The failure to meet a requested deadline for delivery of responses to questions taken on notice by AGD was repeated following the 17 March briefing when the Department provided its response to questions taken on notice on 11 May 2005 instead of the 30 April 2005 deadline as agreed. On this occasion the Committee had to seek advice as to why the responses were late and when they would be received after the deadline had passed.
- 1.26 The Committee takes its responsibility of providing Parliamentary scrutiny of Government very seriously and expects that questions taken on notice by Commonwealth agencies and departments will be responded to promptly and in full and will not require the Committee to invite witnesses back before it in order to gain satisfaction.

Recommendation 1

- 1.27 **That the Attorney-General's Department put in place measures to ensure that questions taken on notice to the Joint Committee of Public Accounts and Audit are either responded to within requested timeframes or that reasons are provided showing why responses will be delayed together with a proposed alternative date by which responses will be received by the Committee.**

Context of the Inquiry

- 1.28 The Committee's inquiry arose out of its review of the ANAO, *AT SIS Law and Justice Program: Aboriginal and Torres Strait Islander Services, Audit Report No. 13, 2003-2004*.
- 1.29 ANAO focused on the adequacy of funding and administrative arrangements of:
- the National Office with Regional Offices of AT SIS; and
 - the National and Regional Offices of AT SIS with AT SILSs.

- 1.30 The Committee's inquiry took place amid the implementation of a major policy development in funding arrangements for ATSILSs. AGD was proceeding with a state by state tendering out of contracts for the provision of legal services to Indigenous Australians.
- 1.31 Preliminary preparations for the tendering process were begun under ATSiS in accordance with the ATSIC Decision of June 2003 and Ministerial Directions provided to the Chief Executive Officer of ATSiS.¹²
- 1.32 The tendering process constitutes one of the response mechanisms to the seven recommendations made by ANAO that were unanimously agreed to by ATSiS:
- The ANAO recommendations are being implemented at an administrative level through targeted policy development and the proposal to *Tender For The Delivery of Indigenous Legal Aid Services*.¹³
- 1.33 The Committee's inquiry built upon ANAO's findings by focusing on the adequacy of legal services delivered to Indigenous Australians particularly from the perspective of the service providers.

Structure of the Report

- 1.34 Chapters Two and Three of this report relate some of the difficulties confronting providers of legal services to Indigenous people, particularly in regards to the provision of family and civil law services (Chapter Two) and how this impacts on the access of legal services by victims of crime, particularly Indigenous women and children. (Chapter Three)
- 1.35 The disproportionate amount of ATSILSs resources devoted to criminal law cases when compared with civil and family law matters lies at the heart of many of the concerns that were raised by service providers and their peak bodies, law societies, community groups and state and territory government agencies throughout the inquiry.
- 1.36 The focus of ATSILSs on criminal law matters has meant that access to Indigenous legal service providers by Indigenous victims of family violence and sexual assault, who are usually women and children, has been dramatically restricted. A number of responses by service providers and the Commonwealth have attempted, with varying degrees of success

12 ATSiC, *Commission Decision, Meeting No. 81, Paper No. 3487*, 16-17 June 2003 and ATSiS, *Exhibit No. 14*.

13 ATSiS, *Submission No. 18*, p. 6.

to address the restricted character of access by Indigenous people to family and civil law services.

- 1.37 Chapters Four and Five relate some directions that may increase the access of Indigenous people to legal services. Two major directions consist in:
- increasing the stability of legal services; (Chapter Four) and
 - requiring better coordination of available legal services between Indigenous specific and mainstream providers. (Chapter Five)
- 1.38 The Committee was cognisant that its inquiry was held while the tendering out of ATSILSs proceeded on a state by state basis. It received considerable amounts of evidence in relation to this matter and has considered this process in the context of the future provision of legal services to Indigenous Australians at Chapter Six.
- 1.39 The Committee also received considerable evidence relating to community based law and justice programs such as the circle sentencing programs in New South Wales, the community law and justice committees in the Northern Territory and community policing programs in Western Australia, which is considered at Chapter Seven as an additional future direction that may profitably be explored in the provision of law and justice services to Indigenous Australians.

Conduct of the Inquiry

- 1.40 On 24 March 2004 the Committee adopted the terms of reference for its inquiry into the provision of Indigenous law and justice services. The inquiry lapsed with the dissolution of the House of Representatives on 31 August 2004.
- 1.41 On Wednesday 8 December 2004, the Committee resolved to adopt an inquiry with the same terms of reference as the inquiry into Indigenous Law and Justice established by the Joint Committee of Public Accounts and Audit in the previous Parliament.
- 1.42 The Committee's terms of reference were advertised in the Indigenous and mainstream press on 31 March 2004.
- 1.43 The Committee received 44 submissions¹⁴, as well as 51 exhibits¹⁵ and other correspondence.

14 Listed at Appendix A.

15 Listed at Appendix B.

- 1.44 The Committee held public hearings in Canberra, Sydney, Darwin, Alice Springs, Adelaide, Dubbo and Perth and an inspection at Yuendumu.¹⁶

¹⁶ Details listed at Appendix C.

Funding and Distribution of Resources in Aboriginal and Torres Strait Islander Legal Services by Case Type

- 2.1 The distribution of ATSILSs' resources between criminal, family and civil law matters lays at the heart of equitable access to legal services by Indigenous Australians, particularly the access of women and children and people living in regional and remote areas.

Aboriginal and Torres Strait Islander Legal Services and Criminal Law Matters

- 2.2 The number of criminal cases dealt with by ATSILSs rose by about 67 percent over the five years – from 68 066 cases in 1997-98 to 113 698 cases in 2002-03.¹ However, ANAO found that 'funding ... for the Legal Aid element [of the Law and Justice Program] has not increased substantially over the last five years.'²
- 2.3 In 2001-02 of the legal aid cases dealt with by ATSILSs, 89 percent were criminal and two percent were family law matters.³ By 2003-04 the proportion of criminal cases dealt with by ATSILSs had risen to 93 percent and the proportion of family law matters had dropped to one percent.⁴

1 ANAO, *ATSIS Law and Justice Program, Audit Report No. 13, 2003-2004*, Para. 1.9, p. 26.

2 ANAO, *ATSIS Law and Justice Program, Audit Report No. 13, 2003-2004*, Para. 1.7, p. 25.

3 ATSIC, *Annual Report 2001-2002*, p. 148.

4 ATSIC, *Annual Report 2003-2004*, p. 125.

- 2.4 ATSILSs expressed a strong view that their primary function is to represent persons in danger of incarceration. This view was supported on a number of grounds.
- 2.5 The preponderance of criminal law matters dealt with by ATSILSs was explained in terms of:
- their very history [they] grew up to deal with the particular point in the legal system where Aboriginal persons charged with criminal offences were coming before courts unrepresented or poorly represented.⁵
- 2.6 The largest ATSILS in New South Wales, the Sydney Regional Aboriginal Corporation Legal Service (SRACLS), supported the view that the primary focus of ATSILSs should be on criminal law by citing the current disproportionate incarceration rates of Indigenous people in relation to the rest of the population:
- There is nothing more alarming than this: we are two percent of the population and we are 20 percent of the gaol population ...⁶
- 2.7 The Western Aboriginal Legal Service (WALS), which services the western area of New South Wales, put the 20 percent figure into context as reflecting an increase in the proportion of Indigenous people represented in the prison population:
- Ten years ago approximately 14 percent of [the gaol population in New South Wales] were Aboriginal people. Today the figure is closer to 20 percent.⁷
- 2.8 WALS explained the reasons for the increase in New South Wales involved:
- the bail laws ... have been greatly tightened [over the last several years] so that more and more Aboriginal people who are classed as repeat offenders are finding it difficult to obtain bail, and they end up in custody. Also the general administration of criminal law over a period of time has resulted in higher and higher sentences.⁸

5 MRALS, *Transcript*, 13 July 2004, p. 46

6 SRACLS, *Transcript*, 13 July 2004, p. 73.

7 WALS, *Transcript*, 30 March 2005, p. 2.

8 WALS, *Transcript*, 30 March 2005, p. 7.

- 2.9 The historical reasons for ATSILSs and the continued and increasing over-representation of Indigenous people in the criminal justice system has resulted in:
- the Aboriginal Legal Service ... remain[ing] at the cutting edge of criminal law. That is where there is this huge wealth of experience...⁹
- 2.10 ATSILSs' view of their primary function is reflected in the Commonwealth's Priority Assistance Categories of the *Policy Framework for Targeting Assistance Provided by Aboriginal and Torres Strait Islander Legal Services*.¹⁰ The Priority Assistance Categories set out criteria for determining priority cases in which ATSILSs should act. The first Priority Assistance Category specifies that providers must give priority to applicants 'where the person may be detained in custody'.¹¹
- 2.11 The conviction with which ATSILSs (and other providers of legal services to Indigenous people) hold their primary responsibility as the provision of criminal law services was evident in the dissatisfaction expressed on the proposed alteration of the Priority Assistance Categories in the *Exposure Draft of the Request for Tender of Indigenous Legal Services*.¹² The Exposure Draft placed 'cases in which personal safety and the safety of a child was at risk' above cases in which 'persons were at risk of detention'.¹³
- 2.12 The requests for tenders to provide Indigenous legal aid services in Victoria and Western Australia and Queensland reiterated the original ordering of Priority Assistance Categories listing the first Priority Assistance Category as 'where the person may be detained in custody'.¹⁴

9 MRALS, *Transcript*, 13 July 2004, p. 53.

10 ATSI, *Exhibit No. 18*.

11 ATSI, *Exhibit No. 18*, Sect. 4.1.

12 ATSI, *Exhibit No. 15*. Instances of ATSILS' concerns at the re-arrangement of Priority Assistance Categories can be found at SEALS, *Exhibit No. 4*, pp. 14-5, VALS, *Exhibit No. 11*, p. 8.

13 ATSI, *Exhibit No. 15*, pp. 62-3.

14 AGD, *Request for Tender No. 04/29 for the Purchase of Legal Aid Services to Indigenous Australians in Victoria and Western Australia*, p. 65 and AGD, *Request for Tender No. 04/01 for the Purchase of Legal Aid Services to Indigenous Australians in Queensland*, p. 67.

- 2.13 Despite the alterations to the order of Priority Assistance Categories, AGD stated that there were no implications of a hierarchy:

All matters listed are given an equal priority.¹⁵

Costs of Increased Incarceration

- 2.14 The Legal Aid Commission of Western Australia (WALAC) summed up the prevailing mood among all providers of legal aid services to Indigenous Australians in criminal matters stating that:

if we were able to provide proper representation for a lot of [Indigenous] people currently being found guilty and being sent to prison, I am sure that we would either reduce the numbers or contribute to a lowering of the sentences that people are being saddled with.¹⁶

- 2.15 Two types of costs accompany increased incarceration rates in the criminal justice system.

- 2.16 The first is the cost to the criminal justice system itself. The fact that the full details of defendants' cases are not before the courts when verdicts and sentences are passed down, undermines the criminal law process.

- 2.17 The second was detailed by the Legal Aid Commission of New South Wales (NSWLAC) as the financial costs of incarceration:

It currently costs \$66,000 to keep an adult in prison for twelve months. The costs jump exponentially when costs for their children are factored in. Children whose parents are in prison run a high risk of being taken into State care or juvenile detention centres. Out of home care can cost as much as \$260,000 a year, while it costs \$216 499 to keep a child in juvenile detention for 12 months.¹⁷

15 AGD, *Submission No. 44*, p. 17.

16 WALAC, *Transcript*, 31 March 2005, p. 19.

17 NSWLAC, *Submission No. 25*, p. 26.

Aboriginal and Torres Strait Islander Legal Services and Family and Civil Law Matters

2.18 The preponderance of criminal law matters dealt with by ATSILSs raises questions of access by Indigenous Australians to legal services in family and civil law matters. People seeking access to family and civil law services are often victims or potential victims of family violence.

Impediments to Provision of Family and Civil Law Services by Aboriginal and Torres Strait Islander Legal Services

2.19 In declaring their primary function as the representation of clients in criminal law matters, ATSILSs also acknowledged the importance of family and civil law services to Indigenous Australians. However, they referred to a range of funding and administrative impediments to establishing and expanding practices and servicing clients in these areas of the law.

2.20 The cost of establishing a civil law practice within the ATSILS funding regime was considered prohibitive. SRACLS, stated:

To set up a civil practice you have to inject maybe \$250,000 or \$300,000 into paying costs out, and you start to get the money back about 18 months later. With our government funding cycle we are just not allowed to do that. We cannot dig that hole in our current budget. So, with the way we are funded at the moment, providing a civil law service is a very tough exercise.¹⁸

2.21 Civil and family law practices were seen as lying even further outside the capabilities of smaller regional ATSILSs. The South Eastern Aboriginal Legal Service (SEALS), which services the south eastern region of New South Wales stated:

We would love to do family law, but the difficulty with family law is that it is a specialised area; it is a paper-driven jurisdiction. To file an application in court, you need affidavits; so you need quality staff who can generate the paperwork to take it to court. We have Aboriginal staff employed and we are developing their skills as secretaries,

18 SRACLS, Transcript, 13 July 2004, p. 63.

but there is a step between what they do and what you would need them to do if you were to run a proper family law practice. If we were properly funded, we would love to do family law and civil matters.¹⁹

2.22 The ability of ATSILSs to develop and retain expert staff is considered at Chapter Four.

2.23 SEALS affirmed the importance of having available family and civil law services, not only in their own terms but in diffusing and diminishing instances in which an event may conclude with a criminal act:

If we could address a custody issue, a contact issue or even a civil matter, say, involving a dispute over a car or a neighbourhood fence, we might not end up dealing with charges...²⁰

2.24 Even were an ATSILS able to establish a civil or family law practice, the lack of acknowledgement from funding bodies of the greater costs involved in undertaking family and civil law cases discouraged involvement in these areas of law. SRACLS stated:

We get \$60 or \$70 a head to do a criminal case, a family law case or a care and protection case ...²¹

2.25 AGD clarified the claims that ATSILSs received the same amount per case regardless of the type of case undertaken:

Each ATSILS currently receives a block funding grant ... They do not receive a per case flat rate ... The issue of disincentive [therefore] does not arise ... The provision of particular services is ultimately a matter for the provider ...²²

2.26 The far greater resources required to conduct civil and family law cases was supported by the National Association of Community Legal Centres (NACLC). NACLC:

estimate that the amount of time needed for civil and family matters is six or seven times greater than that needed for criminal matters.²³

19 SEALS, *Transcript*, 9 June 2004, p. 36.

20 SEALS, *Transcript*, 9 June 2004, p. 36.

21 SRACLS, *Transcript*, 13 July 2004, p. 63.

22 AGD, *Submission No. 44*, p. 3.

23 NACLC, *Transcript*, 13 July 2004, p. 5.

- 2.27 The Aboriginal Legal Rights Movement (ALRM), the sole ATSILS in South Australia, also supported claims that the model used to fund ATSILSs militated against them conducting family and civil law cases:

Assessing the costs of services cannot be on the basis that each type of case is of equal value. There must be a weighting process that reflects resources needed to deliver the service, and one family law matter can sometimes be the equivalent of 50 guilty pleas.²⁴

- 2.28 The inadequacy of family and civil law services to Indigenous Australians is exacerbated by the fact that a significant proportion of the Indigenous population live in regional and remote Australia. Even mainstream providers of legal services such as the NSWLAC found:

there are large pockets throughout the state where we cannot attract private practitioners to family law work at legal aid rates ...

In Commonwealth family law, we pay \$130 an hour. That is way below market rate.²⁵

- 2.29 WALs confirmed the difficulties of obtaining family law services for clients by referral in rural, regional and remote areas:

there is a problem in arranging representation for people in family law matters, because the private profession has, by and large, decided not to continue to do legal and family law work in this area.²⁶

- 2.30 The serious consequences of the paucity of family law services in regional areas was exemplified in:

a case where a woman was in court and the judge said, 'If you don't have a solicitor here next time we are just closing the case.' In this case it was this woman against DOCS, so it was pretty important that she had representation. To the magistrate it looked like she didn't give a damn, and there was no-one there to say she had been exhausting every avenue trying to find a solicitor.²⁷

24 ALRM, *Transcript*, 19 August 2004, p. 29.

25 NSWLAC, *Transcript*, 13 July 2004, p. 80.

26 WALs, *Transcript*, 30 March 2005, p. 5.

27 Grace Cottage, *Transcript*, 30 March 2005, p. 53.

- 2.31 A final major reason for the ATSILSs not taking on family law matters involved conflict issues. Conflict issues are discussed in detail at Chapter Three.

Family and Civil Law Services Provided by Aboriginal and Torres Strait Islander Legal Services

- 2.32 Larger ATSILSs, particularly those with state wide coverage and or operating out of a capital city, tended to offer some level of service in family and civil law matters. The Alice Springs based Central Australian Aboriginal Legal Aid Service (CAALAS) also provides family and civil law services.²⁸
- 2.33 ALRM advised that responding to changing community needs had resulted in:
- a bit more than a quarter but less than a third ... of our resources being channelled towards legal service delivery other than criminal casework delivery.²⁹
- 2.34 CAALAS stated that of nine lawyers, two are full-time civil lawyers and one a full-time family lawyer.³⁰
- 2.35 The former Director, Legal Services of the Aboriginal Legal Service of Western Australia (ALSWA), Mr Mark Cuomo, stated ALSWA:
- has always had a capacity ... for family law and usually has had somewhere between two and four [out of 30] practitioners ... who have been dedicated to family law practice. All of the 11 country solicitors do some family law as well.³¹
- 2.36 SRACLS stated that it had introduced a family law service as the result of successfully lobbying ATSIC for additional resources:
- we have been running a [family law] pilot [of two solicitors out of an overall staff of 26 solicitors] for the past 20 months and building up a practice.³²
- 2.37 Some ATSILSs sought to offset a lack of funding for resource intensive family and civil law matters by entering into agreements
-

28 CAALAS, *Transcript* 22 July 2004, p. 39.

29 ALRM, *Transcript*, 19 August 2004, p. 34.

30 CAALAS, *Transcript*, 22 July 2004, pp. 39-40.

31 Mark Cuomo, *Transcript*, 31 March 2005, p. 1-2.

32 SRACLS, *Transcript*, 13 July 2004, p. 60.

with LACs.³³ The Commonwealth provides funds to LACs to act in matters of Commonwealth law, which are primarily family law matters.

2.38 The coordination of services between ATSILS and LACs is discussed in detail at Chapter Five.

2.39 Another strategy to provide family law services was the use of pro bono solicitors. SRACLS stated that:

We ... have a ... pro bono scheme which was introduced about two years ago, and ... about 70 barristers ... indicated that they would be prepared to do pro bono work for us.³⁴

Committee Comment and Recommendation

2.40 ATSILSs operate in a climate of effectively static funding and increasing demand. ATSILSs prioritisation of cases where a person is in danger of incarceration is understandable because these needs are immediate. To withhold representation of accused persons in danger of incarceration, Indigenous or otherwise, would constitute a fundamental breach of the principles of our criminal justice system.

