4 June 2004

LCA:1867

The Secretary
Joint Committee of Public Accounts and Audit
Parliament House
CANBERRA ACT 2600
Email: jcpa@aph.gov.au

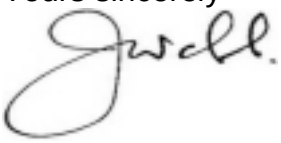
Dear Secretary

Indigenous Law and Justice Inquiry

The Law Council is pleased to provide a response to the Joint Committee's request for submissions to its Inquiry into Indigenous Law and Justice, prepared by its Access to Justice Committee.

Thank you for the extension of time provided in which to lodge this response.

Yours sincerely



Peter Webb
Secretary-General

SUBMISSION TO THE

JOINT COMMITTEE OF

PUBLIC ACCOUNTS AND AUDIT

BY THE ACCESS TO JUSTICE COMMITTEE

OF THE LAW COUNCIL OF AUSTRALIA

INDIGENOUS LAW AND JUSTICE INQUIRY

4 June 2004

Law Council
OF AUSTRALIA

SUBMISSION TO THE JOINT COMMITTEE

OF PUBLIC ACCOUNTS AND AUDIT

INDIGENOUS LAW AND JUSTICE INQUIRY

Introduction

The Law Council's Access to Justice Committee welcomes the opportunity to participate in the inquiry into legal aid services available to Indigenous Australians.

The views of the Access to Justice Committee are set out in this submission in response to the issues raised for discussion in the Indigenous Law and Order Justice Inquiry.

The Access to Justice Committee is a standing committee of the Law Council of Australia, which is the peak national representative body of the Australian legal profession.

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Executive Summary

- The Law Council's Access to Justice Committee has concerns about some of the potential effects of the *Exposure Draft Purchasing Arrangements: Legal Services Contract 2005-2007 for legal aid services for Indigenous Australians* ('the Exposure Draft') if carried into operation.

- The Law Council's Access to Justice Committee supports the provision of funds by the Commonwealth to ensure legal aid services for Indigenous Australians.

- The Law Council's Access to Justice Committee accepts that in the expenditure of such funds, value for money and accountability for the expenditure are essential ingredients. However, it is not convinced that the replacement of the current regime by the new arrangements contemplated in the Exposure Draft will result in a better delivery of legal aid services essential to Indigenous Australians.

- The Law Council's Access to Justice Committee has no difficulty in accepting that publicly-funded services must be accountable and transparent in the delivery of those services, and the funds used demonstrably in the most efficient way. Such an outcome will not necessarily be produced by putting all of those services to tender.

- The Law Council's Access to Justice Committee does not support the total dismantling of the current arrangements and the institution of any new scheme unless there are strong reasons for so doing. To the present time, those reasons are not apparent.

- The Law Council's Access to Justice Committee recognises that the tyranny of distance presents major problems in the area of legal representation. The establishment of an elaborate infrastructure which is capital city based and which provides access to elaborate information resources and telephone legal advice is not a proper substitute for ready access to legal representation. Particularly in criminal matters, there is a need for proper legal advice and representation at an early stage in proceedings.

- Indigenous communities need to have local access to properly qualified legal practitioners, adequately experienced in handling child welfare matters, family law matters, criminal matters and civil matters.

- The Law Council's Access to Justice Committee finds it difficult to see which suitable tenderers could be identified and how any successful tenderer could deliver a superior service to that already provided through the existing ATSILS network.

- Indigenous Australians should not have to meet tests and threshold requirements not imposed on non-Indigenous Australians who seek access to legal assistance through Legal Aid Commissions. The *material influence test* is objectionable as it requires the service, in effect, to pre-judge the outcome of a matter rather than identify a realistic risk of imprisonment or a reasonably arguable case.

- If the Legal Aid Commissions were to take over the work of the ATSILS, such a course would only be effective if the ATSILS were taken 'in-house' in the Legal Aid Commissions and worked as a wholly self-contained division of the Legal Aid Commission.

- The Law Council's Access to Justice Committee believes that there should be properly funded Indigenous women's legal services able to deal with family law and/or domestic violence issues.