2.41 However, the accessibility of family and civil law services to Indigenous people is important in two respects:

- to ensure that Indigenous Australians are aware of and can realise their full entitlement under the law; and
- as a means of resolving issues that might otherwise escalate into future criminal law matters.

2.42 The arrangements under which ATSILSs receive funding present significant impediments to them introducing or increasing family and civil law services.

2.43 AGD needs to resolve the precise character of the legal services it requires to be provided by ATSILSs.

33 WALs, *Submission No. 2*, p. 5.

34 SRACLS, *Transcript*, 13 July 2004, p. 67.

- 2.44 If AGD considers that it is desirable that ATSILSs provide family and civil law services, it needs to put in place funding arrangements that acknowledge the costs of establishing civil law practices and the greater amount of time and resources required of a legal service to conduct family and civil law matters.
- 2.45 Funding for family and civil law practices would have to be on a far more extended cycle than has been the case to date and the block funding across criminal, family and civil law matters must be acknowledged to be manifestly inadequate and inappropriate in encouraging provision of adequate family and civil law services.
- 2.46 The Committee considers that, in the event that AGD considers that ATSILSs should provide family and civil law services, the level of expected services in these areas of the law needs to be specified and funds for the provision of services needs to be dedicated specifically to the provision of these services.

Recommendation 2

- 2.47 **That based on available data and need, all future contracts between the Attorney-General's Department and providers of services that are currently delivered by Aboriginal and Torres Strait Islander Legal Services designate specific requirements of family, civil and criminal case loadings and provide adequate funding to meet these requirements.**
- 2.48 Furthermore, the Committee notes that the incapacity and discouragement to provide family and civil law services in current funding arrangements impacted in a particularly acute way upon smaller regional ATSILSs. The Committee understands that this incapacity supports the Government's stated preference of minimising the number of providers in the tendering out of ATSILSs.
- 2.49 If AGD considers that family and civil law services should be provided to Indigenous Australians by organisations other than ATSILSs, the evidence shows overwhelmingly that the designated providers should be Indigenous owned and that designated providers should be required to maintain a network of Community Legal Workers.

Indigenous Women and Access to Legal Services

- 3.1 The distribution of ATSILSs' resources between criminal, family and civil law matters has a direct impact upon Indigenous women's access to ATSILSs. Women and children are generally victims of violence who require legal services that will protect them against offenders through family and civil law processes such as restraining orders, child custody orders and criminal compensation claims.
- 3.2 Statistics provided by Mr Cuomo showed that the breakdown of ALSWA's clients by gender and case type showed that in the nine months to 31 March 2005, 26 percent of criminal law cases, 59 percent of family law cases and 47 percent of civil cases were for female clients.¹
- 3.3 WALs indicated a trend in the different requirements of Indigenous men and women for legal services:
- the percentage of criminal law clients we represent who are female is between 25 and 30; in the civil and family law area it is approximately 50.²
- 3.4 The sole ATSILS in Victoria, the Victorian Aboriginal Legal Service (VALS), stated that:
- 26 percent of ... criminal law matters are for female clients.
Over 50 percent of [our] civil and family clients are female. As criminal matters are more common than civil and family

1 Mark Cuomo, *Exhibit No. 51*.

2 WALs, *Transcript*, 30 March 2005, p. 3.

cases this means that 27 percent of all cases are for women. however due to the higher time required to do civil and family law matters over 37 percent of lawyer time is allocated to female clients.³

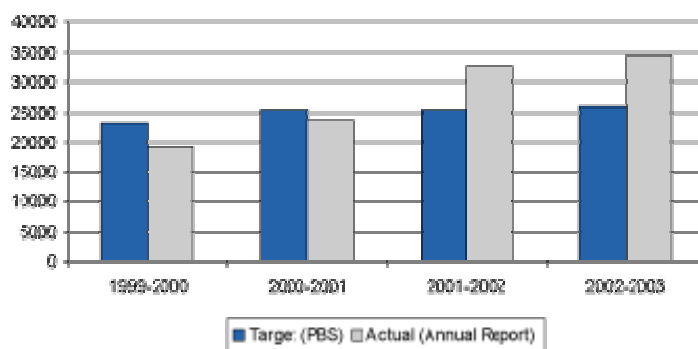
- 3.5 SEALS confirmed the legal requirements of Indigenous women lay, in the main, outside criminal law:

Of the people who call up on the phone or come to our office for non-criminal advice, 85 percent would be female ... We appear for six percent of women.⁴

Increase in Women Clientele to Aboriginal and Torres Strait Islander Legal Services

- 3.6 ATSILSs experienced a steady and significant increase in the number of female clients between 1999-2000 and 2002-03.⁵ Not only have the numbers of ATSILSs' clients who are women increased, but since 2001-02 the legal services have exceeded the Portfolio Budget Statement (PBS) target number of women clients they have handled.

Table 1 Number of Legal Matters for Women Handled by ATSILSs



Source ANAO, *ATSIS Law and Justice Program, Audit Report No. 13, 2003-04*, p. 100

- 3.7 The increase in the proportion of women who are handled by ATSILSs is reflected in increased rates of contact with the criminal justice system.

3 VALS, *Submission No. 15*, p. 17.

4 SEALS, *Transcript*, 9 June 2004, p. 43.

5 ANAO, *Audit Report No. 13, 2003-2004*, Para. 6.59, p.100

- 3.8 An indicator of the increased levels of contact of Indigenous women with the criminal justice system is manifest in the dramatically disproportionate rise in incarceration rates. ATSIIS stated that:

From 1991 to 2001 the number of Australian women in custody increased by 147 percent (Indigenous women included), the corresponding increase for Indigenous women alone was 225.8 percent. Incarceration levels for men also increased over this time period both Indigenous and non-Indigenous but at much lower rates.⁶

Family Violence and Child Sexual Assault

- 3.9 Rates of family violence and child sexual assault are difficult to determine because of the unknown rates of unreported offences. Levels of known family violence and child sexual assault will obviously be higher in populations who have contact with the legal system either as victims or as offenders than in the general population.
- 3.10 ATSIIS referred to an apparent change of attitude to family violence in Indigenous communities:

I have seen a groundswell against family violence and other criminal activities in a way that I have not seen in a long time. It almost seems like people have hit the wall and enough is enough, whereas there are probably fewer pockets that I have come across where some people in some communities think that family violence is acceptable behaviour. While that may still be the case in some communities, I would say that overwhelmingly it is not being seen as acceptable.⁷

- 3.11 Sydney based Warringa Baiya Aboriginal Women's Legal Centre disagreed:

domestic violence is starting to increase ... That is because of the acceptance of it. We have seen the adults, the parents, go through it and the mother keep returning to the perpetrator. Now the children are thinking that that is what you do, that is

6 ATSIIS, *Submission No. 18*, p. 18.

7 ATSIIS, *Transcript*, 9 June 2004, p. 10.

what a relationship is all about. I believe that domestic violence is increasing.⁸

- 3.12 Ignorance of legal rights was cited as a fundamental hurdle to combating family violence by the community based East Dubbo Women's Group:

Domestic violence in our community and in other communities like ours where the population is predominantly Aboriginal has been an acceptable way of life.⁹

- 3.13 Alice Springs based Central Australian Women's Legal Service (CAWLS) concurred:

There are still a lot of pressure points and a lot of myths about who is responsible for what is occurring, and I think there are still beliefs amongst a range of members of the community and service providers that the victim in fact has contributed to this occurring.¹⁰

- 3.14 Darwin based Top End Women's Legal Service (TEWLS), which runs a FVPLS, highlighted the extent to which ignorance of the unacceptable character of family violence could extend:

at a recent conference in Sydney ... two workers from two different Aboriginal Legal Aid Services expressed the following opinions:

- it is appropriate behaviour (and therefore there should be no police or legal intervention) for a man to hit his wife if she is "nagging him" or "chewing his ear";
- when a man and woman are arguing and violence is involved in a public place it is inappropriate for there to be police or legal intervention;
- men in many remote communities are disempowered because women groups have (finally) gained some power and say in how funds may be distributed within those communities;
- there are as many male victims of family violence as there are female victims; and
- family violence is the fault of women and it is women taking out restraining orders which causes family violence.¹¹

8 Warringa Baiya, *Transcript*, 13 July 2004, p. 26.

9 East Dubbo Women's Group, *Transcript*, 30 March 2005, p. 40.

10 CAWLS, *Transcript*, 22 July 2004, p. 10.

11 TEWLS, *Submission No. 26*, 21 July 2004, p. 4.

- 3.15 The Many Rivers Aboriginal Legal Service (MRALS), which services the north eastern area of New South Wales, explained the increasing incarceration rates for Indigenous women as responses to high incidences of family violence and child sexual assault:

we are starting to see the flow-through into older ages of a lot of child victims of sexual assault, physical assault and systems abuse from having been made state wards and left high and dry.¹²

- 3.16 Warndu Wathilli-Carri Ngura Aboriginal Family Violence Legal Service (Warndu), which is based in Port Augusta, provided some indication of the levels of child sexual assault among its clients. It reported that out of their most recent 200 clients 44 percent had suffered from sexual abuse as children. Of 25 cases involving males, 70 percent had suffered sexual abuse as children.¹³

Impediments to Indigenous Women Accessing Aboriginal and Torres Strait Islander Legal Services

Conflict Issues

- 3.17 The predominance of criminal law cases handled by ATSILSs has resulted in conflict issues that restrict access of parties seeking family and civil law services.
- 3.18 Conflict issues arise when one of the parties to a dispute has already made contact with a legal service provider thus 'conflicting out' or preventing access to the service provider by the other party.
- 3.19 Conflict issues restrict Indigenous women from accessing ATSILSs particularly in instances of family law and family violence matters because the nature of the criminal justice system means that the accused usually makes first contact with available legal services.
- 3.20 The Northern Territory Legal Aid Commission (NTLAC) suggested that conflict issues in family violence matters invariably worked to the disadvantage of women:

If an offence is committed, the police act fairly quickly to charge somebody. The offender therefore appears at the

12 MRALS, *Transcript*, 13 July 2004, p. 54.

13 Warndu, *Transcript*, 19 August 2004, p. 45.

Aboriginal Legal Service beforehand, either in custody or because they have been required to go to court. This then means that, by the time the victim of the offence – which, tragically, is invariably a woman – appears, Aboriginal Legal Services is then conflicted from providing any assistance in family, crimes compensation or domestic violence matters.¹⁴

- 3.21 Conflict issues can even restrict the access to an ATSILS in the event that both parents are seeking representation against a state agency that has removed children considered to be at risk:

If there has been any history of domestic violence between husband and wife then to appear for both of them can create a conflict, so we bail out totally in that situation.

Unfortunately, it is often the case that there has been a history of domestic violence which has, to some extent, led to the child being in need of care in the first place.¹⁵

- 3.22 Referrals to pro bono solicitors or LACs are means of ensuring that victims receive legal advice and representation. However, referrals will almost always be directed to a provider that is not as equipped to provide legal services to Indigenous people as an Indigenous specific provider.

- 3.23 The general effectiveness of referring Indigenous people to non-Indigenous service providers was questioned by ALRM:

The chances of a person dropping out in a referral process are enormous. It is a high-risk approach to enforcing or exploring legal rights. The ability to provide comprehensive casework when needed as one smooth operation is essential to the smooth delivery of services.¹⁶

- 3.24 Matters involving family violence and child sexual assault demand that victims are as comfortable as possible with their legal representatives, an outcome that is achieved through Indigenous specific providers. SEALS stated that Indigenous women:

tell their own kind a lot more than they will tell outsiders and it takes a long time to get the understanding or their faith so they can actually tell you things.¹⁷

14 NTLAC, *Transcript*, 21 July 2004, p. 43.

15 WALs, *Transcript*, 30 March 2005, p. 7.

16 ALRM, *Transcript*, 19 August 2004, p. 40.

17 SEALS, *Transcript*, 9 June 2004, p. 34.

- 3.25 Furthermore, pro bono and LAC resources were not available to ATSILSs operating in some regional and remote locations. ALRM stated:

Access to pro bono services in South Australia are virtually non-existent, unlike in the Eastern States. We cannot even get firms to accept ALRM briefs because we pay the rate the Legal Services Commission was paying in 1998, and people are not available to take our briefs when we seek to brief private practitioners.¹⁸

- 3.26 NSWLAC confirmed the lack of funding for briefing out family law cases:

In Commonwealth family law, we pay \$130 an hour. That is way below market rate.¹⁹

- 3.27 Warndu stated that only 25 percent of its clients were eligible for legal aid through the Legal Services Commission (LSC) because of merit and guideline requirements. Under the LSC guidelines requirements:

Legal aid is provided for criminal matters and some family matters, but it is not provided for clients who come to our service, say, for immediate protection, for a restraining order or if they have debt related matters. Many of our clients have several thousand dollars worth of property damage or, because of joint and several liability principles, they are left holding the baby of debt, so to speak, while the other party takes off. Property damage is an area that they need to face. No legal aid funding is provided for issues like housing and immediate shelter ... very little of our work, perhaps 25 per cent, could be legal aid funded.²⁰

- 3.28 The Committee heard evidence from a number of Indigenous specific and mainstream providers of legal services to Indigenous people suggesting the implementation of 'Chinese Walls' strategies to overcome conflict issues. Chinese Walls are put in place within an organisation to effectively isolate family law from criminal law areas. This would allow an ATSILS or LAC to act for both parties.

18 ALRM, *Transcript*, 19 August 2004, p. 29.

19 NSWLAC, *Transcript*, 13 July 2004, p. 80.

20 Warndu, *Transcript*, 19 August 2004, p. 46. Also ALRM, *Submission No. 11*, p. 12.

- 3.29 The Darwin based Northern Australian Aboriginal Legal Aid Service (NAALAS) described the magnitude of conflict issues and referred to a policy of Chinese Walls as its response:

Women would come to us for advice and then we would realise that we had actually acted for the other party. It could have been up to 10 years ago in a criminal matter, but because we had that information about the other party that precluded us from being able to represent these clients. We have now spent considerable amounts of money on putting up a Chinese wall. We have separated all the files. We have criminal matters on one floor and civil and family matters on the second floor.²¹

- 3.30 NSWLAC expressed reticence at implementing a Chinese Walls policy because of current legislation:

I would like to see a situation where we can build technological and practical Chinese Walls, so that, if I needed to, I could have a legal aid family lawyer acting for the woman, say out of our Dubbo office, and someone acting for the man, if that was appropriate, out of our Wagga office. Things would be totally confidential and separate as part of our IT system and as part of our processes and procedures. Ultimately, to get that I think we will probably need some sort of legislative amendment, because the state of the law is so ... confused on conflict of interest.²²

- 3.31 NTLAC qualified the effectiveness of Chinese Walls in remote communities because of the perception of conflict:

One plane comes out with the magistrate. If you have two lawyers from the same service saying 'But we've got Chinese walls between us,' the perception is terrible ... In those cases ... you do need two separate services.²³

- 3.32 The Ngaanyatjarra Pitjantjatjara Yankunytjattjara (NPY) Women's Council referred to the way in which remote areas exacerbated perception of conflict issues:

Geographically [our area] is a large place but, population wise, it is a very small place ... I think the reassurance and

21 NAALAS, *Transcript*, 21 July 2004, p. 3.

22 NSWLAC, *Transcript*, 13 July 2004, p. 79.

23 NTLAC, *Transcript*, 21 July 2004, p. 43

safety of women and kids is one reason for separation [of services] and also so that there is seen not to be a conflict. I know you can have Chinese Walls and all the rest of it, but you have got a pretty small population and you have got Aboriginal people working in organisations who are often related to clients ...²⁴

- 3.33 MRALS argued that Chinese Walls contravened the basic expectation of an adequate legal service:

the Chinese Walls analogy ... is justice that no other group in Australia is expected to put up with and indeed should not be. I think that is a terribly discriminatory basis upon which to be providing legal services...²⁵

- 3.34 In response to concerns raised by services providers and other stakeholders AGD stated that:

Providers of legal services are subject to the usual conflict of interest provisions that apply in the particular jurisdiction in which the service is provided.²⁶

Indigenous on Indigenous Prohibitions

- 3.35 Some ATSILSs have met the challenges of finding themselves in conflict by refusing to support either party where both parties in a case are Indigenous.

- 3.36 SEALS and SRACLS stated that they have a policy of briefing out all 'black on black' matters.²⁷

- 3.37 WALs stated that:

In criminal matters we will represent a defendant even though the alleged victim of his crime is also an Aboriginal person. In civil matters, because of funding shortfalls, we apply a policy of not representing people if the other party to the proceedings is Aboriginal.²⁸

- 3.38 NSWLAC explained:

24 NPY Women's Council, *Transcript*, 22 July 2004, p. 23.

25 MRALS, *Transcript*, 13 July 2004, pp. 50-1

26 AGD, *Submission No. 44*, p.24.

27 SEALS, *Transcript*, 9 June 2004, p. 47 and SRACLS, *Transcript*, 13 July 2004, p. 68.

28 WALs, *Transcript*, 30 March 2005, p. 2.

With crime you have the state against an individual, so in some respects it is easy to choose a side. You can run into incredible difficulties in civil – it is an individual against an individual, almost invariably. In family ... it is always individual against individual.²⁹

- 3.39 ALRM informed the Committee that it had revoked its policy of not taking on cases where both parties are Indigenous. However, the policy:

has caused a high number of complaints ... because for 30 years it has been a case of us not taking sides. We are now taking sides and some people are unhappy with that. Other people think it is fantastic.³⁰

- 3.40 The feedback on ALRM's policy change was 'in the vicinity' of 95 percent complaint and five percent approval.³¹

- 3.41 The practice of refusing to take cases where both parties are Indigenous has been proscribed under the terms of the Request for Tender of Indigenous Legal Services in Western Australia and Victoria and Queensland.³²

Social Pressures

- 3.42 A number of factors operate within Indigenous communities beyond the usual taboos associated with family violence and child sexual assault issues that make these matters even more difficult to address through the justice system. The close knit social connections that operate in Indigenous communities can operate in particularly forceful ways in restricting access to legal services and the justice system by victims of family violence.

- 3.43 Warndu outlined the difference between dealing with victims of family violence in Indigenous and non-Indigenous communities:

Indigenous people live in a close and what you might describe as a fairly discrete community ... They have very close family ties. Because of that, sometimes you get quite

29 NSWLAC, *Transcript*, 30 March 2004, p. 65.

30 ALRM, *Transcript*, 19 August 2004, p. 38.

31 ALRM, *Transcript*, 19 August 2004, p. 38.

32 AGD, *Request for Tender No. 04/29 for the Purchase of Legal Aid Services to Indigenous Australians in Victoria and Western Australia*, Appendix A, Sect. 2.4, p.63 and AGD, *Request for Tender No. 04/01 for the Purchase of Legal Aid Services to Indigenous Australians in Queensland*, Appendix A, Sect. 2.4, p. 65.

immense pressure from the families to try to deal with the matter internally. Sometimes that conflicts with the best advice given by our service. Sometimes we try to work with the client within their community ... it makes the time for dealing with issues lengthy when you are not only dealing with the client, the children and other outside agencies, but almost with the community itself.³³

- 3.44 The Dubbo Women's Housing Programme referred to social pressures in close knit communities that may be brought to bear upon individuals who report unlawful activity:

If somebody in the community reported a law-breaking activity that may be happening then that family might be targeted ... if they have had a breakdown in the relationship with their partner and the partner's community is in that area ... they are targeted with regard to the breakdown of the relationship.³⁴

- 3.45 The intense character of social connections in Indigenous communities can also operate to prevent access of victims to legal services in small isolated communities:

a woman may not want to go to the Aboriginal Family Violence Service and she may come to [the mainstream WLS] even though she is eligible for the other one. There are perceptions of confidentiality...³⁵

- 3.46 A further impediment to Indigenous women accessing legal services to alleviate a family violence or child sexual abuse situation was a concern that involving authorities could result in the removal of children:

no matter how many resources we provide, we are still not getting women with the children who have been the victims of sexual abuse coming to use our service. One of the reasons for that is that it is a Department of Community Services case and therefore it has to go to that service and they will use their solicitors.³⁶

33 Warndu, *Transcript*, 19 August 2004, pp. 44-5.

34 Dubbo Women's Housing Programme, *Transcript*, 30 March 2005, p. 34.

35 WLS South Australia, *Transcript*, 19 August 2004, p. 25.

36 Wurringa Baiya Aboriginal Women's Legal Centre, *Transcript*, 13 July 2004, p. 25.

Representation of Victims

Police and Prosecution Services

3.47 MRALS argued that victims of family violence had their interests at least in part represented by police and prosecution services. Whereas if offenders received no representation from ATSILSs they faced the possibility of being left without any professional representation whatsoever:

there is no body other than ATSILSs ... defending the accused person in a court of law. The victim of domestic violence and sexual assault should be getting the full force of the police and prosecutorial services of the state ...³⁷

3.48 SEALS pointed to the improved police procedures in ensuring that offenders were prosecuted for acts of family violence as evidence of the increased representation of victims' interests in New South Wales:

Up until, say, six years ago, if there was domestic violence the perpetrator was charged. If the woman did not turn up at court ... The charges could go on but, when it came time for a hearing, if the victim did not turn up the matter was thrown out of court ... over the last four or five years ... if a matter is set down for hearing and the victim does not turn up, the magistrate ... will issue a warrant for her arrest to bring her along so that she can follow through the process. Secondly, in serious assault matters or even where there is physical violence, the police now take the victim back to a police station and interview them on videotape. So, if the victim does not turn up, there is still evidence of what she said; there are pictures of the damage ... it also makes it easier to discuss with the defendant that it is a matter they should plead to, because the evidence is there.³⁸

3.49 Dubbo Women's Housing Program referred to:

a Domestic Violence Court Assistance Scheme attached to which are two specialist Aboriginal workers. We also have the Domestic Violence Counselling Service, attached to which is one Aboriginal position ... within [the Dubbo Women's

37 MRALS, *Transcript*, 13 July 2004, p. 51.

38 SEALS, *Transcript*, 9 June 2004, p. 35.

Housing Programme and the Grace Cottage Family Health Services] Aboriginal workers outweigh non-Aboriginal workers...³⁹

- 3.50 The Rural Women's Outreach Project auspiced by WLS South Australia countered suggestions that police and judicial support for victims of family violence was satisfactory. In South Australia:

there is not much support for women to obtain restraining orders or to report incidents to police. There generally seems to be a failure with enforcing breaches, and even granting restraining orders can be very difficult ... I have had police officers tell me it is easier for private practitioners to get restraining orders than the police, because the magistrate is more lenient in terms of the evidence required from a private practitioner than from the police.⁴⁰

- 3.51 The lack of support for Indigenous women who are victims of crime could be even more pronounced in smaller communities where:

police have developed relationships with the men in communities and so are more reluctant to take them up in front of the court system.⁴¹

- 3.52 Warndu explained that:

sometimes we see situations that need to be dealt with where police are not privy to all of the information or, if they are, have made the decision that the matter is not as serious ... there are times with some clients when they say, 'Look, we don't really think the grounds are there.' Police have a different standard, I suppose, from a lawyer. We look at intimidation, harassment and those types of things.⁴²

- 3.53 The inadequacy of support for women who are victims of violence was affirmed to WLS South Australia by a court officer:

at Coober Pedy, the magistrate who was doing the court circuit brought us to the front of the court and said ... There is no support for women when they go to court.⁴³

39 Dubbo Women's Housing Programme, *Transcript*, 30 March 2005, p. 30.

40 WLS South Australia, *Transcript*, 19 August 2004, p. 22.

41 WLS South Australia, *Transcript*, 19 August 2004, p. 23.

42 Warndu, *Transcript*, 19 August 2004, pp. 49-50.

43 WLS South Australia, *Transcript*, 19 August 2004, p. 26.

Family Violence Prevention Legal Services

- 3.54 TEWLS outlined the need for a discrete service for victims of family violence:

if you have a service which is always seen as representing the perpetrator of a criminal offence, the victims of those offences are not going to feel comfortable going to that same service.⁴⁴

- 3.55 Warndu provided an example of the type of work carried out by FVPLSs:

mostly personal safety issues, which are immediate, and we need to deal with the police and women's shelters and perhaps representations in the magistrate's court. There are often children's issues where we try to seek negotiation and/or if necessary representation in some sort of court to resolve those. There can be debt problems arising from property damage perhaps from a history of domestic violence. There might be personal health issues and sometimes post-traumatic stress and emotional issues. Frequently there are long-term housing problems and extended family problems and sometimes underlying social issues or even sexual assault issues...⁴⁵

- 3.56 FVPLSs assisted at least 7 100 people in 2003-04. AGD was unable to provide a breakdown of cases by type. However, the Committee notes that the Many Rivers Family Violence Prevention Legal Unit provided assistance to 97 clients on criminal law matters, 36 clients on civil law matters and 190 clients on family law matters.⁴⁶

- 3.57 VALS pointed out that:

The Office of Evaluation and Audit report (Pg 111,OEA, 2003) stated that there was more unmet need for civil and family law than family violence services but this was rejected by ATSIIS with no explanation in their response to the report.⁴⁷

- 3.58 AGD stated that:

44 TEWLS, *Transcript*, 21 July 2004, p. 31.

45 Warndu Wathilli-Carri Ngura Aboriginal Family Violence Legal Service, *Transcript*, 19 August 2004, p. 44.

46 ATSIIS, *Annual Report*, 2003-04, pp. 129-30.

47 VALS, *Submission No. 15*, p. 18.

Where matters extend to family or civil law matters unrelated to family violence, this will be the responsibility of alternative service providers.⁴⁸

- 3.59 Mr Cuomo suggested that the wider breadth of services provided by FVPLSs should not override their character as providers of legal services:

I have to say that I would like to see some more casework out of ... [the FVPLSs at Geraldton, Fitzroy Crossing and Kalgoorlie]. We get a lot of calls from people who get to the courthouse steps and then want representation. For conflict reasons and for reasons of volume, it has always been very hard to deal with that. I always hoped that the alternative centres might pick up a bit more of that case load, but that does not seem to have happened.⁴⁹

- 3.60 AT SIS conceded that the provision of a holistic service including counselling together with legal services had the potential to confuse whether the character of family violence was seen primarily as a criminal matter or a social work matter:

I suppose [holistic service provision] does have the potential to confuse [the status of family violence]. I do not think anybody involved in any of that process is confused about the seriousness of those issues ... there is the potential for that confusion and that the mostly anecdotal advice we get back from communities is that these are serious issues. People want them cleaned up, but people are really struggling because they do not want people ending up in jail as well. This is trying to deal with the issue within the seriousness of the crime itself, and people do need to be dealt with properly within the law ... Where it does get confusing at the local level from anecdotal evidence I am getting is around the very issue that no-one wants anyone to be locked up. They want this stopped and cleaned up.⁵⁰

- 3.61 The emphasis on the family violence prevention aspect of FVPLSs rather than the legal service element of the program was borne out by the fact that some FVPLSs did not possess permanent or full-time solicitors:

48 AGD, *Submission No. 44*, p.5.

49 Mark Cuomo, *Transcript*, 31 March 2005, p. 5.

50 AT SIS, *Transcript*, 9 June 2004, p. 9.

many FVPLS units have entered into agreements with solicitors on a fee-for-service basis or pro bono arrangement to provide services ... if no full-time permanent solicitor is available.⁵¹

3.62 However, AGD stated that:

The funding allocation for new FVPLS units took into account the Department's experience in administering current services, with particular focus on sustaining a lawyer, coordinator and sexual assault worker.⁵²

3.63 AGD also informed the Committee that:

The Indigenous Family Violence Partnership Program [administered by the Department of Family and Community Services (FaCS)] provides a flexible funding pool of \$37.3 million over four years for the Australian Government to pursue agreements with State/Territory governments to fund family violence and child protection initiatives in Indigenous communities. The Family Violence Regional Activities Program [also administered by FaCS] provides non-legal services to Indigenous women and children, with \$3.8 million allocated in 2004–05.⁵³

3.64 FVPLSs are located almost without exception outside urban areas. WLS New South Wales acknowledged the high levels of need for Indigenous legal services in rural and regional Australia but argued that potential client need should be taken into account:

We understand that there are fewer services in the rural sectors of New South Wales. But I do not think you can say that, just because a person is living in the city, they do not want to access a service that is appropriate to their culture.⁵⁴

3.65 ALRM reported that in South Australia:

the majority of potential clients for [FVPLS] services actually live in suburban Adelaide and surrounding areas.⁵⁵

51 AGD, *Submission No. 44*, p. 9.

52 AGD, *Submission No. 44*, p. 14.

53 AGD, *Submission No. 44*, p. 16.

54 WLS New South Wales, *Transcript*, 13 July 2004, p. 13.

55 ALRM, *Submission No. 11*, p. 8

An Indigenous Women's Legal Service?

3.66 The Committee received evidence canvassing both sides of a debate concerning the desirability of a legal service that would be specific to Indigenous women.

3.67 The Law Society of South Australia suggested that a women's specific service was needed more urgently than a family violence service:

the family violence service model that we have operating in Port Augusta is inadequate for servicing Indigenous women's needs ... Indigenous women require a service that is specific to them. There are real conflict issues if you expect Indigenous males and females to be in the same service ... the ideal needs to be that they have separate funding and they are in a different location ... It is extremely difficult for women to share the same offices with male perpetrators of violence, for example, or even with their spouses in a family law situation. They perceive it as an inadequate service for them ...⁵⁶

3.68 WLS South Australia supported the idea of a legal service that is specific to Indigenous women:

there is a real need to have a service that caters specifically for Indigenous women's needs, especially when we have high conflict rates between the different legal service providers.⁵⁷

3.69 NACLC and WLS New South Wales supported this view:

Because of the conflict issue ... and because it is referred to as women's business, separate programs are needed.⁵⁸

3.70 The Law Council of Australia supported an Indigenous women's legal service on the grounds that only a separate women's service would defeat the perception of conflict:

the concept put forward by the Law Council as being particularly important is the identification in the eyes of the consumer that it is separate and distinct and they can approach it with confidence. It is all very well for us as

56 Law Society of South Australia, *Transcript*, 19 August 2004, pp. 4-6.

57 WLS South Australia, *Transcript*, 19 August 2004, p. 15.

58 WLS New South Wales, *Transcript* 13 July 2004, p. 11.

lawyers to talk about Chinese Walls; that means nothing to most consumers of legal services.⁵⁹

- 3.71 Countering arguments for a legal service that was specific to Indigenous women, ALRM suggested that gender specific legal services would mean that ATSILSs would effectively become legal services for Indigenous men and thus deprive Indigenous women of access to their expertise in criminal law matters:

The [ALRM] has become highly specialised in representation in criminal matters. The increasing profile of Aboriginal women within the criminal justice system needs to be factored into the question of whether it makes sense to split the service to be gender specific or whether there is a better model. There is certainly a critical need for a service whose primary focus is service provision to Aboriginal women and children.⁶⁰

- 3.72 Warndu argued that establishing gender specific legal services would likely restrict the access of Indigenous men to family law services:

The major group that suffers in family violence is the children ... We frequently have male clients whose visitation rights or contacts with their children are completely denied ... We believe that the children have got a right to see both parents, which is enshrined in the Family Law Act ...⁶¹

- 3.73 The Alice Springs based Central Australian Aboriginal Family Unit (CAAFLU) distinguished itself from CAWLS in that acting for men seeking restraining orders as well as women.⁶²

- 3.74 AGD stated that:

The FVPLS units are expected to provide services to victims of family violence whether male or female.⁶³

59 Law Council of Australia, *Transcript*, 19 August 2004, p. 56.

60 ALRM, *Transcript*, 19 August 2004, p. 31.

61 Warndu, *Transcript*, 19 August 2004, p. 50.

62 CAAFLU, *Transcript* 22 July 2004, p. 32

63 AGD, *Submission No. 44*, p. 15.

Committee Comment and Recommendations

- 3.75 Sadly, Indigenous women are increasingly requiring the criminal law services offered by ATSILSs.
- 3.76 The increase in women clientele to ATSILSs shows that they are not perceived by women as exclusive services for men. This is reinforced by ATSILSs having exceeded PBS targets for handling matters involving women in 2001-02 and 2002-03. Rather, the lion's share of ATSILSs' work in criminal law is not an area required by women, although this is changing.
- 3.77 The Committee acknowledges the importance and high quality of the work done by ATSILSs in representing the rights of the accused, whether men or women, in the criminal justice system. However, it is of the view that within the overall provision of legal aid the rights of the accused should not be focused upon to the extent that rights and safety of persons in danger of violence or the rights of injured parties to compensation are ignored.
- 3.78 The Committee believes that it is paramount that Indigenous people have available to them organisations that can provide legal representation and advice on criminal, family and civil law matters, not only in a culturally appropriate way, but that are community based.
- 3.79 The Committee is not convinced that legal services that are specific to Indigenous women would progress the accessibility of criminal, family and civil law services to Indigenous Australians.
- 3.80 However, the current situation in which access to family and civil law services is restricted because of conflict issues is not satisfactory.
- 3.81 In the view of the Committee an Indigenous specific legal service that focuses on civil and family law matters as well as providing support for victims of family violence is a preferable arrangement to a gender specific legal service because it:
- maintains women's access to ATSILSs, with their expertise in Indigenous criminal law matters; and
 - means that Indigenous men have access to family and civil law services as well as family violence services provided by FVPLSs.
- 3.82 FVPLSs have a wide ranging role in responding to family violence both in the capacity of social work units and legal services. The

Committee accepts the importance of treating family violence holistically but is concerned that the primary function of FVPLSs is the provision of legal services.

- 3.83 Provision of legal services should be enhanced through clear lines of communication between FVPLSs and providers of social support under the Indigenous Family Violence Partnership Program and Family Violence Regional Activities Program administered by FaCS.
- 3.84 The Committee is not suggesting that FVPLSs withdraw from providing services such as counselling for victims of family violence but rather that the focus of these organisations as providers of legal services be affirmed and acknowledged in their funding and required outputs.

Recommendation 3

- 3.85 **That the Attorney-General's Department ensure that Family Violence Prevention Legal Services focus on the provision of family and civil law services to Indigenous Australians, particularly through the legal representation of clients.**
- 3.86 If FVPLSs are to be considered as major Indigenous specific providers of family violence prevention, family and civil law services, these services should not be confined to regional and remote Australia but rather, like ATSILSs, be located in all areas of significant need.

Recommendation 4

- 3.87 **That the Attorney-General's Department acknowledge that urban Indigenous populations also require family violence, family and civil law services and locate Family Violence Prevention Legal Services accordingly.**
- 3.88 The Committee understands the motives behind prohibitions on black on black cases by ATSILSs, particularly in regional areas but finds this strategy constitutes evidence of the inability of smaller regional ATSILSs to meet the full legal requirements of the communities they service.

- 3.89 The Committee supports the Commonwealth's proscription of the practice of refusing to take on cases where both parties are Indigenous.
- 3.90 The Commonwealth's stated preference for a smaller number of providers per state and territory is considered at Chapter Six.
- 3.91 Further to the second dot point of paragraph 3.79, the Committee is aware of situations in which Women's Legal Services provided or auspiced FVPLSs. For instance, TEWLS provides the FVPLS in the Top End of the Northern Territory and will auspice the new FVPLS for Melville and Bathurst Islands and Nhulunbuy. The Walgett based Walanbaa Yinnar Wahroo Family Violence Prevention Legal Service is auspiced by WLS New South Wales as will the new FVPLS for Bourke/Brewarrina.⁶⁴
- 3.92 It is important that FVPLSs do not become gender specific services.

Recommendation 5

- 3.93 **That the Attorney-General's Department ensure that Indigenous men are provided full access to all Family Violence Prevention Legal Services.**

64 AGD, *Submission No. 44*, p. 14.

Retention of Expert Staff

- 4.1 Retention of staff appeared to be a problem that has affected ATSILSs as well as the National Office of ATSIIS.

Retention of Staff in Indigenous Specific Legal Services

- 4.2 Indigenous specific legal service providers complained of a chronic and increasingly acute inability to maintain expert legal staff.
- 4.3 Raw data together with statistical analysis of the length of time that solicitors remained employed by WALIS showed a significant decline in the average number of years solicitors spent with the service between 1978, when the service was established, and the present:

Table 2 Average Time of Employ of Solicitors in Western Aboriginal Legal Service

Years	1978-1990	1990-1999	2000-June 2005
Average Time of Employ of Solicitors	4 years 10 months	2 years 1 month	1 year 5 months

Source *Western NSW Community Legal Centre, Submission No. 42, p.5.*

4.4 WALs stated that the service required nine changes in their staff of 13 solicitors in the preceding year.¹

4.5 WALs specified that:

we have not had trouble attracting solicitors. The trouble has been keeping solicitors ... The salary structures that we offer are not competitive with those offered by comparable organisations ... Another difficulty is that we cannot offer any career structure. The job they get is the job they keep.²

4.6 The problem of retaining legal staff was exacerbated for ATSILSs operating in regional and remote areas:

most of our lawyers come from the coast, or often the big cities, and keeping solicitors out in the back blocks for any long period is difficult.³

4.7 DIMIA agreed that the often remote location of ATSILSs was a reason for a high turnover of staff.⁴

4.8 ATSILSs' inability to retain staff meant that service to clients was compromised:

Because ... we never get a regular solicitor ... one client does not see the same solicitor all the time so the solicitor is not following that person's case the whole time. They have to retell their story and they get frustrated.⁵

Inequities in Remuneration

4.9 ANAO re-iterated a consistent theme that has emerged out of inquiries into ATSILSs. ATSILSs have been found to receive inadequate funding for the services they provide when compared with publicly funded mainstream providers of legal services. ANAO cited reports:

On the provision of legal services by ATSILSs have referred to shortfalls in ATSIC funding for legal aid of either \$12.4 million or \$25.6 million.⁶

1 WALs, *Transcript*, 30 March 2005, p. 9.

2 WALs, *Transcript*, 30 March 2005, p. 9.

3 WALs, *Transcript*, 30 March 2005, p. 9.

4 DIMIA, *Transcript*, 9 June 2004, p. 7.

5 Grace Cottage, *Transcript*, 30 March 2005, p. 53.

6 ANAO, *Audit Report No. 13, 2003-2004*, Para. 2.30, p. 42.

- 4.10 The reports referred to by ANAO are the ATSIC Office of Evaluation and Audit (OEA), *Evaluation of the Legal and Preventative Services Program*, 2003 which indicated the \$25.6 million funding shortfall to ATSILSs and the Commonwealth Department of Finance and Administration, *ATSIC Output Pricing Review*, December 2000 which estimated the shortfall in funding to be in the order of \$12.4 million.
- 4.11 The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) qualified the OEA figure of a \$25.6 million comparative shortfall in funding to ATSILSs arguing that:
- What [the OEA review] did was compare the cost of ATSILSs with the highest priced alternative ...
- The highest priced alternative was getting a private practitioner to do it.⁷
- 4.12 In responding to the OEA report, AGD expressed the view that:
- a more obvious comparison between ATSILS and Legal Aid Commission services would include Commission services provided in-house, thus achieving a more like with like comparison. It is unfortunate that the data needed to underpin such an analysis is not available on a nationally consistent basis.⁸
- 4.13 NTLAC confirmed the absence of comparable data between LACs and ATSILSs and detailed some of the complexities in developing a comparable scale:
- What we classify as a duty lawyer service, for example, is classified by the Aboriginal Legal Services as something else. We have tried a number of times both nationally and in the NT to do that sort of comparative data exercise, and it is really difficult to know...
- When they go out to bush courts, they certainly deal with 60 matters in two days ... If we were forced to do the same thing the Legal Aid Commission would probably be able to, but we do not. Again, it is difficult to compare because it is a different sort of work.⁹
- 4.14 ATSILSs were unequivocal in affirming that their staff across all levels received less remuneration than the equivalent level in a LAC. SRACLS referred to:
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7 DIMIA, *Transcript*, 9 June 2004, p. 27.