- The Law Council's Access to Justice Committee believes that the major issues in retaining staff are the workload experienced, lack of support resources available and the difficult practising conditions encountered on a regular basis. In addition, salaries paid are often well below those available in Legal Aid Commissions or the private profession.

- If the current ATSILS do not tender or become absorbed by a new organisation that does tender, then it is difficult to envisage how their respective infrastructures, professional and administrative staff and resources could be utilised by any new organisation. The loss of the current infrastructure would be a devastating blow to the effective delivery of legal aid services to Indigenous Australians, particularly in rural and remote areas.

(a) The distribution of Aboriginal and Torres Strait Islander Legal Services resources among criminal, family and civil cases.

- **What needs to be done to ensure a fair distribution of Indigenous legal services?**

1.1 The fair distribution of Indigenous legal services will be achieved by ensuring that these services are accessible by Indigenous people where Indigenous people live and work. The Access to Justice Committee is concerned that the proposed tender in accordance with the Exposure Draft may not achieve the required level of accessibility, distribution and coverage.

1.2 The Exposure Draft proposes that there be one provider for each State or Territory. It appears that there may be circumstances where more than one provider would be contracted. It is difficult to envisage the type of organisation which would already have in place the infrastructure required to allow the legal services to be accessed easily by Indigenous people where they live and work.

1.3 The distribution of Indigenous legal services might be achieved on a fair basis by establishing a network of offices within major Indigenous community centres, or at least adjacent to those centres. The Access to Justice Committee does not consider that there can be a fair distribution of these services where the providers are based in the capital cities.

1.4 Legal services cannot be properly accessed by Indigenous people or provided to Indigenous people merely by telephone enquiry lines, internet, web-sites or email. A key component of a fair distribution of Indigenous legal services is that the majority of the services are on case representation in child welfare, family law and criminal matters, as well as civil matters. This cannot effectively be done by providers based in capital cities. The Access to Justice Committee would be most concerned that if providers were based in capital cities, the emphasis would be on the provision of legal advice, either by telephone, via the internet, email or other more conventional means, rather than on actual representation on casework files. Provision of legal information and provision of proper legal advice is an important feature of the distribution of legal services to Indigenous people, but Indigenous people cannot have proper access to justice unless in appropriate cases they can access legal representation on a case by case basis.

1.5 The Access to Justice Committee would be further concerned that if the providers were based in capital cities, many Indigenous people would be forced to seek assistance and/or representation through mainstream Legal Aid

Commissions, or from community legal centres, whose resources are already stretched to the limit.

1.6 The establishment of an elaborate infrastructure which is capital city based and which provides access to elaborate information resources and telephone legal advice is not a proper substitute for ready access to legal representation. Particularly in criminal matters, there is a need for proper legal advice and representation at an early stage in proceedings.

1.7 It must to be recognised that the tyranny of distance presents major problems in the area of legal representation. At paragraph 2.4.3 of the Exposure Draft, reference is made to the requirement on providers to pay *"special attention" "to the needs of clients from remote communities not serviced by mainstream legal aid providers"*. Appendix D to the Exposure Draft is a map which shows the major clusters of Indigenous population. The Access to Justice Committee is concerned that a successful tenderer might consider that some remote Indigenous communities are "*serviced by mainstream legal aid providers*" so that no proper arrangements are made for the distribution of legal resources and services to people in these remote communities.

1.8 Paragraph 2.4.3 of the Exposure Draft also refers to "*outreach arrangements using Field Officers (also known as Court Officers)"*. These arrangements are referred to as "*an effective method of reaching people in need, particularly in remote locations"*. This raises the concern that some resources would be applied by successful tenderers based in capital cities to establish a network of Field Officers or Court Officers and meet tender requirements simply by establishing such a network. However, there already exists an Aboriginal legal services network employing Field Officers who are most experienced. There would be a significant waste of resources if the existing network were dismantled and a new network had to be established in its stead. The supply of Field Officers is not a complete answer to access to justice for remote Indigenous people.