8 ATSIC OEA, *Evaluation of the Legal and Preventative Services Program*, 2003, p. 142.

9 NTLAC, *Transcript*, 21 July 2004, p. 45.

the gap in Sydney, as to people doing comparable court work. We have looked at it two or three times over the last five years. The best it has ever been was about a 15 per cent difference, and I think now it is getting back up to 25 to 30 per cent.¹⁰

4.15 NAALAS estimated that remuneration levels were about 15 percent less than the amount received by their counterparts in the NTLAC.¹¹

4.16 In terms of raw data, NAALAS stated that:

NAALAS received \$2.25m and dealt with over 3,000 matters in the 2002-2003 financial year, while the NT Legal Aid Commission received over \$4m for around 1,100 matters. This did not include the funding from the Commonwealth for family law matters.¹²

4.17 Furthermore, NAALAS denied that the discrepancy could be justified in terms of greater complexity of cases dealt with by NTLAC.¹³

4.18 Mr Cuomo stated that in Western Australia:

There is a very large wage differential between ALS and Legal Aid and then between Legal Aid and the private profession, with ALS very much being at the bottom of that ... There was an example ... where the manager of criminal law in ALS in Western Australia, who basically manages all these country practitioners and 10 in Perth, was earning \$70,000 a year. At that stage I think Legal Aid were recruiting the equivalent at \$110,000. The government lawyers - the DPP - were getting paid in excess of that. So you are sitting at the bottom of the heap.¹⁴

4.19 ATSIIS conceded that Indigenous legal aid services relied upon motives other than financial remuneration to attract staff.¹⁵

4.20 Mr Cuomo agreed with the suggestion that financial remuneration was not the primary reason people were attracted to work with ATSIISs but suggested that at some point these motives were not of themselves sufficient to retain employees:

People do not go [to the ALSs] for the money; they go there for a bundle of other reasons, from experience to the goodness of their

10 SRACLS, *Transcript*, 13 July 2004, p. 65.

11 NAALAS, *Transcript*, 13 July 2004, p. 5.

12 NAALAS, *Submission No. 13*, p. 3.

13 NAALAS, *Transcript*, 13 July 2004, p. 5.

14 Mark Cuomo, *Transcript*, 31 March 2005, p. 3.

15 ATSIIS, *Transcript*, 9 June 2004, p. 7.

souls. But it has got to the stage now where the wage differentials have meant that recruiting is very difficult.¹⁶

Fringe Benefits Tax Supplementation

4.21 A proposal to remove a temporary package of assistance which finished in June 2004 would reduce funding for Indigenous legal aid from \$42.97 million in 2002-03 to \$40.46 million in 2005-06.¹⁷

4.22 SEALS stated that the removal of the Fringe Benefits Tax supplementation meant that:

Some people are on the same wage they were on four or five years ago. In fact they have lost it through the FBT.¹⁸

4.23 NAALAS stated that their pay levels had not risen since 1998, yet the workload had increased by 50 percent.¹⁹

4.24 AT SIS stated that:

If the problem that the \$2 million-odd was provided to solve has now passed, then it has done its job and we move on.²⁰

4.25 AGD informed the Committee that as part of the 2005-06 Budget the Government has announced that the supplementation would continue but that FVPLSs do not currently receive the supplementation.²¹

Lack of Career Path and Working Conditions

4.26 AT SIS suggested that AT SILSs that serviced large populations could sustain adequate career paths for their legal practitioners:

There are some career options, and they involve trial and advocacy work internally within the organisation, so you have senior lawyers, deputy principal solicitors and so forth. In the larger organisations - for example, those based in capital cities - there are more options for staff to progress.²²

4.27 The largest AT SILSs in New South Wales, Sydney based SRACLS, disputed this claim:

16 Mark Cuomo, *Transcript*, 31 March 2005, p. 3.

17 AT SIS, *Exhibit No. 15*, p. 20.

18 SEALS, *Transcript*, 9 June 2004, p. 43.

19 NAALAS, *Transcript*, 13 July 2004, p. 6 and NAALAS, *Submission No. 13*, p. 8.

20 AT SIS, *Transcript*, 9 June 2004, p. 6.

21 AGD, *Submission No. 44*, p. 19.

22 AT SIS, *Transcript*, 9 June 2004, p. 8.

we have not got the resources to be able to set a career path for a junior solicitor to become the principal solicitor. So the minute they go up a couple of rungs either we have the private practitioners come along and poach them or they go to the Legal Aid Commission ... what has happened with the legal services over the last 15 years that I have been involved with ... is that we have become a training ground for either the Legal Aid Commission or private firms.²³

- 4.28 The Solicitor in Charge of the NSWLAC Dubbo Office who had previously worked with WALC stated that:

Working for WALC, given the stresses and the time and the distances travelled, was not consistent with family life. Creating a career structure is something that the ALS has failed in doing.²⁴

- 4.29 DIMIA stated that career paths in Indigenous legal services were:

inevitably limited because ... If you are dealing with locally based organisations your career options are more limited than if you are dealing with a state wide or nationally based organisation.²⁵

- 4.30 WALAC confirmed that it had an advantage over ALSWA in staffing regional and remote centres:

For a start, we have what we call critical mass. We do not have an office with less than three lawyers, for example, so that means that you can bring on a quite junior lawyer who has got appropriate supervision. We also promote very heavily our professional development program, so we have been quite successful in getting people out of law school through the articulated clerk program who are really what we would call top shelf. A lot of those people are very keen to embrace the sort of development opportunities they get for, say, a one-year placement in a regional office. In a regional office you have a great mix and variety of work.²⁶

23 SRACLS, *Transcript*, 13 July 2004, p. 64.

24 NSWLAC, *Transcript*, 30 March 2005, p. 60.

25 DIMIA, *Transcript*, 9 June 2004, p. 8.

26 WALAC. *Transcript*, 31 March 2005, p. 18

Induction and Maintaining Expertise

4.31 The Committee explored various strategies for increasing the duration of solicitors' services with legal service providers particularly through the creation of more options for solicitors through cooperation with other service providers.

4.32 The Law Society of South Australia raised the possibility of implementing some sort of incentive scholarship scheme to encourage potential practitioners from rural and remote regions to undertake the study, return to those rural and remote regions and be available to deliver services.²⁷

4.33 However, the Law Society clarified its position in cautioning against attempts to attract relatively inexperienced practitioners into Indigenous legal service providers:

The special needs of the Indigenous community are so extreme that in fact what is needed are experienced people who have been around for a long time and know exactly what they are doing ... Putting people who are fresh out into the country is very much sink or swim and not a suitable response.²⁸

4.34 The Western NSW CLC commented on the difficulties peculiar to regional legal services:

Some Community Legal Centres, particularly in capital cities, have great arrangements with universities and schools in relation to the intake of students. Unfortunately, we have great difficulty in accessing those, because there is no university that teaches legal studies.²⁹

4.35 AGD informed the Committee that:

there is only one situation where there has been a formal secondment, although there may be other arrangements that are less formal. The formal secondment has been between the Victorian Aboriginal Legal Service, VALS, and the Victorian Legal Aid Commission for a family law solicitor to work in VALS. From VALS, we understand that arrangement was successful: that the

27 ALRM, *Transcript*, 19 August 2004, p. 11.

28 ALRM, *Transcript*, 19 August 2004, p. 11.

29 Western NSW Community Legal Centre, *Transcript*, 30 March 2005, p. 28.

solicitor was very well received and its clientele were happy with the arrangement.³⁰

- 4.36 The advantages of having worked with an ATSILS was related by the Solicitor in Charge of the NSWLAC Dubbo Office who previously worked with WALs:

I am finding that members of the Aboriginal community who know me because I have been working in this area for 11 years – in the same field and previously with the ALS – will seek out my services even though I am no longer with the ALS. There is this idea of familiarity with a solicitor whom they know has in the past worked for one of their organisations.³¹

Aboriginal Field Officers and Community Legal Workers

- 4.37 Indigenous specific legal service providers facilitate access to their services through the employment of Aboriginal Field Officers, Court Officers and Community Legal Workers who live in the communities and act as a conduit between providers and clients.
- 4.38 WLS New South Wales, which auspices the Walgett based Walanbaa Yinaar Wharoo Family Violence Prevention Legal Service provided an example of the work of community based staff:

The [local Walgett] women ... say to us, 'It's white law. You deal with the white fella stuff. You deal with the white lawyers, the Canberra bureaucrats and the money, and we will do the community stuff.' So, for example, in our Walgett unit we employ four local Aboriginal women who are basically running it, but we supply the lawyers ... We are supplying that supervision and doing the file work. We are taking back all the legal stuff that needs to be done. We are doing the accounting part in Sydney and we are reporting back and making sure the statistics and everything are done correctly. The four Indigenous women in Walgett are doing all the community work, and we have an advisory group of elder women in Walgett.³²

- 4.39 The ATSIC Yilli Rreung Regional Council provided an example of the practical difference between a solicitor and an Aboriginal Field Worker:
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30 AGD, *Transcript*, 17 March 2005, p. 6.

31 NSWLAC, *Transcript*, 30 March 2005, p. 59

32 WLS New South Wales, *Transcript*, 13 July 2004, pp. 7

When a lawyer is going into bat to get a client out on bail, for instance, the client service officer knows that the capacity of a grandmother to put her hand up for the bail and implications for her are far greater than the lawyer may understand. He finds that she has put her collateral or her resources up at great risk. On occasions the client service officer came back to me saying, 'Listen, I have a real problem with this. I don't think they are considering all the issues. I think we should reconsider the bail application because we're focusing more on the client than the actual community.'³³

4.40 The Law Council of Australia described the function of Aboriginal Field Officers to ATSILSs and FVPLSs:

the reality of the matter is that qualified and appropriately trained legal representatives are not going to be available to be out there in multitudinous communities. What is important is to get a network of people with an understanding of the system who are respected by their communities and to whom individuals in the communities will turn in times of trouble and who can facilitate the provision of whatever is an appropriate service to assist those people.³⁴

4.41 VALS affirmed the centrality of field officers in the strongest of terms:

Solicitors would also be lost without Field Officers. Field Officers are the most important link in the chain for legal service delivery.³⁵

4.42 SEALS supported this view:

We can take some field staff out and employ more solicitors, which some ALSs do. They put the emphasis on solicitors. We put an emphasis on field staff, because that is the real connection.³⁶

4.43 CAAFLU stated:

The level of expertise in a lot of Aboriginal legal aid services rests with the field officers and the local staff with that local knowledge. ... Usually there is more of a turnover of legal staff than non-legal staff. The wealth of knowledge often is in the non-legal staff ... They are constantly educating the lawyers.³⁷

33 ATSIIC Yilli Rreung Regional Council, *Transcript*, 21 July 2004, p. 21.

34 LCA, *Transcript*, 19 August 2004, p. 58.

35 VALS, *Submission No. 15*, p. 9.

36 SEALS, *Transcript*, 9 June 2004, p. 42.

37 CAAFLU, *Transcript*, 22 July 2004, p. 38.

Commonwealth National and Regional Offices

4.44 The Committee received complaints referring to unresponsiveness in the National and Regional Offices of ATSIIS.

4.45 SEALS referred to the consequences for service providers of a lack of expertise in the National Office of ATSIIS:

the original funding formula they talked about the Bureau of Statistics having done with criminal statistics was created in 1997 as part of the reform process. It was to be reviewed in two years and any inequities across the country were to be sorted out. Legal and Preventative refused to address that issue. We kept saying, 'Sort out the problems.' So from 1999, when it should have been reviewed, to 2003 they basically just trod water because everybody was moving all over the place. They then got the Bureau of Statistics involved but it has now been over 12 months since then. We are still on the same funding level that we were in 2000, which was based on a 1996 formula that is very complicated. It goes to about five or six decimal points for loadings for distance from courts, the number of Aboriginal people in the area and the number of Aboriginal people in custody. It is a really difficult formula. That is just an example of how we have had no support or assistance from them.³⁸

4.46 The apparent paralysis in the National Office of ATSIIS, or its refusal to respond to requests for information exacerbated the difficulties for particular legal services that accompanied a climate of severely restricted resources imposed on ATSILSs in general. SEALS stated:

When the formula was first put in place for funding for the Queanbeyan ATSIC region the population statistics for Canberra were not included in the funding formula. So of the 4,000 or 6,000 people that we are looking after in our region at least 2,500 of those people were not even counted. When we continually challenged that they would say, 'No, the formula is right.' But we believe that was because they did not want to admit that they had made a mistake in the funding formula. We have continued to challenge that at regional council level as well as organisational level.³⁹

38 SEALS *Transcript*, 9 June 2004, p. 38.

39 SEALS *Transcript*, 9 June 2004, p. 38.

- 4.47 Disagreements on the level of funding grants between ATSILSs and the Commonwealth were evident in other states. When asked about the size of ALSWA's budget, Mr Cuomo stated:

At the moment, that is subject to argument with representatives of the Attorney-General's Department...

ATSIC did an exercise with a demographer in the late nineties which basically indicated that Western Australia, then under a budget of about \$5½ million, was \$2 million short of its fair share of the pie. For one reason or another, that was never remedied.⁴⁰

- 4.48 NAALAS provided an example of the added strain to an under-resourced organisation that a lack of administrative will could produce in Regional Offices of ATSI:

Some of our furniture was 30 years old. When I first came to the job my desk was falling apart – you could not open the doors etcetera. We had had a half-promise from ATSI that we could have some refurbishment funds, and when we applied for them we knew they had been set aside. They were actually to move to another building but they sat on them for six months, so the lease for the building went elsewhere. We still needed the funds to improve the circumstances we were working in. When we approached the regional office, they took a couple of months to think about it and then I got an email from them saying, 'We've decided that we're going to send this to Canberra to have another look at it. I'll be away for a week so you won't be able to talk to me about it anyway.' I then rang Canberra directly, which apparently you are not allowed to do, and after the tantrum I threw we had the agreement by eight o'clock the next morning. But I know with most managers who would sit there and take it, we could have been sitting there for another six months with the building literally falling down around our ears. As I said, we have now had the money; we got it one month before the end of the financial year and managed to expend it. There is that sort of small mindedness in some cases. It seemed as though people were scared to make decisions at the regional level, and there did not seem to be a clear reporting or a clear method of their going straight to central office to get that kind of permission.⁴¹

40 Mark Cuomo, *Transcript*, 31 March 2005, pp. 4-5.

41 NAALAS, *Transcript*, 21 July 2004, p. 7.

4.49 Poor rates of staff retention in the ATSI National Office were attributed to:

the re-locations of the Branch between Canberra and Sydney in 2000 and 2003. Only one experienced officer moved to Sydney when the Branch relocated in 2000, and it is expected that none of the current Sydney staff will be relocating back to Canberra in the latest move.⁴²

4.50 The move of the Indigenous Law and Justice Branch from ATSI to AGD appears to have been nowhere near as disruptive to staff as the moves between Canberra and Sydney:

51 staff who were working for ATSI moved across to a new Branch in the Department ... Included amongst those 51, were 34 staff who are located in what are now called Indigenous coordination centres located around the country and were formerly ATSI Regional Offices.⁴³

Committee Comment and Recommendations

4.51 The Committee is concerned that the allegedly poor rates of remuneration together with the limited career paths available in ATSI in comparison to LACs are creating a crisis in retention of expert staff for the ATSI.

4.52 The evidence taken in relation to comparative remuneration rates between the staff of ATSI and LACs is inconclusive despite some strong anecdotal evidence of a disadvantage to ATSI.

4.53 The Committee believes that it is imperative to ascertain the relative rates of remuneration between legal and management staff in ATSI and LACs and to ensure that ATSI staff are remunerated at a more competitive rate than currently appears to be the case if these legal services are to remain viable.

Recommendations 6

4.54 **That the Attorney-General's Department, in consultation with National Legal Aid and the National Aboriginal and Torres Strait Islander Legal Services Secretariat, develop a comparative scale of remuneration between Aboriginal and Torres Strait Islander Legal Services (ATSI)**

42 ANAO, *Audit Report No. 13, 2003-2004*, Para. 1.13, p. 27.

43 AGD, *Transcript*, 17 March 2005, p. 1

and Legal Aid Commissions and review funding of providers of services currently delivered by ATSILSs as appropriate.

- 4.55 The Committee was concerned to discover that Family Violence Prevention Legal Services have not had extended to them Fringe Benefit Tax supplementation.

Recommendation 7

- 4.56 **That the Department of Treasury grant Fringe Benefit Tax supplementation to Family Violence Prevention Legal Services.**
- 4.57 The first and most obvious response to the flow of solicitors from ATSILSs would suggest a formal cooperative arrangement between publicly funded legal services such as ATSILSs and LACs. This type of strategy is considered in the wider context of general cooperation between Indigenous and mainstream legal service providers at Chapter Five.
- 4.58 However, a recommendation is called for at this point to address the specific issue of strategies to provide career paths for ATSILSs' lawyers. The Committee was impressed at the possibilities that the secondment of a family law solicitor from the Legal Aid Commission of Victoria to VALS and believes that an exchange program between ATSILSs and LACs at a national level would benefit both types of organisations.

Recommendation 8

- 4.59 **That the Attorney-General's Department, in consultation with the National Aboriginal and Torres Strait Islander Legal Services Secretariat and National Legal Aid, develop and implement a formal exchange program whereby solicitors from providers of services that are currently delivered by Aboriginal and Torres Strait Islander Legal Services and Legal Aid Commissions are afforded opportunities to work, for a specified period, within the other organisation.**
- 4.60 In making the following recommendation the Committee is cognisant that legal work in ATSILSs and FVPLSs requires more experienced solicitors than may be the case in other practices. This is because of the difficulties that arise in clients who are alienated and ignorant of the justice system

before which they are called or to which they appeal as well as cultural sensitivities of which officers of the court are often ignorant.

- 4.61 This said, the Committee believes that one way of lifting the profile of Indigenous specific legal services may be a program of bonded scholarships.

Recommendation 9

- 4.62 **That the Department of Education, Science and Training, in consultation with the Attorney-General's Department, the National Aboriginal and Torres Strait Islander Service Secretariat and the National Network of Indigenous Women's Legal Services, explore the feasibility of implementing a system of bonded scholarships where successful applicants on being accepted to the bar are required to provide a specified period of service to a designated provider of services currently delivered by Aboriginal and Torres Strait Islander Legal Services or Family Violence Prevention Legal Services.**

- 4.63 The Committee affirms the importance of Aboriginal Field and Court Officers and Community Legal Workers in providing the nexus between the legal staff of ATSILSs and FVPLSs and the clients they service. The networks of support officers enable Indigenous specific legal services to provide accessible services in a way that mainstream providers cannot.

Recommendation 10

- 4.64 **That the Department of Education, Science and Training ensure that places are available for the training and development of paralegal community support workers who are employed with providers of services that are currently delivered by Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services.**

- 4.65 While it is of little consolation to ATSILSs it should be acknowledged that these organisations do provide a very valuable training for solicitors who pass through the organisations. These solicitors are not lost to the justice system and can be seen as resources in the provision of legal services to Indigenous people regardless of the organisation for which they currently work.

Coordination of Legal Aid Services to Indigenous Australians

- 5.1 With the very limited resources available to Indigenous legal services, the coordination of ATSILSs and FVPLSs with mainstream providers of legal services, such as LACs and CLCs, should be a high priority. The clear determination of specific objectives to improve coordination of legal services needs to be addressed.
- 5.2 Recommendation 1 of ANAO's *Audit Report No. 13, 2003-04* stated:
- that in order to maximise the efficient and effective use of program resources ATSIIS should develop strategic and business plans, including risk management, for the Law and Justice Program. Planning should take account of:
- the need to promote a whole-of-government approach, determined in consultation with relevant State and Commonwealth agencies, to achieve equitable access to legal aid services by Indigenous Australians; [and] ...
 - the roles of LACs and CLCs, and the potential for them to deliver services to Indigenous Australians.¹
- 5.3 At an administrative and funding level AGD informed the Committee that:
- on 1 December [2004], we had a restructure within our department. As a result of that, the Indigenous Law and Justice Branch is now co-located with the Legal Assistance Branch ... The Legal Assistance Branch deals with mainstream legal aid issues, financial assistance from the

¹ ANAO, *ATSIIS Law and Justice Program, Audit Report No. 13, 2003-04*, Para. 2.54, p. 48.

Commonwealth directly and the operation of community legal services ... we have done that in order to maximise the interaction between the Indigenous and mainstream legal aid program management...²

Commonwealth-State Funding Divide

5.4 LACs complained about the prevailing situation in which:

since 1997 the Commonwealth have insisted that Commonwealth money be spent on what they call Commonwealth matters ... [This situation makes it difficult] for us ... to be a little bit proactive to introduce new initiatives when we are dealing with state buckets of money and Commonwealth buckets of money.³

5.5 NTLAC echoed the concerns of NSWLAC:

The Commonwealth imposes ... a commonwealth-state funding divide on the Legal Aid Commissions which makes it very difficult for the Commission here to expand its services to Indigenous people, particularly Indigenous women in domestic violence matters.⁴

5.6 NSWLAC provided an example of the way in which the tying of Commonwealth funding to Commonwealth matters did not reflect the reality of discrete cases:

You ... have a female presenting for advice. The advice will range from Commonwealth family law to State domestic violence law and perhaps to State crime. There might be social security involved.⁵

5.7 The tying of Commonwealth funding belied a trend in the overall proportion of LAC funds received from the Commonwealth in New South Wales:

Before 1997-98, when there was not this Commonwealth-state divide, the Commonwealth provided 55 percent of funds for [LACs] and the state provided 45 percent. The public purpose

2 AGD, *Transcript*, 17 March 2005, p. 2.

3 NSWLAC, *Transcript*, 13 July 2004, pp. 75-6.

4 NTLAC, *Transcript*, 21 July 2004, p. 38.

5 NSWLAC, *Transcript*, 13 July 2004, p. 76.

fund contribution was included in that 45 percent. I think the switch now in New South Wales is about 70 to 30: 70 percent state and public purpose fund and 30 per cent Commonwealth.⁶

5.8 AGD stated that the Commonwealth:

recently entered into new funding agreements with all states and territories for the provision of legal aid in Commonwealth law matters until December 2008 ... the Australian Government will provide funding of \$599 million over four years...⁷

Coordination of Indigenous Specific with Mainstream Legal Services

5.9 The working relationships between Indigenous specific and mainstream legal service providers to Indigenous Australians appeared to be well established at a local, informal level. The relation between ALSWA and CLCs in Western Australia appeared to be typical of relationships between legal service providers in most of the areas visited by the Committee:

We have no formal coordinating role. There are community legal centres both in the city and country. We work well with them. We work well with legal aid, and legal aid work well with all of us...⁸

Aboriginal and Torres Strait Islander Legal Services and Legal Aid Commissions

Aboriginal and Torres Strait Islander Legal Services: Integral or Supplementary Providers

5.10 The Committee received conflicting views on the status and function of ATSILSs in the justice system.

5.11 An on-going source of complaint from ATSILSs was that they were funded as providers of services that were supplementary to

6 NSWLAC, *Transcript*, 13 July 2004, p. 76.

7 AGD, *Submission No. 44*, p. 4.

8 Mark Cuomo, *Transcript*, 31 March 2005, p. 10

mainstream legal aid providers, however state and territory governments viewed Indigenous affairs as a Commonwealth responsibility.⁹

- 5.12 The Law Society of South Australia explained how the indeterminate position of ATSILSs in relation to the justice system had resulted in them receiving inadequate funding: that:

ATSIS and ATSIC were referring to themselves as being 'supplementary funders' of Aboriginal Legal Services, without making any provision whatsoever via the Commonwealth to get the state to assist ATSILSs ... If the Commonwealth is going to call itself a supplementary funder then we say that they ought to be actually making arrangements with the states to make that supplementation happen. It is hardly for the ATSILSs or the Law Society to be doing these high-powered political manoeuvres as between the Commonwealth and states on what is essentially a federal issue.¹⁰

- 5.13 AGD confirmed that no approaches to the states and territories had been made by the Commonwealth to contribute to the work of ATSILSs.¹¹

- 5.14 MRALS suggested that LACs were simply not equipped at the organisational level to service Indigenous communities. For LACs to expect to provide services that were as accessible to Indigenous people as those provided by ATSILSs:

There would ... need to be some serious addressing within [LACs] of the issue of having Aboriginal field officers. There would need to be some real Aboriginal control over what happens - in other words, more than token places on the board of the commissions.¹²

- 5.15 ANAO cited OEA findings that ATSILSs provided 89 percent of Indigenous legal aid cases and LACs provided 11 percent in 2000-01.¹³

- 5.16 NTLAC stated that:

⁹ For instance, ALRM, *Transcript*, 19 August 2004, p. 33.

¹⁰ ALRM, *Transcript*, 19 August 2004, p. 3.

¹¹ AGD, *Submission No. 44*, p. 8.

¹² MRALS, *Transcript*, 13 July 2004, p. 52.

¹³ ANAO, *Audit Report No. 13, 2003-2004*, Para. 2.46, p. 46.

19 percent of applications received in the last financial year were from Indigenous people seeking services ...

A fairly small percentage of Indigenous people choose to come to [NTLAC] - where perhaps they may have family working at the Aboriginal Legal Services, or for some reason like that, may not want to go to the Aboriginal Legal Services - and would come to us as a second choice because of conflict problems or because of the lack of resources of those services.¹⁴

- 5.17 WALAC stated that 17 percent of their overall clientele were Indigenous¹⁵ and went so far as to say that:

We would consider ourselves supplementary service providers to the Aboriginal Legal Service ... I think [Indigenous people's] first choice if you could generalise would be to use the Aboriginal Legal Service.¹⁶

- 5.18 In commenting on the OEA *Evaluation of the Legal and Preventative Services Program*, AGD stated:

the Commonwealth provides funding for ATSILS to provide legal aid services for indigenous people and ... legal aid commissions are supplementary service providers for indigenous clients.¹⁷

- 5.19 This view provides little indication of AGD's view of the position of ATSILSs in the provision of publicly funded legal aid within the overall justice system.

- 5.20 In the most unequivocal statement of its view of the position of ATSILSs, AGD confirmed ATSILSs reports that the Commonwealth considered them as supplementary providers of legal services:

The funding of Indigenous legal aid provides supplementary support to the equitable provision of legal aid to all Australians.¹⁸

¹⁴ NTLAC, *Transcript*, 21 July 2004, pp. 38-9.

¹⁵ WALAC, *Transcript*, 31 March 2005, p. 16.

¹⁶ WALAC, *Transcript*, 31 March 2005, pp. 15 & 24.

¹⁷ ATSIC OEA *Evaluation of the Legal and Preventative Services Program*, 2003, p. 141.

¹⁸ AGD, *Submission No. 44*, p. 4.

Memoranda of Understanding

- 5.21 Memoranda of understanding between service providers can lend a degree of formality to cooperative arrangements. ATSIIS stated that:

there are memorandums of understanding between ATSILSs and Legal Aid Commissions, for example, in New South Wales, that encourage cooperation in a landscape where there is a great need and where each organisation has some particular expertise.¹⁹

- 5.22 ANAO clarified the effectiveness of extant memoranda of understanding:

while ... there are partnership arrangements between LACs and ATSILS [in some states] the usefulness of these arrangements in developing constructive relationships is limited.²⁰

- 5.23 An example of how memoranda of understanding might operate or fail to do so was provided in New South Wales where NSWLAC has established memoranda of understanding with SRACLS, WALs and the Kamilaroi Aboriginal Legal Service (KALS):

which is designed to increase the ability of those legal services to do family law work.²¹

- 5.24 NSWLAC stated that the implementation of the memoranda fell within a range of outcomes. At the top end of a spectrum of usefulness SRACLS provided an example of constructive cooperation which extended civil and family law services to Indigenous people:

At the present time, we have [LAC] solicitors come to our office and provide civil advice to people from the Aboriginal community. They always feel more comfortable in the Aboriginal Legal Service.²²

- 5.25 In regards to family law services, SRACLS:

have come to an arrangement with the Legal Aid Commission where we can get grants for legal aid to fund some of our Aboriginal clients within the service.²³

19 ATSIIS, *Transcript*, 9 June 2004, p. 19.

20 ANAO, *Audit Report No. 13, 2003-2004*, Para. 2.51, p. 47

21 NSWLAC, *Transcript*, 13 July 2004, p. 81

22 SRACLS, *Transcript*, 13 July, 2004, p. 64.

23 SRACLS, *Transcript*, 13 July 2004, pp. 66-7.

- 5.26 The cooperative relationship between NSWLAC SRACLS extended to the provision of advice:

the New South Wales Legal Aid Commission ... [have] said 'We've got some money to spend on civil law for Indigenous women held in prison', but they come to us to get ideas on what programs might work.²⁴

- 5.27 However, NSWLAC stated that memoranda of understanding between the Commission and the New South Wales regional ATSILSs, KALS and WALs, had not been as successful as the relationship with SRACLS.²⁵

- 5.28 The Dubbo regional office of NSWLAC confirmed the lack of success of the memorandum of understanding with WALs and explained:

It has not been highly successful, though, I must say, because there is a perception ... that the ALS could not get involved because it would be perceived to be taking sides. Even though the Commission, technically, would be funding both sides, a commission solicitor would be appearing for one side of the family law dispute and the ALS for the other. The ALS did not want to get involved because of the perception that it would be taking sides.

I made a submission to the board of WALs about this, to try to say that this is not how we would operate it. The response was, 'No, the perception would be divisive' ...²⁶

- 5.29 A less formal arrangement existed between NTLAC and ATSILSs in the Northern Territory. NTLAC described instances where a person is referred from an ATSILSs:

we have a number of protocols to try and encourage the client service officer from the Aboriginal Legal Service to bring the client over, to assist taking instructions and ... to make the person feel more comfortable.²⁷

24 SRACLS, *Transcript*, 13 July 2004, p. 63.

25 NSWLAC, *Transcript*, 13 July 2004, p. 81.

26 NSWLAC, *Transcript*, 30 March 2005, pp. 65-6.

27 NTLAC, *Transcript*, 21 July 2004, p. 44.

5.30 On a different matter, however, NAALAS stated that:

We have ... an agreement ... with [NTLAC] where more complex matters are briefed to them. We have never briefed any to them; we try to deal with them in-house.²⁸

Family Violence Prevention Legal Services and Community Legal Centres

5.31 Many of the issues confronting the position of ATSILSs in the criminal justice system and the coordination of these services with other mainstream providers also occur for FVPLSs. Of particular interest was the coordination of services provided by FVPLSs with CLCs, some of which run Indigenous Women's Projects.

5.32 In addition to the \$22.7 million over the next four years for the expansion of FVPLS programs, AGD referred to:

\$4.4m [that] was provided [in 2003–04] to specialist women's, rural women's and Indigenous women's services through the Commonwealth Community Legal Services Program. Of that amount, \$2.9m was provided to 11 centres to provide specialist women's legal services, nine centres received a total of \$594,699 to provide specialist rural women's legal services and there were eight centres which received a total of \$930,548 to provide specialist legal services to Indigenous women. Both the women's legal services and rural women's legal services programs also provide legal information and assistance to female Indigenous clients.²⁹

5.33 NACLCL informed the Committee that four percent of its clients on an Australia-wide basis were Indigenous and of those, 75 percent were Indigenous women.³⁰

5.34 The only FVPLS in South Australia operated out of Port Augusta where a Rural Women's Outreach Program run by WLS South Australia was also located. However:

those two services are not enough to cope with the level of family violence in that area. The Aboriginal Family Violence Service is funded to provide a service in Port Augusta and the

28 NAALAS, *Transcript*, 21 July 2004, p. 5.

29 AGD, *Submission No. 44*, p. 9.

30 NACLCL, *Transcript*, 13 July 2004, p. 2.

Davenport community only. We are funded to work with all women in South Australia.³¹

Committee Comment and Recommendations

- 5.35 The Committee applauds the increased coordination between areas responsible for legal aid funding to mainstream and Indigenous specific providers within AGD. However coordination at this level must be followed through:
- at the level of service providers; and
 - between Commonwealth and state and territory agencies responsible for funding providers of legal aid.
- 5.36 To take the second of these coordination issues first, the argument of whether the Commonwealth or states and territories are responsible for a particular service often occurs in federal systems of government. The Committee is of the view that in regards to the provision of legal services to Indigenous people, this issue needs to be resolved as a matter of urgency and that it should not be left for ATSILSs, LACs or Law Societies to push for this resolution.
- 5.37 ATSILSs, and increasingly FVPLSs, are the primary providers of legal services to Indigenous Australians. In 2003 Indigenous Australians constituted 21 percent of the national prison population and thus they constitute a significant proportion of criminal justice business.³² In the view of the Committee this context makes it difficult to sustain an argument that ATSILSs and FVPLSs are supplementary legal services.
- 5.38 State and territory governments should acknowledge that insufficient support for the work of ATSILSs and FVPLSs is likely to result in greater Indigenous prison populations and consequently a greater cost to state tax payers.

31 WLS South Australia, *Transcript*, 19 August 2004, p. 25.

32 Australian Bureau of Statistics 1994-2004, *Prisoners in Australia*, cat no4517.0.

Recommendation 11

- 5.39 **That the Attorney-General raise the matter of Commonwealth and state/territory funding for providers of services currently delivered by Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services with his state and territory counterparts with a view to gaining some level of state/territory contribution for these services.**
- 5.40 Moving to the first of the above matters, while AGD has taken steps to coordinate the administration of funding between mainstream and Indigenous legal service providers, it appears that coordination of the service providers on the ground has not been formally facilitated or required.
- 5.41 The coordination of all providers of legal services to Indigenous people is of vital importance, particularly the coordination of Indigenous specific and mainstream providers of similar types of law services – that is providers that are primarily criminal or family and civil services.
- 5.42 ATSILSs and LACs are primarily providers of criminal law services to Indigenous people FVPLSs and CLCs are primarily providers of family and civil law services.
- 5.43 While the Committee is aware of memoranda of understanding between ATSILSs and LACs in New South Wales, Victoria and Western Australia and operational protocols between ATSILSs and LACs in the Northern Territory and South Australia, the arrangements appear to be varied and to work with various degrees of success. AGD needs to assure itself that ATSILSs and LACs have the highest levels of cooperation in place.

Recommendation 12

- 5.44 **That the Attorney-General's Department, in consultation with National Legal Aid and the National Aboriginal and Torres Strait Islander Legal Services Secretariat, develop and require providers of services currently delivered by Aboriginal and Torres Strait Islander Legal Services (ATSILSs) to implement a memorandum of understanding between**

them and Legal Aid Commissions (LACs) that includes:

- sharing each others duty solicitors;
- the provision of representation and advice by one organisation to the other's clients;
- the use of office space and facilities in ATSILSs by LAC solicitors for Indigenous clients when these clients are referred from ATSILSs to LACs;
- protocols requiring ATSILSs solicitors to introduce clients to LAC solicitors in the event that clients are referred from ATSILSs to LACs;
- access of ATSILSs solicitors to LAC technology, such as video-conferencing, in order to facilitate remote client contact;
- access of LAC solicitors to Aboriginal Field Officers employed with ATSILSs when required to communicate with clients;
- mutual sharing of vehicles for remote travel; and
- access of ATSILSs and LAC staff to in-house training programs run by the other organisation.

5.45 The Committee was concerned at the myriad of programs and services that provide legal services to Indigenous women. Perhaps the most apparent area for potential overlap is the FVPLSs and the Indigenous Women's Projects run out of designated CLCs.