1.9 The Indigenous communities need to have local access to properly qualified legal practitioners, adequately experienced in handling child welfare matters, family law matters, criminal matters and civil matters.

1.10 Paragraph 2.4.3 of the Exposure Draft refers to *"reverse charge telephone access*". It is suggested that this *"may also be useful in some circumstances".* If access to legal advice by telephone becomes the more usual way of receiving such advice, then there would be a significant downturn in the level and quality of the distribution of Indigenous legal services. Such a situation would represent a less than fair distribution of Indigenous legal services. Legal services provided to Indigenous people in this way would be significantly inferior to that provided through existing Legal Aid Commissions to all Australians who qualify for assistance and would in any event, be a duplication of resources.

1.11 Paragraph 1.3 of the Exposure Draft states that it is the primary objective of the Legal Aid Services Program *"to improve the access of Indigenous Australians*

to high quality and culturally appropriate legal aid services, so that they can fully exercise their legal rights as Australian citizens". This cannot be done simply by the supply of Field or Court Officers and through reverse charge telephone arrangements. What is called for is the allocation and provision of appropriately trained and experienced lawyers on the ground within major centres of Indigenous population. Where smaller and more remote communities exist, then regular visits by appropriately qualified and experienced lawyers to those centres are required, so that advice can be given and instructions provided on a face to face basis.

1.12 Paragraph 1.4 of the Exposure Draft notes that the existing ATSILS arrangements provide legal aid services at some *"96 separate service sites across Australia"*. Whilst competitive tendering is good in theory, it is difficult to see which suitable tenderers could be identified and how any successful tenderer could deliver a superior service to that already provided through the existing ATSILS networks.

1.13 The Access to Justice Committee is concerned that a crisis situation might develop if the existing ATSIL network were disbanded. Such disbandment would result in a considerable loss of expensive infrastructure only to be followed by the need to re-establish that infrastructure. If no suitable tenderers can be identified, then there well may be a crisis of access to justice for Indigenous Australians. A dismantling of the ATSIL networks will not assist to provide a fair distribution of Indigenous legal services, but rather, would be positively harmful.

1.14 The Exposure Draft appears to assume that the coverage of Legal Aid Commissions in remote areas is appropriate and well established. This assumption does not meet close scrutiny and does not reflect reality. There are significant gaps in coverage in rural and remote areas in the existing Legal Aid Commission networks. Accordingly, to rely on those networks for a fair distribution of legal services to Indigenous Australians would result in ineffective coverage.

- **Do you feel that certain kinds of cases are not receiving the attention they deserve?**

2.1 Paragraph 2.6.2 of the Exposure Draft notes that, in circumstances where the relative claims of two applicants *"are judged to be equal on other grounds"*, a provider is *"required to give priority to an applicant resident in an area not serviced by a Legal Aid Commission"*.

2.2 The difficulty with this requirement is that the eligible person dependent on a Legal Aid Commission may find it particularly difficult to access legal representation through its networks because of the gaps which exist in the coverage by Legal Aid Commissions in rural and remote areas. A proper and fair distribution of Indigenous legal services in those circumstances would be dependent on there also being a fair and proper network of arrangements in place in rural and remote areas through Legal Aid Commissions.

Commissions have not received additional Commonwealth funding to make that goal a reality.

2.3 The priorities for assistance in criminal matters (see paragraph 3.8 of Appendix A to the Exposure Draft) require that it is only *"where the provider judges that the assistance would have a material influence on the outcome of the case"* that assistance is to be provided. Whilst there are other conditions to be met as well, this requirement provides the threshold for assistance in these matters. This means that representation in casework assistance for criminal matters for Indigenous Australians would be less available than representation in casework assistance provided to all Australians through Legal Aid Commissions of the various States and Territories. Indigenous Australians should not have to meet tests and threshold requirements not imposed on non-Indigenous Australians who seek access to legal assistance through Legal Aid Commissions.