Recommendation 13

5.46 **That the Attorney-General's Department rationalise funding of Indigenous legal services by incorporating Indigenous Women's Projects, that are currently administered through mainstream Community Legal Centres, into the Family Violence Prevention Legal Services program.**

Tendering Out of Aboriginal and Torres Strait Islander Legal Services

- 6.1 Throughout the Committee's inquiry into the provision of law and justice services to Indigenous Australians, ATSIIS and then AGD were developing and implementing a state by state tendering out of the services provided by ATSILSs. The tender was intended to increase administrative effectiveness in moving funding from a grants based regime to a contractual arrangement that focused on outputs.
- 6.2 The tender was completed in Victoria and Western Australia with the previous state-wide providers, VALS and ALSWA, announced as the successful bids on 1 and 14 April 2005 respectively. The tender contracts are scheduled to commence on 1 July 2005.
- 6.3 The tendering out of services provided by ATSILSs in Queensland was released on 5 March 2005 and closed on 6 April 2005 with a commencement date for the successful provider(s) of 1 July 2005.
- 6.4 Contracts for the provision of legal services to Indigenous Australians in Victoria, Western Australia and Queensland will all expire on 30 June 2008.
- 6.5 The remaining states and the Northern Territory are scheduled to commence arrangements under tenders on 1 July 2006.¹

1 AGD, *Transcript* 17 March 2005, p. 2.

Reasons for the Tender

- 6.6 DIMIA explained why services provided by ATSILSs were put out to tender. The tender:

target[s] two things. One is cost[:] ... rationalisation of the number of providers and reducing overheads ... But the other thing it targets, which you do not get through simple rationalisation, is necessary improvements in the quality of service to make sure you get the best provider, as opposed to simply the cheapest provider.²

- 6.7 NAALAS cited a failed attempt to tender out the Domestic Violence Legal Service in Darwin as contradicting DIMIA's claim that tender processes delivered the best provider:

tender processes often do not give you the best person for the job – they give you the one that writes the best tender document. ... [The Domestic Violence Legal Service] was a three-year contract – the same sort of thing that the federal government is offering – and at the end of one year there were just so many complaints about the lack of service that they revoked the contract and gave it to the Legal Aid Commission...³

- 6.8 NTLAC explained that:

There were some major concerns about [the tender]. One of the issues was that the private firm running the Domestic Violence Legal Service also provided a number of criminal legal services so a fair amount of conflicts arose. Instead of providing funding for a conflicted domestic violence applicant to be sent somewhere else they were simply referred off somewhere else and no-one knew exactly where and no funding was provided to do that. They ran very little community legal education and very little law reform and advocacy services.⁴

Savings

- 6.9 The new arrangements to be implemented were expected to produce savings through the diminution of overheads in states and territories with more than a single provider.

2 DIMIA, *Transcript*, 9 June 2004, p. 13. Cp. ATSIIS, *Transcript*, 9 June 2004, pp. 26-7.

3 NAALAS, *Transcript*, 21 July 2004, p. 9.

4 NTLAC, *Transcript*, 21 July 2004, p. 41.

Table 3 Funding of ATSILSs in Victoria , Western Australia and Queensland 2001-02 to 2007-08

Year	Victoria	Western Australia	Queensland
2001-02	2 228 452	6 695 234	11 568 465
2002-03	2 339 172	6 828 396	11 975 720
2003-04	2 425 938	7 869 185	12 117 663
2004-05	2 410 706	7 127 824	13 494 187
2005-06	2 717 184	8 198 400	*
2006-07	2 809 486	8 811 842	*
2007-08	2 887 856	9 398 198	*

* Indicates figures unavailable because tender and related contract negotiations are currently in train. See Senate, Legal and Constitutional Legislation Committee, *Transcript*, 23 May 2005, p. 41.

Source AGD, *Submission No. 44*, p. 22 and AGD, *Correspondence*, 31 May 2005 and *Correspondence*, 6 June 2005.

6.10 AGD stated that:

Any savings [from the tender] will flow to increased services ... because there is no change in the amount of money by virtue of the tendering process.⁵

Centralisation of Providers

6.11 At a public hearing on 9 June 2004 ATSIIS and DIMIA consistently referred to the situation in Queensland, where 11 of the 25 ATSILSs are located, as exemplifying the need for rationalisation of the services in order to reduce overheads:

In Queensland, for example, there are 11 separate services who would have principal solicitors, auditors where necessary, financial officers and bookkeepers...

There is a contrast between the costs associated with administration for Western Australia, where they have one service for the whole state, and Queensland where there are 11...

The Office of Evaluation and Audit report showed that the per case costs of the Queensland services were much higher than those of other states...

the much higher cost of certain services in some locations than in others, particularly in Queensland, with a very high number of

5 AGD, *Transcript*, 17 March 2005, p. 3.

services and the inevitable costs tied up in the overheads that go with that..⁶

- 6.12 AGD provided a breakdown of approved budgets by ATSILSs for 2004-05.⁷

Table 4 Approved Percentage of ATSILS's Budget on Service Overheads by State/Territory 2004-05

State/Territory	No. of ATSILSs	Overheads (Services)	Total Expenditure	% of Budget
New South Wales/Australian Capital Territory	6	1 402 030	10 552 452	13.3%
Northern Territory	4	870 838	5 821 573	15.0%
Queensland	11	2 398 351	12 873 776	18.6%
South Australia	1	551 328	3 645 882	15.1%
Tasmania	1	101 600	1 046 887	9.7%
Victoria	1	236 400	2 410 706	9.8%
Western Australia	1	1 156 300	7 127 824	16.2%

Source AGD, *Exhibit No. 43*.

- 6.13 On average the 11 Queensland ATSILSs expend the highest proportion of their total budget on service overheads. However, the proportion of funding devoted to service overheads in Queensland is not grossly in excess of other states and territories that contain large service areas with significant remote populations of Indigenous people such as Western Australia, South Australia and the Northern Territory.
- 6.14 The reason for the increased service overheads in ATSILSs expenditure where a significant proportion of the client base is remote is that sub-offices are required to maintain community based accessible services.
- 6.15 Furthermore, expenditure on service overheads appeared particularly efficient in New South Wales with its large service area and six ATSILSs. One reason for this may be the tendency of Indigenous people in this state to live in regional centres rather than remote communities.
- 6.16 It is noteworthy that ATSILSs in New South Wales spend proportionately less on service overheads than the Northern Territory with its four ATSILSs and South Australia and Western Australia where single providers operates.
- 6.17 Mr Cuomo formerly of ALSWA stated that:

6 ATISIS and DIMIA, *Transcript*, 9 June 2004, pp. 12, 13 and 26.

7 AGD, *Exhibit No. 43*.

there are economies of scale with a single state wide service ... you do not have to replicate management too many times; you can run a reasonably lean management and a reasonably flat management structure...⁸

6.18 AGD did not provide a breakdown of the proportion of ATSILSs' budgets spent on management salaries as opposed to the salaries of solicitors and community workers.

6.19 ATSILSs particularly from New South Wales were vocal in their opposition to the stated preference in the Exposure Draft of the Request for Tender document of a single provider of services within each state and territory.⁹

6.20 The regional ATSILSs in New South Wales were established because of the inadequacy of the then single state based Aboriginal Legal Service of New South Wales, otherwise known as the Redfern Aboriginal Legal Service:

The real problem that the ALS faced in the mid-70s was that they used to fly blokes in and out to appear in Walgett and Brewarrina, when they could not get people to go there. Aboriginal Legal Services field officers from those places - Broken hill, Bourke and Brewarrina, - set up an independent legal service to provide representation that worked.¹⁰

6.21 WALs stated that:

people out west and past the Blue Mountains believe that past history shows that they did not get serviced. ... [The] issue needs to be addressed to ensure that the services are on the ground and they are out there ... There are also people on this side of the Blue Mountains.¹¹

6.22 MRALS stated that:

The regionalised model [in New South Wales] allows for direct communication between the decision makers in the ATSILS and community members, especially those members from small and isolated settlements.¹²

6.23 Mr Cuomo stated that during his time at ALSWA he found:

8 Mark Cuomo, *Transcript*, 31 March 2005, p. 8.

9 ATsIS, *Exhibit No. 15*, Sect. 2.4.2, p. 18.

10 Western NSW CLC, *Transcript*, 30 March 2005, p. 24.

11 WALs, *Transcript*, 30 March 2005, p. 9

12 MRALS, *Transcript*, 13 July 2004, p. 46.

You have a very inflexible set of choices, because you do not have too much in the way of discretionary funding ... Some communities get very angry and upset when they do not see their needs being met...¹³

- 6.24 Mr Cuomo speculated that the tender arrangements would not alter the provision of Indigenous legal services in Western Australia:

I think Western Australia is seen as a success because amongst the ATSILS we have done things like maintain our family law presence and some civil presence, which I talked to you about earlier...

To be brutally honest, I do not think the tender is going to change much in Western Australia.¹⁴

- 6.25 The Request for Tender in Victoria and Western Australia reiterated the Commonwealth's preference for a single state provider and the Request for Tender in Queensland allowed the possibility of splitting the state into two zones thus requiring two providers down from the current 11 ATSILSs.¹⁵

- 6.26 AGD maintained that:

The Government's preference is for single service providers, although in some states and the Northern Territory it may consider the option of having two providers based on regional zones...¹⁶

Increases in Accountability

- 6.27 Recommendations Four and Five of ANAO, *ATSIS Law and Justice Program, Audit Report No. 13, 2003-2004*, identified the communication of targets, performance data and evaluation between funding bodies and service providers as areas in need of strengthening in the administration of the Law and Justice Program.

- 6.28 AGD responded that:

The Request for Tender documentation ... sets performance targets ... the scope of services to be provided has been clearly

13 Mark Cuomo, *Transcript*, 31 March 2005, p. 8.

14 Mark Cuomo, *Transcript*, 31 March 2005, pp. 8-9.

15 AGD, *Request for Tender No. 04/29 for the Purchase of Legal Aid Services to Indigenous Australians in Victoria and Western Australia*, Sect. 2.41, p. 19 and AGD, *Request for Tender No. 04/01 for the Purchase of Legal Aid Services to Indigenous Australians in Queensland*, Sect. 2.4.1, p. 20.

16 AGD, *Submission No. 44*, p. 23.

defined as legal assistance and casework, and other activities previously carried out by ... ATSILSs, such as law reform and community education, can be funded through other programs administered by the Department.¹⁷

- 6.29 SEALS complained of the complicated character of the performance reporting data system employed by ATSIIS rendered the system next to useless in providing information to service providers:

There were 65 different classes so they could work out age, sex and charges. They have probably spent \$3 million on ALSs ... over the years. We put information in but we cannot generate stats.¹⁸

- 6.30 ALRM provided an example of how data collection can suffer in a climate of static funding and increasing demand:

our organisation has been running on empty for some time, to the extent that to maintain our existing services level of services ... we have had to transfer our corporate support type service resources into service delivery just to maintain services ... It would be lovely if we could gain [statistical compilation] , but we cannot.¹⁹

- 6.31 The Law Council of Australia supported this view:

One of the things that is of concern is that providing all this information and providing this accountability and so forth cannot be done without cost. Where you have a service that is absolutely cash strapped trying to get coalface services to the communities, there is difficulty about putting aside money to ensure proper audit trails and all that sort of thing.²⁰

Concerns at Possible Results of the Tender

Community Ownership and Embeddedness

- 6.32 Concerns relating to the tender focused on the possibility that a non-Indigenous service provider might make a successful bid for the provision of services currently delivered by ATSILSs. In such an event, it was argued, the provider would be without the networks of Indigenous field

17 AGD, *Submission No. 44*, p. 1.

18 SEALS, *Transcript*, 9 June 2004, p. 40.

19 ALRM, *Transcript*, 19 August 2004, p. 35.

20 Law Council of Australia, *Transcript*, 19 August 2004, p. 57.

officers that have proven so important in providing a conduit between provider and client.²¹ It was also put that a non-Indigenous provider, by definition would not be owned by the community that it serviced and this would further alienate potential clients from seeking assistance.

6.33 The challenge of maintaining the community based character of service providers, so essential in making them accessible to their Indigenous clients, while ensuring the accountability of these providers to the funding agency developed as an issue through the Committee's inquiry.

6.34 DIMIA put the problem from the Commonwealth's side in the following terms:

It is a bit like the difference between local government, state government and federal government in the mainstream system ... The potential for conflicts of interest becomes more focused the more localised the decision making becomes.²²

6.35 ALRM insisted that ATSILSs must be Aboriginal owned and controlled:

There is a sense of ownership and a sense of belonging, The feeling is, 'It is one of our organisations.' This is something that the Indigenous community of South Australia keep on emphasising - the Aboriginal Legal Rights Movement is their organisation. They are the members and they actually own the organisation.²³

6.36 MRALS expanded on the importance of providers belonging to the communities they service:

what in fact happens in a court of law is that more often than not there is an Aboriginal person who is very fearful of the fact that he or she is coming before a very alien process with alien people in it. A very large part of the work of an ATSILS in criminal law practice is to, firstly, win the trust and confidence of that person so that they can give proper instructions and have that case properly presented.²⁴

6.37 WLS New South Wales stated that:

The problem with the tender document ... is that they did not put in anything about employing Indigenous people...²⁵

21 SEALS, *Transcript*, 9 June 2004, p. 45 and WLS New South Wales, *Transcript*, 13 July 2004, p. 12.

22 DIMIA, *Transcript*, 9 June 2004, p. 6.

23 ALRM, *Transcript*, 19 August 2004, p. 36.

24 MRALS, *Transcript*, 13 July 2004, p. 46.

25 WLS New South Wales, *Transcript*, 13 July 2004, p. 12.

- 6.38 NAALAS complained that the Request for Tender provided:
- no quota for Aboriginal field officers ... There is no quota for even a single Aboriginal staff member.²⁶
- 6.39 SEALS stated that it was funded to provide five and a half solicitors but that:
- there is no need for Aboriginal employment in the tender. They say you need cultural awareness training but it does not say whether it is half an hour when the new person starts or what. It is critical for the employment of Aboriginal people. We employ Aboriginal people in Moruya, Nowra and our Canberra office. If the tendering process happened and a mainstream organisation won it, the five white lawyers would all get jobs. The savings the provider would make would mean that they would not need to employ any Aboriginal people and you would therefore lose that direct connection with the community.²⁷
- 6.40 CAAFLU also expressed concern that the impact of the tender on Aboriginal Field Officers:
- I fear that [they] would be lost if things were tendered out ... they would be the ones that perhaps would not be employed if [ATSILSs] were tendered out.²⁸
- 6.41 The Request for Tender Documents raises the possibility of providers utilising Field/Court Officers under a sub-dot point in Selection Criteria 2.²⁹

Access versus Cost

- 6.42 Another concern raised at the possibility of a successful non-Indigenous provider referred to the commercial basis on which large scale law firms run their businesses. It was argued that provision of legal services to Indigenous people within a commercial framework would contribute to deterioration in service levels because of the demand for commercially acceptable profit margins in an environment of severely limited funds.

26 NAALAS, *Transcript*, 21 July 2004, p. 10.

27 SEALS, *Transcript*, 9 June 2004, pp. 42 and 45.

28 CAAFLU, *Transcript*, 22 July 2004, p. 38.

29 AGD, *Request for Tender No. 04/29 for the Purchase of Legal Aid Services to Indigenous Australians in Victoria and Western Australia*, Sect. 4.6.2, p. 54 and AGD, *Request for Tender No. 04/01 for the Purchase of Legal Aid Services to Indigenous Australians in Queensland*, Sect. 4.6.2, p. 57.

6.43 The Committee received evidence expressing concern that the tendering out of ATSilSs did not adequately ensure that Indigenous specific legal services would remain geographically accessible to their clients.

6.44 NSWLAC speculated that if a commercial law practice was awarded a tender:

the first thing they would do is take their costs off the top – that is their profit margin. Then you have to look at what is left and how you are going to provide that and how you are going to provide it in locations that are required.³⁰

6.45 SEALS expressed concern at possible restriction of access to services:

One is the balance between access and cost. To appear for one person, ALSs may have to drive 200 kilometres, because that person is important. So we do not balance access versus cost. If we were looking at it on a cost efficiency basis and not as providing a special service, we could probably get a duty solicitor to go to the court at Cooma and the New South Wales legal aid system would pick up that funding ... They also talk about a 1800 number ... Indigenous people have a very poor record of use of 1800 numbers. You can imagine somebody at Wilcannia ringing the 1800 number with all the material from their court case and their references and then taking notes.³¹

Uncertainty of Funding

6.46 ATSilSs complained of the disruptive way in which the tendering out process had been implemented particularly the move to six monthly funding cycles. The need to implement six monthly funding cycles appeared to arise as the result of poor management on the part of Commonwealth agencies.

6.47 VALS stated that:

uncertainty has become more debilitating since June 2003 when ATSiS was created. Since that date ATSiS have been on six monthly or less funding periods. To a program which is acknowledged to be under funded and have difficulty retaining staff the move to shorter funding periods is at best an example of

30 NSWLAC, *Transcript*, 13 July 2004, p. 83

31 SEALS, *Transcript*, 9 June 2004, p. 37.

careless and incompetent program management and at worst part of an agenda of destroying Indigenous organizations.³²

- 6.48 NAALAS informed the Committee it was on its third six month funding cycle in July of 2004 and related the impact of this funding regime on its work:

The six-monthly reporting conditions are very onerous. The fact that we only get six-monthly releases has prevented us from doing some things. For instance, our cars are over three years old. Normally we would go into another lease arrangement, but we cannot go into anything that is long term at the moment. This has been the third six-monthly release that we have had so far and, as I say, in terms of being able to operate effectively it has been very onerous. Most of our bills for insurance and things like that come in the first six months, so we are struggling at the end of the six months to make our payments. The other thing is that our funding was three weeks late this financial year, so we were not sure how we were going to pay wages. We actually stopped paying creditors' bills for a week in order to pay the wages, and then the money from ATSIC came through. We are subjected to a lot of those small things.³³

- 6.49 MRALS confirmed that it had been put on a six month funding cycle with little information of when this arrangement would conclude beyond a supposition that the tendering out of services would eventually proceed in New South Wales.³⁴

- 6.50 AGD stated that

A 12 month funding cycle was restored for ATSILS in those states and the NT, which are not going to tender in the 2004-05 financial year. Funds in the 2005-06 financial year will be made available for the ATSILS in the NT and SA until new contracts commence on 1 February 2006, and in NSW and Tasmania until 30 June 2005.³⁵

32 VALS, *Submission No. 15*, p. 3.

33 NAALAS, *Transcript*, 21 July 2004, p. 8.

34 MRALS, *Transcript*, 13 July 2004, p. 48

35 AGD, *Submission No. 44*, p. 18.

Other Legal Service Providers

- 6.51 ATSIS stated that the tendering out of services provided by ATSILSs was indicative of a broader trend:

the tender relates also to a broader issue about contracting and entering into contracts. The initiative in relation to ATSILS was part of a broader view that ATSISS had about the delivery of services. So, in that sense, it was a bit of a forerunner ...

We were progressing a series of reforms across all of our programs, including Family Violence Prevention Legal Services, a move away from grants to outcomes based contracts. So there is a reform process which is also touching on Family Violence Prevention Legal Services. But there is the issue of the use of the tendering process, which could occur in the future, potentially – although there is no decision in that and, of course, any such decision will now rest with the organisation that will be taking over responsibility for those services.³⁶

- 6.52 As the organisation that received responsibility for funding legal services to Indigenous people after the dissolution of ATSISS, AGD stated that FVPLSs continued to receive grant funding through an annual application process and that these arrangements were unlikely to change.³⁷

- 6.53 AGD explained that:

Due to the sensitive nature of this program, a procurement process was tailored to account for specific requirements, such as the need for culturally appropriate responses and the difficulty in securing service provision and recruitment for remote communities. For these reasons, and because of the difference in scale, a different approach was adopted for the FVPLS program expansion to that adopted for the tender process for the provision of legal aid to Indigenous Australians.³⁸

- 6.54 AGD stated that a grants-based funding arrangement was also employed with CLCs. These services:

originated as a grants-based program and different amounts of funding were provided to different centres ... Current resource levels are based on the amounts originally provided as a result of

36 ATSISS, *Transcript*, 9 June 2004, p. 20.

37 AGD, *Submission No. 44*, pp. 6-7.

38 AGD, *Submission No. 44*, p. 7.

those funding applications, with indexation increases on those amounts.³⁹

- 6.55 AGD stated that the Prevention, Diversion and Rehabilitation program was funded through open and competitive grants procedures.⁴⁰

Committee Comment and Recommendations

- 6.56 The Committee acknowledges that moving from a grants based funding regime to a contractual output focused funding arrangement for the provision of legal services to Indigenous Australians is desirable. A tendering out process is one method of achieving this aim.
- 6.57 However, the Committee has reservations in relation to the way in which the tendering out process was developed, particularly the concern and frustration among ATSILSs and other providers of legal services to Indigenous Australians, such as LACs, which appears to have been generated by a lack of responsiveness and information from ATSIIS to these service providers.
- 6.58 The Committee was disappointed to receive no submissions from Queensland, particularly as the presence of 11 ATSILSs in that state was consistently cited as a reason to fund a smaller number of service providers across all states and the Northern Territory.
- 6.59 On the strength of figures provided by AGD, the Committee is not convinced that proposed savings on service overheads will be a significant outcome of the proposed centralisation of legal service providers under the terms of the tender.
- 6.60 The figures provided by AGD did not include a breakdown of salary expenditure on management as opposed to 'coal face' service provision and thus the Committee can come to no conclusion as to whether the centralisation of service providers, under the terms of the tender, will produce greater resources to 'coal face' services.
- 6.61 While the stated preference for a single provider may be appropriate in Victoria and Western Australia (where there is currently only one provider per state), in jurisdictions where there are other arrangements and different circumstances, the preference for a single provider may cause significant disruption to services. The Committee awaits the results

39 AGD, *Submission No. 44*, p. 3.

40 AGD, *Submission No. 44*, p. 7.

of the Queensland tender and the level of services delivered by a significantly smaller number of providers with interest.

- 6.62 The importance of services that are owned by and embedded in the communities they service is demonstrated by the great successes that Indigenous organisations such as ATSILSs and, more recently FVPLSs, have had in making the justice system more accessible to Indigenous Australians.

Recommendation 14

- 6.63 **That in centralising providers of services that are currently delivered by Aboriginal and Torres Strait Islander Legal Services, the Attorney-General's Department ensures that these services establish and maintain governance mechanisms that allow representation of and responsiveness to the views of the communities in their service area.**

- 6.64 The Committee recognises that an essential part of the services provided by ATSILSs is the involvement of community based paralegal staff who provide support for clients. The Committee expects that a functional network of Aboriginal Field and Court Officers should be an essential part of a successful tender bid.

Recommendation 15

- 6.65 **That in awarding tender bids, the Attorney-General's Department ensure that the current levels of paralegal community legal workers employed by Aboriginal and Torres Strait Islander Legal Services is not diminished.**
- 6.66 The Committee is concerned that funding for CLCs and FVPLSs remains grants-based. The historical and grants based character of funding for ATSILSs was found to be inadequate by ANAO and the same may be the case for funding of FVPLS and CLC operations.

Recommendation 16

- 6.67 **That the Australian National Audit Office conduct a performance audit of those areas of the Attorney-General Department's responsible for funding of Family Violence Prevention Legal Services and Community**

Legal Centres with regard to the same matters covered in the *Audit Report No. 13, 2003-2004*.

- 6.68 The Committee shares the concerns of AGD that ATSILSs' resources are devoted to the provision of coal face services rather than used in unnecessary replication of management. To this end, the Committee believes that in addition to other categories of performance data that AGD requires of service providers a breakdown of their expenditure on management should also be included.
- 6.69 The Committee is also concerned at statements that on a comparative basis ATSI and AGD had underfunded ATSILSs in some jurisdictions. It would be beneficial if the adequacy of funding on a comparative basis across jurisdictions was conducted.

Recommendation 17

- 6.70 **That the Australian National Audit Office conduct a performance audit of the Indigenous Law and Justice Branch of the Attorney-General's Department at the mid way point of the tender contracts in each jurisdiction with a view to identifying difficulties and recommending improvements in administration and service delivery.**

Future Directions: The Importance of Community in Prevention and Diversion

- 7.1 The delivery of legal aid to Indigenous Australians is the primary function of ATSILSs and FVPLSs. However, the provision of legal aid does not describe the full role of these services.
- 7.2 Another important function of ATSILSs and FVPLSs has been and continues to be their role in implementing and supporting prevention and diversionary programs.
- 7.3 Besides funding preventative services under the FVPLS program, AGD provided \$5.348 million through its Prevention, Diversion and Rehabilitation programs in 2002-03.¹
- 7.4 The Prevention, Diversion and Rehabilitation output consists of four areas:
- Night patrols;
 - Youth Initiatives;
 - Prisoner Support and Rehabilitation Services; and
 - Restorative Justice Initiatives.²
- 7.5 The importance of ensuring the availability of preventative and diversionary initiatives takes on particular importance in light of the Indigenous demographics. MRALS stated that within its service area:

1 AGD, *Submission No. 44*, p. 2.

2 AGD, *Exhibit No. 44*.

40 percent of the Aboriginal population is under the age of 15. The Indigenous population grew by 29.8 percent between 1996 and 2001 making it the fastest growing ATSI region in the nation.³

- 7.6 The pertinence of this statistic comes to light when it is realised that 29.5 percent of matters dealt with by ATSI in 2002-03 occurred in the 18 to 24 year group.⁴

Some Community Based Justice Initiatives

- 7.7 During the course of the inquiry, the Committee gathered evidence on an array of community based justice initiatives that emerged in response to the problem of access to the law and justice system by Indigenous Australians. These included the institution of community law and justice committees in the Northern Territory, circle sentencing courts in New South Wales and community policing programs in Western Australia.

- 7.8 These initiatives have generated a framework in which prevention and diversionary programs are delivered to Indigenous Australians. These developments have occurred in large part since the late 1990s.

- 7.9 The Western Australian Government indicated the array of programs it was considering supporting and implementing:

I have had the women from the [Northern Territory] Kurduju [community law and justice] group ... come and present at a forum in WA. There are a couple of Aboriginal sentencing courts in WA that have been set up. There is also an intent to include Aboriginal people in sentencing and disposition of sentencing through community supervision agreements – the way we use bail hostels and juvenile case conferencing – which we are adapting for Aboriginal communities so that Aboriginal elders or responsible people are participating in a kind of mediated process with police, the offender, the offender's family and a representative of justice, which could be an Aboriginal elder.⁵

3 MRALS, *Submission No. 28*, p. 1.

4 ATSI, *Exhibit No. 24*.

5 WA Department of Justice, *Transcript*, 31 March 2005, p. 30.

- 7.10 The Western Australian Government also provided detail on its community policing initiatives in remote discrete communities that are considered later in this chapter.

Community Law and Justice Committees

- 7.11 On 31 March 2005 the Committee visited the remote community of Yuendumu in the Northern Territory. The visit occurred in response to an invitation to inspect some of the operations of community law and justice committees covered by the Kurduju Regional Crime Prevention Committee.⁶
- 7.12 The Kurduju Committee is an umbrella group for community law and justice committees operating at Ali-Curung (since 1997) and Lajamanu (since 1998) as well as Yuendumu (since 2000).⁷ The Kurduju Committee is supported through the Northern Territory Department of Justice.
- 7.13 Each community law and justice committee responds to and springs from the unique situation of its community. It described community law and justice committees as having:
- the primary role in the implementation of strategies arising from the planning process and they act as the interface between the community and the myriad of government agencies involved in the provision of law and justice services.
- 7.14 Besides providing pre-trial advice to magistrates on the circumstances of offenders and cases, the community law and justice committees have responded to problems confronting their communities by implementing men's and women's night patrols, safe houses and youth diversion programs.⁸
- 7.15 Mr Cuomo referred to the need for flexibility in implementing arrangements that were emerging in Western Australia which are similar to the Northern Territory law and justice communities:
- It varies from community to community. Each of the communities has its own way of doing it. It operates at a

6 Kurduju Regional Crime Prevention Committee, *Submission No. 24*, and *Exhibit Nos. 26 and 27*.

7 Kurduju Regional Crime Prevention Committee, *Submission No. 24*, p. 2.

8 For details see Kurduju Regional Crime Prevention Committee, *Submission No. 24*, and *Exhibit Nos. 26 and 27* and Yuendumu Community, *Exhibit No. 47*.

number of levels. You have got the preventative level and the community activities that go along with that – looking after the kids, night patrols and those sorts of things.⁹

- 7.16 The WA Department of Justice stated that community law and justice committees would not work in some communities:

In some of the remote communities [the Northern Territory model] works, but ... it is the senior Aboriginal women who have made that work. In WA, the senior Aboriginal women have not always got the authority or the status to carry it off.¹⁰

Customary Law

- 7.17 The remoteness of the communities that operate community law and justice committees means that customary law and practices can remain strong informers of the communities' sense of justice. CAALAS stated:

our clients do live in two worlds and they are in the main subject to their own laws, and these [community law and justice] groups offer the possibility of a nexus so that there is some juncture, I suppose, from what is happening in the community. Cultural factors and Aboriginal law factors that are applying are not going to be dealt with directly in the courts, but there is a sort of a nexus and feedback from what is happening on the ground in the communities. I think it is positive in that way. On the other hand, we as lawyers have a difficulty in the sense that we are still appearing in our system on behalf of the client, who is an individual. We have to advocate on behalf of the client, which may be at odds with the community view or a view that is coming out of the community...

Also, when different people appear before that panel of people, there is also the problem of whether they are actually related to the people sitting on that panel. Quite often there are difficulties with the elected council. Then there is another council – the council of elders. Quite often the council of elders overrides the elected panel. Where [an ATSILS solicitor] is coming from is from representing his client in the European legal system, whereas this other system is still

9 Mark Cuomo, *Transcript*, 31 March 2005, p. 7.

10 WA Department of Justice, *Transcript*, 31 March 2005, p. 31.

going on regardless of the white system. It has an end result and they will have a result as well. I think it clears the way for people to be dealt with, but they are still going to be dealt with in the other system, regardless of the outcome.¹¹

7.18 TEWLS confirmed the importance of traditional law in remote Indigenous communities:

community members respect and fear their own law ... rather than a restraining order, banishment to an outstation may be a deterrent ... women generally wish to receive restraining orders as a last resort. Prior to this, women require support, such as a safe place to stay, mediation through their family and community and assistance...¹²

7.19 The significance of customary law together with the community based character of community law and justice committees could lead to views that these committees are instruments of customary law.

7.20 Ms Jackie Antoun, Northern Territory Department of Justice, clarified the role of community law and justice committees and their relationship with Australian and customary law:

The work of the justice committee should not be described or equated with the use of customary law, although where customary law is consistent with mainstream law it may be accommodated using the avenues which the justice [committees] have developed.¹³

7.21 Ms Antoun's clarification was supported by the Kurduju Committee:

It is important to note that the legal system here described, is not a straightforward revival of customary law although it certainly incorporates many elements of that law. Rather, it is an innovative adaptation of traditional decision making processes to the modern situation.¹⁴

7.22 In relation to payback the community law and justice committees have been instrumental in reducing the incidence of uncontrolled payback:

11 CAALAS, *Transcript*, 22 July 2004, p. 41.

12 TEWLS, *Transcript*, 21 July 2004, p. 23.

13 Jackie Antoun, *Correspondence*, 5 April 2005, p. 1

14 Kurduju Regional Crime Prevention Committee, *Exhibit No. 26*, p. 12.

The Kurduju Committee ... have long been concerned that proper and due processes applying to the application of customary law is sometimes being neglected and conducted improperly. In some cases powerful family groups can dominate other smaller groups or individuals, and there is an increasing number of incidents of quick fix and alcohol-fuelled punishment/payback occurring. The consequences of this are far-reaching and horrendous.¹⁵

- 7.23 It should be noted that community law and justice committees do not carry out payback.¹⁶

Circle sentencing

- 7.24 Circle sentencing began with the so-called Nunga Courts in South Australia. Variations on the idea have spread to Queensland as the Murri Court and Victoria where it has recognised in the *Magistrates Court (Koori Court) Act 2002 (Vic)*.

- 7.25 The Darwin based ATSIC Yilli Rreung Regional Council related the development of circle sentencing in the Northern Territory:

Our Regional Council played a role in bringing people from the Koori Courts for us to look at doing business differently so that they could start to get different outcomes...

the Family Court developed the first concept, in relation to its structure, of having seagrass matting and Indigenous artefacts, and Indigenous people actually came to the court.¹⁷

- 7.26 In 2002 circle sentencing was piloted in the Nowra region of New South Wales and has since been expanded to Dubbo, Brewarrina, Bourke and Walgett.¹⁸
- 7.27 Circle sentencing strategies are generally reserved for cases in which the defendant has pleaded guilty, although the Koori Court of Victoria has a category of eligibility where 'Koori defendants ... elect to go to the Koori Court.'¹⁹

15 Kurduju Regional Crime Prevention Committee, *Exhibit No. 27*, p. 22.

16 Kurduju Regional Crime Prevention Committee, *Exhibit No. 27*, p. 22.

17 ATSIC Yilli Rreung Regional Council, *Transcript*, 21 July 2004, p. 17.

18 SEALS, *Exhibit No. 23*. NSWLAC, *Transcript*, 30 March 2005, p. 62.

19 <http://www.magistratescourt.vic.gov.au/CA256CD30010D864/page/Specialist+Court+Jurisdictions-Koori+Court?OpenDocument&1=60-Specialist+Court+Jurisdictions~&2=20-Koori+Court~&3=~> . Accessed 30 May 2005.

- 7.28 The arrangements seek to make the criminal justice system more relevant to the Indigenous communities and individuals that are subject to them and they do this in a number of ways.
- 7.29 Some of the arrangements utilised in circle sentencing include:
- having the magistrate sit around a table with the prosecution, offender, victim and their representatives;
 - allowing community representatives, such as Elders, to address the impact of the crime upon the community and express a community view on the case.
 - using plain English rather than legal jargon in proceedings; and
 - allowing offenders and their representatives to explain why an event has occurred and victims and their representatives to explain the impact of this action with direct dialogue with one another.²⁰

Community Policing

- 7.30 The Western Australia Police Service referred to a 2002 review of policing practices in remote communities:

Our policing practices up until then had been predominantly reactive with, quite frankly, a very base policing service ... Part of the recommendations of the review suggested that we would be doing this better if we actually provided a policing service, bringing stability and a core service to a community, the premise of that being that the community cannot wake up in the morning with a vision of hope and of a tomorrow without feeling safe and secure.²¹

- 7.31 The review cited current community police practices in the remote communities of Western Australia namely the Warden Scheme and the Aboriginal Police Liaison Officer Scheme. Both schemes involve the nomination of community members to liaise between communities and the Police Service.
- 7.32 The Police Service referred to the Aboriginal Police Liaison Officer Scheme that:

20 For example, SEALS, *Exhibit No. 24*.

21 WA Police Service, *Transcript*, 31 March 2005, p. 25. See WA Police Service, *Exhibit No. 41*.

has been in existence for 30 years, and it has evolved into an enforcement capability, as opposed to a cultural advice capability. So we are going back to assess whether our service delivery is actually being met by doing that.²²

7.33 The review emphasised the importance of government support for communities, not only through funding and delegation of decision making, but in delivering coordinated and accessible services.

7.34 To this end, the Western Australian Government is rolling out Multi Agency Facilities in remote communities:

A multifunctional police facility ... will be staffed by police officers and Department for Community Development child protection workers. We are negotiating with the Department of Justice in relation to their delivery of programs and services and making available facilities for their use. There will be a court attached to each one of these facilities.²³

Reservations at Community Based Justice Initiatives

7.35 While strong support was expressed for continued and increasing involvement by Indigenous communities in the justice system, a number of qualifications and reservations were raised.

Resource Intensive Arrangements

7.36 NAALAS warned against viewing community based justice programs as providing an immediate panacea:

Such is the dynamic of Aboriginal arrest and incarceration here in the Territory that there have been lists of 30-plus people in bush courts, and they have tended to increase over the past 10 years and are not going to go away – whether or not community justice panels exist.²⁴

7.37 MRALS offered support for circle sentencing as a proven diversionary strategy but qualified this by referring to the resource intensive nature of these arrangements:

22 WA Police Service, *Transcript*, 31 March 2005, p. 26.

23 WA Police Service, *Transcript*, 31 March 2005, p. 26.

24 NAALAS, *Transcript* 21 July 2004, p. 11.

The Nowra model has been spoken about, and I know that the solicitors there are very supportive of it. But it is hugely resource intensive because suddenly ... instead of an appearance before a magistrate being fairly short and sharp, one charge of malicious damage resulting in a broken window may take up to three, four or five hours. Down the track that may get a much better result; I do not doubt that. I simply make the point that it is a good thing but it is necessary to remember it is very resource intensive.²⁵

- 7.38 The National Network of Indigenous Women's Legal Services accepted the more intensive resources demanded by circle sentencing but put this in context by emphasising the achievements of the strategy:

traditionally when Aboriginal men went to court the majority of time they spent before a magistrate rated between two to seven minutes and often they were found guilty and sentenced to no less than three to six months. Circle sentencing has turned that around in that the offenders now have to confront their wrongdoings in front of their peers and respected and well-regarded elders of their community. For the first time we are looking at substantial case time of two to three hours, but we are also witnessing a remarkable [60 percent] reduction in the types of crimes being committed by Aboriginal men...²⁶

- 7.39 NTLAC supported community based justice initiatives but warned:

it is sometimes an excuse for saying 'We'll leave you to it,' and not provide the resources to do that. If communities are going to come up with their own solutions it is very important that they are supported to do so...²⁷

Accurate Community Representation

- 7.40 NSWLAC stated of circle sentencing programs in western New South Wales:

25 MRALS, *Transcript*, 13 July 2004, pp. 48-9.

26 NNIWLS, *Transcript*, 13 July 2004, p. 33.

27 NTLAC, *Transcript*, 21 July 2004, p. 40.

The difficulty they will have is in finding someone who is accepted by the community as a representative of the community. Even in my relatively short experience in western New South Wales – 11 years or so – I have seen some of the older structures breaking down, where the elders perhaps are not as respected as they traditionally would have been.²⁸

- 7.41 NPY Women’s Council raised concerns of adequately ensuring the whole of the communities view was represented:

The magistrate might say, ‘I want to hear from the community.’ Who is the community? Someone’s family member might come in and say, ‘I’m a senior member of the community, and I just happen to be this fellow’s father,’ or uncle or whatever. It can work both ways. The [Women’s Council] have put as a whole that [people sitting in court contributing] is not a way they want to have these matters dealt with.²⁹

- 7.42 The Western Australia Police Service confirmed the difficulty of ensuring community views were communicated to authorities:

historically we have actually empowered the offenders and the perpetrators in respect of some of these. I have been aware of justices of the peace that we have nominated – respected elders, allegedly, within the community – that turn out to be the perpetrator but, because of their cultural bearing and position and their intimidation within that particular area, we were not to know that we were actually empowering them until it was too late.³⁰

- 7.43 CAAFLU cited an:

example where a woman might be a strong spokesperson at her community against domestic violence but if her son is involved, her position is, ‘That woman is just making trouble for him. He did not break a bone.’³¹

28 NSWLAC, *Transcript*, 30 March 2005, p. 62.

29 NPY Women’s Council, *Transcript*, 22 July 2004, p. 26.

30 WA Police Service, *Transcript*, 31 March 2005, p. 31.

31 CAAFLU, *Transcript*, 22 July 2004, p. 31.

Family Violence and Child Sexual Assault

7.44 The Committee encountered two views on whether community based justice initiatives should be extended to incidence of family violence and sexual assault.

7.45 The Chairperson of the ATSIC Yilli Rreung Regional Council expressed personal support for implementing pilot programs that would allow family violence matters to be dealt with in the circle sentencing arena.³²

7.46 ALRM also raised the possibility of tailoring elements of circle sentencing to allow it to be used in family violence cases:

You have had quite a lot of discussion of the suitability of alternative models in the area of family violence and the problems of bringing victim and perpetrator together in that sort of circle sentencing model. I think it is problematic, but that should not turn us away from looking at alternatives, particularly in light of the problems that the current adversarial system presents for Indigenous peoples.³³

7.47 On the other side, NAALAS raised an instance:

that someone is charged with assault with intent to cause bodily harm, and that that person has a great many prior convictions for previous violence. They would automatically be facing a significant jail term, and no police authority would want to see that simply dealt with in house. No community, to my mind, would want that.³⁴

7.48 The Western Australia Police Service stated:

The overwhelming cry that we are receiving from ... people is that they want the people involved in family violence and child abuse to be arrested.³⁵

7.49 NPY Women's Council agreed stating that:

Australian law should apply to perpetrators of assaults against women and sexual assault offenders...³⁶

32 ATSIC Yilli Rreung ATSIC Regional Council, *Transcript*, 21 July 2004, p. 21.

33 ALRM, *Transcript*, 19 August 2004, p. 41.

34 NAALAS, *Transcript*, 21 July 2004, p. 11.

35 WA Police Service, *Transcript*, 31 March 2005, p. 28.

36 NPY Women's Council, *Transcript*, 22 July 2004, p. 26.

- 7.50 NPY Women's Council raised concerns relating to putting pressure on victims of family violence to carry through a sentencing session:

After ringing the police and reporting the matter to the police, when the time comes to go to court the wife does not want to testify. She will drop the charges every time.³⁷

- 7.51 On inquiring about the appropriate handling of cases involving family violence or sexual assault at Yuendumu, the community was unanimous in expressing the view that such matters were referred to the police.

- 7.52 The women at Yuendumu expressed the strong view that both Indigenous and non-Indigenous legal systems should support one another.

Indigenous Legal Services and Community Justice

- 7.53 The legal aid, preventative and diversionary activities of ATSILSs and FVPLSs have resulted in varying levels of participation in community based justice initiatives.

- 7.54 At a basic legal aid level MRALS stated:

Even in circle sentencing, you still need a representative body such as ours because the accused still needs to have his or her legal counsel with them as they go through that two to three hour process.³⁸

- 7.55 However, ALRM referred to preventative and diversionary activities as following from the community based character of Indigenous specific providers:

There is an important point about the difference between a legal service and a legal aid service: the conventional understanding of legal aid is that you are responding with a bandaid to a perceived problem. The legal service goes to a community, works out what the community needs are and works with the community to solve its problem ... they are proactive, useful things...³⁹

- 7.56 CAAFLU echoed the importance of prevention and diversion by citing the inadequacy of a merely reactive provision of legal aid:
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37 NPY Women's Council, *Transcript*, 22 July 2004, p. 25.

38 MRALS, *Transcript*, 13 July 2004, p. 48.

39 ALRM, *Transcript*, 19 August 2004, p. 33.

it is like we are at the tail end of everything. We do restraining orders when the assault has happened, and also with compensation cases they have been assaulted. So we have focused on going into schools, at Papunya and Yuendumu, and also worked with women at Hermannsburg and given them legal education. We have shown videos about the legal systems – how a restraining order works, if anything should happen.⁴⁰

7.57 CAAFLU's preventative activities focused on community education:

We have gone into the high school at Tenant Creek ... We have also gone to the Anyinginyi Congress in Tenant creek ... and the Tenant Creek hospital ... we have worked closely with the Domestic Violence Counselling Service and had input into town camps up at Tenant Creek. We have also done it here in Alice Springs...

we have had meetings at Hermannsburg ... we are about to set up is a program where women go along and sit down there a few days a week and do painting ... So there is that incidental education where we are not letting everyone know that someone is a victim or that someone wants to know about domestic violence or compensation...

We have had two camps where we have taken ... young people from the town camps of Alice Springs. We took them out of town and had a three-day camp and workshop.⁴¹

7.58 TEWLS stated that:

We try to provide a forum for women in the communities to come together and to provide support for each other. It can be very isolating, and often there are no forums for the women to come together and talk about violence. The other thing is that family violence may not be talked about because it is a very sensitive issue. We try to provide a forum for women to come together to talk about what is happening and to try to come up with solutions and provide power for them in that way.⁴²

40 CAAFLU, *Transcript*, 22 July 2004, p. 36.

41 CAAFLU, *Transcript*, 22 July 2004, pp. 32-3 and 36.

42 TEWLS, *Transcript*, 21 July 2004, p. 27.

7.59 Some ATSILSs expressed frustration at the inadequate funding of preventative programs. SEALS stated:

we are the only service that I know of, certainly in New South Wales, probably in the whole country, that has a Young Offenders Program. That Young Offenders Program is actually funded by the ATSIC Regional Council out of the discretionary moneys. That came about from Royal Commission recommendations, and we continued it on because the need was there to look after youth. That equates to having one youth officer in each of the three offices looking after various geographical locations.⁴³

7.60 However, the Youth Offenders Program run by SEALS had been cut by the Regional Manager.⁴⁴

7.61 WALs also expressed frustration that:

the limited resources we get do not allow for any preventative or real education programs.⁴⁵

7.62 In the Northern Territory CAAFLU, which provides family violence prevention services at Yuendumu, related a close involvement in the origin of the community law and justice committee:

It started with Mrs Peggy Brown, who, while I was in court making submissions would tap me on the shoulder and say, 'He should be locked up,' or, 'Give him bail.' The magistrate noticed that she was regularly giving input, and she was then invited to address the court. From there it turned into a situation where input was being given by a group of people who understood the full history of the offenders and of the community. It is invaluable because bush courts like Yuendumu traditionally are extremely busy. It is a process whereby you do not address the court for a particular length of time about someone and you might not know the full story either. These law and justice committees are people living within the community and who are respected within that community, and they have important things to say ... It is certainly an important way for the courts and the people who visit the centre to get a fuller picture of that community and

43 SEALS, *Transcript*, 9 June 2004, p. 32.

44 SEALS, *Transcript*, 9 June 2004, p. 42.

45 WALs, *Transcript* 30 March 2005, p. 6.

its people's roles other than the role of the offender, which places them in the court.⁴⁶

7.63 However, community law and justice committees do not always work to the same parameters as legal service providers. CAALAS, which also provides services at Yuendumu, stated:

the [community law and justice] group will meet with stakeholders prior to court and discuss issues and then make recommendations or community feelings known both about types of matters and about individuals. Within that context, we have to appear for the individual to advocate for them in the court and then the magistrate as the sitting tribunal will determine what he takes from what we advocate and the information he has from the community justice group.⁴⁷

Committee Comment

7.64 Community based prevention and diversion responses empower communities by providing:

- a voice in the criminal justice proceedings which would otherwise be completely foreign to the communities and individuals who are subject to them; and
- an opportunity for communities to develop and implement strategies for dealing with problems themselves.

7.65 Preventative and diversionary programs are essential components of the provision of legal services to a sector of the Australian community that suffers such a disproportionate incarceration rate as the Indigenous population.

7.66 Evidence received by the Committee suggests that the community based character of ATSILSs and FVPLSs places them in a particularly strong position to contribute to the delivery preventative and diversionary programs to the communities they service.

7.67 Community based initiatives are, by their very nature, various rather than uniform. The success of one or a particular combination of

46 CAAFLU. *Transcript*, 22 July 2004, p. 31.

47 CAALAS, *Transcript*, 22 July 2004, p. 40.

initiatives will work very successfully in some communities but when the same arrangements are implemented elsewhere they could actually hinder the objective.

- 7.68 Evidence indicated that an essential factor in successfully implementing community based initiatives is a strong foundation of community consultation. The importance of community consultation and acting on the information gathered was nowhere more apparent than in the efforts of the governments of Western Australia and the Northern Territory to implement community based justice initiatives.
- 7.69 The Committee supports the circle sentencing, community law and justice committee and community policing initiatives that it encountered and encourages all stakeholders, government departments and agencies, legal service providers and indeed the communities themselves, to continue to explore the possibilities that lie in this direction.
- 7.70 While the Committee is aware of the importance of tailoring community justice initiatives to the local requirements and practices of each community, there is a very real need to ensure that the community decision making procedures, such as circles and community law and justice committees, properly reflect the views of the entire community.
- 7.71 Although it is a matter for state and territory governments, the Committee believes that the evidence it has received does not support the extension of circle sentencing procedures to matters involving family violence or sexual assault. However diversionary programs devised by and for the community must be retained and encouraged.



Appendix A – List of Submissions

- 1 Ms Jennifer Saunders
- 2 Western Aboriginal Legal Service
- 3 South Eastern Aboriginal Legal Services
- 4 The Law Society of South Australia
- 5 Freehills Law Firm
- 6 Ngalaya Aboriginal Corporation
- 7 Country Women's Association of NSW
- 8 Central Australian Women's Legal Service Inc
- 9 Warndu Watlhilli-Carri Ngura Aboriginal Family Violence
Legal Service Inc
- 10 Womens Legal Services - NSW
- 11 Aboriginal Legal Rights Movement Inc
- 12 Central Australian Aboriginal Legal Aid Service Inc
- 13 North Australian Aboriginal Legal Aid Service
- 14 South Australian Government
- 15 Victorian Aboriginal Legal Service Co-operative Ltd
- 16 The Law Society of New South Wales
- 17 Northern Territory Legal Aid Commission
- 18 Aboriginal and Torres Strait Islander Services
- 19 Access to Justice Committee of the Law Council of Australia
- 20 ATSIC Yilli Rreung Regional Council
- 21 South Eastern Aboriginal Legal Services
SUPPLEMENTARY (to Submission No. 3)

- 22 National Legal Aid
- 23 Women's Legal Service (S.A) Inc
- 24 Aboriginal Law and Justice Strategy and Kurduju Regional
Crime Prevention Committee
- 25 Legal Aid Commission of NSW
- 26 Top End Women's Legal Service
- 27 Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's
Council
- 28 Many Rivers Aboriginal Legal Service
- 29 Tasmanian Aboriginal Centre
- 30 Wirringa Baiya Aboriginal Women's Legal Centre
- 31 Northern Territory Legal Aid Commission
SUPPLEMENTARY (to Submission No. 17)
- 32 Pipers Barristers and Solicitors
- 33 Central Australian Women's Legal Service Inc
SUPPLEMENTARY (to Submission No. 8)
- 34 Women's Legal Service (S.A) Inc
SUPPLEMENTARY (to Submission No. 23)
- 35 National Association of Community Legal Centres
- 36 Attorney-General's Department
- 37 Legal Services Commission of South Australia
- 38 Northern Territory Government
- 39 Legal Aid Commission of NSW
SUPPLEMENTARY (to Submission No. 25)
- 40 The Law Society of South Australia
SUPPLEMENTARY (to Submission No. 4)
- 41 Western NSW Community Legal Centre Inc
- 42 Western NSW Community Legal Centre Inc
SUPPLEMENTARY (to Submission No. 41)
- 43 Newcastle Aboriginal Support Group
- 44 Attorney-General's Department
SUPPLEMENTARY (to Submission No. 36)



Appendix B – List of Exhibits

- 1 Aboriginal Legal Rights Movement Inc
ALRM's Supplementary submission to the Senate Legal Aid & Access to Justice Inquiry
- 2 Aboriginal Legal Rights Movement Inc
ALRM's Submission to the Senate inquiry into Legal Aid and Access to Justice
- 3 Aboriginal Legal Rights Movement Inc
ALRM's comments on the ATSI Presentation to the Queensland Aboriginal & Torres Strait Islander Legal Services on the 8th August 2003.
- 4 South Eastern Aboriginal Legal Services
SEALS Exposure Draft Purchasing Arrangements – Comments, dated 22 April 2004
- 5 The Law Society of South Australia
Law Society SA comments on Exposure Draft Purchasing Arrangements Legal Services contract for Indigenous Australians
- 6 Central Australian Aboriginal Legal Aid Service Inc
CAALAS Response to the Exposure Draft Purchasing Arrangements
- 7 Human Rights and Equal Opportunity Commission
Correspondence between the manager Law & Justice Branch of ATSI & the ATSI Commissioner, dated 7 May 2004
- 8 Human Rights and Equal Opportunity Commission
'Ensuring access to justice for Indigenous women';

excerpt from Chapter 5 of Social Justice Report 2003

- 9 Human Rights and Equal Opportunity Commission
National Indigenous Legal Advocacy Courses - Fact Sheets
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- 51 *Mr Mark Cuomo
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Appendix C – Witnesses Appearing at Public Hearings

Monday, 9 June 2004 - Canberra

Aboriginal and Torres Strait Islander Services

Mr John Boersig, Manager, Law and Justice Branch

Ms Kerrie Tim, Group Manager, Social and Physical Wellbeing

Mr Bernard Yates, Deputy Chief Executive Officer

Attorney-General's Department

Ms Sue Pidgeon, First Assistant Secretary, Family Pathways Branch

Ms Philippa Lynch, First Assistant Secretary

Australian National Audit Office

Mr Pat Farrelly, Contractor

Mr Steven Lack, Acting Group Director

Department of Immigration and Multicultural and Indigenous Affairs

Mr Peter Vaughan, Executive Coordinator, Office of Aboriginal and Torres Strait Islander Affairs

Ms Rosalind Webb, Principal Legal Officer, Legal and International Office of ATSI/A

Human Rights and Equal Opportunity Commission

Mr Darren Dick, Director, Aboriginal and Torres Strait Islander Social Justice Unit

Mr Christopher Holland, Policy Officer, Aboriginal and Torres Strait Islander Social Justice Unit

Mr Craig Lenehan, Acting Director, Legal Services

South Eastern Aboriginal Legal Services

Mr Gerry Moore, Chief Executive Officer

Mr Gary Pudney, Principal Solicitor

Tuesday 13 July 2004 – Sydney**Combined Community Legal Centres NSW**

Ms Polly Porteous, Director

Hawkesbury Nepean Community Legal Centre

Ms Tracy Leahy, Coordinator

Ms Shirley Palmer

Legal Aid Commission

Ms Louise Blazejowska, Executive Officer

Mr Bill Grant, Chief Executive Officer

Many Rivers Aboriginal Legal Service

Mr John McKenzie

National Association of Community Legal Centres

Mr Robin Inglis, Victorian State Representative

Ms Liz O'Brien, National Convenor

National Network of Indigenous Women's Legal Services

Miss Winsome Matthews

Miss Leanne Miller, Committee Member

Sydney Regional Aboriginal Corporation Legal Service

Mr Peter Bugden, Principal Solicitor

Mr Trevor Christian, Manager

Mr Ralph Scott, Finance Manager

Wirringa Baiya Aboriginal Women's Legal Centre

Ms Trish Frail-Gibbs, Coordinator

Womens Legal Services – NSW

Ms Catherine Carney, Principal Solicitor

Ms Annette Hennessy, Aboriginal Programs Officer

Aunty Gloria Matthews, Aboriginal Elder

Wednesday 21 July 2004 – Darwin**Aboriginal Justice Advocacy Committee**

Mr Christopher Howse, Executive Officer

ATSIC Yilli Rreung Regional Council

Mr Kimberley Hunter, Chairperson

Law Society Northern Territory

Ms Barbara Bradshaw, Chief Executive Officer

Northern Australian Aboriginal Legal Aid Service

Ms Sharon Payne, Director

Mr Alistair Morris, Administration Manager

Northern Territory Legal Aid Commission

Ms Jenny Hardy, Deputy Director

Top End Women's Legal Service

Ms Sabina Crawley, Solicitor

Ms Angela Dowling, Coordinator

Ms Joanna Martin, Principal Solicitor

Thursday 22 July – Alice Springs

Central Australian Aboriginal Family Legal Unit

Ms Phynea Clarke, Senior Client Service Officer

Mrs Lillian Davis, Client Service Officer

Ms Victoria Shiel, Solicitor

Central Australian Aboriginal Legal Aid Service Inc

Mr David Bamber, Principal Legal Officer

Mrs Patricia Miller, Director

Central Australian Women's Legal Service Inc

Ms Vanessa Lethlean, Solicitor/Coordinator

Ms Janet Taylor

Ngaanyatjarra Pitjanjatjara Yankunytjatjarra Women's Council

Ms Vicki Gillick, Coordinator

Mrs Margaret Smith, Executive Member

Thursday 19 August 2004 – Adelaide

Aboriginal Legal Rights Movement Inc

Mr Christopher Charles, General Counsel

Mr Neil Gillespie, Chief Executive Officer

Ms Joanna Richardson, Manager, Civil Family & Human Rights Section

Dr Irene Watson, Legal Officer

Australian Legal Assistance Forum

Mr Brian Withers, Member of Justice Access Committee

Law Society of South Australia

Mr Peter Haskett, Member of Council and Executive

Ms Julie Redman, Committee Member

Warndu Wathilli-Carri Ngura Aboriginal family Violence Legal Service Inc

Ms Susan Dodd, Coordinator

Mr Mark Forth, Senior Solicitor

Women's Legal Service (SA) Inc

Ms Cheryl Axleby, Sub Committee Representatives

Ms Zita Ngor

Ms Marilyn Wright

Wednesday 30 March 2005 – Dubbo**Western Aboriginal Legal Service**

Mr Richard Davies, Principal Solicitor

Mr Ted Fernando, Chairperson

Ms Lorraine Wright, General Manager

Western NSW Community Legal Centre Inc

Ms Roslyn Barker, Consultant

Mrs Mary Ann Hausia

Ms Kate Wandmaker, Principal Solicitor

Mr Eric Wilson, Chairperson

Thursday 31 March 2005 – Perth**Individuals**

Mr Mark Cuomo

Legal Aid Commission of WA

Mr Lex Payne, Practice Manager

Mr George Turnbull, Director

Mr Bevan Warner, General Manager

WA Department of Justice

Ms Wendy Murray, Director, Planning Policy and Review

WA Police Service

Inspector Anthony Galton-Fenzi, Officer in Charge Aboriginal Policy and Services