2.4 A similar requirement is placed on applicants with civil law cases (see paragraph 3.11 of Appendix A to the Exposure Draft) seeking representation for casework assistance. The provider must judge that "*the assistance would have a material influence on the outcome of the case"*. Whilst there are further conditions which apply, the threshold requirement for a *material influence* must be met before representation can be provided. The *material influence test* is objectionable as it requires the service, in effect, to pre-judge the outcome of a matter rather than identify a realistic risk of imprisonment or a reasonably arguable case. That is not, and should never be, the role of a legal aid service provider.

2.5 It is well-recognised that representation through Legal Aid Commissions for civil law matters is significantly limited. On the face of it, it may be easier for Indigenous Australians to access legal representation for civil matters through Indigenous legal services. However, the *material influence test* should not be imposed. It would be fairer to apply a merit test such that an applicant would simply need to establish reasonable prospects of success to access representation and casework in civil law matters.

- **Do you feel that changes to funding priorities are needed?**

3.1 The priorities for assistance are set out in Chapter 3 of Appendix A to the Exposure Draft. Whilst appropriate, the priority given to child welfare matters, personal safety matters, and to assistance for persons at risk of being detained in custody does not go far enough. It is also appropriate that priority be given to a family member of a person who dies in custody where that person seeks

representation at an inquest into the death of the relative. The Access to Justice Committee supports these priorities for assistance.

3.2 However, in relation to representation, the Exposure Draft does not appear to recognise the need for priority where there is a risk of detention. In this regard, the Access to Justice Committee refers to paragraph 3.8 of the Exposure Draft, which imposes the *material influence test* already referred to in paragraph 2.4. By imposing the *material influence test* as a threshold issue, persons who might be at significant risk of detention if convicted but who cannot establish that legal representation would have a material influence on the outcome of the case, will be without legal representation under the priorities established in 3 *Priorities for Assistance* in Appendix A to the Exposure Draft.

3.3 The Access to Justice Committee believes that 3 *Priorities for Assistance* in Appendix A is internally inconsistent in that it does not deliver any priority to legal representation to an applicant at risk of being detained in custody unless the person is able to meet the *material influence test*.

3.4 The Access to Justice Committee notes that it is not apparent from paragraph 3.3 of Appendix A to the Exposure Draft how the stated priorities in relation to child welfare matters and personal safety matters are to be guaranteed to Indigenous Australians. This is particularly concerning where representation and casework assistance in family law matters also have the *material influence test* applied to it.

3.5 An additional requirement in relation to family law is that the applicant has participated in, or agreed to participate in, primary dispute resolution (PDR). There is an exception in the case where the process might be thought inappropriate or where it is unavailable, for example, in remote areas.

3.6 Representation for a family law matter involving child welfare issues will not be available unless the *material influence test* is met. This means that there will be a significant numbers of cases where no representation will be possible in family law matters, despite child welfare issues being involved.

3.7 The Access to Justice Committee believes that the Exposure Draft priorities require amendment and the *material influence test* should be removed.

3.8 Paragraph 4.4 of the Exposure Draft provides that test cases are not to be mounted. Paragraph 4.3 of the Exposure Draft also limits potential assistance in civil matters because of the requirement not to provide legal assistance where the matter issue falls *"primarily within the responsibility of another Government agency or service provider"*. There is a further requirement that the provider *"judges that the legal assistance sought by an applicant is more appropriately delivered by that other body and reasonably accessible to the applicant*".

3.9 The real issue is that other relevant bodies effectively include a wide range of Government agencies, including Government Tribunals such as the Social Security Appeals Tribunal, a Small Claims Court or a disability discrimination service. A further significant limit on services is set out in paragraph 4.2 of the Exposure Draft, which provides that providers must "*exercise control over the costs incurred on any individual case, having regard to the complexity of the case, the potential consequences for the client, and the relative needs of other applicants for assistance*". The Access to Justice Committee is concerned that this appears to give a legal service provider a licence for the widest discretion.

3.10 The Exposure Draft provides that services are to be delivered *"in accordance with the priorities defined in section 3 and the other provisions of …. policy directions" (paragraph 4.2)*. This further entrenches the limitations on the services to be provided.

3.11 A further concern to the Access to Justice Committee is the provision relating to scope of services in paragraph 4.1 of the Exposure Draft. Legal casework services including representation and assistance covering criminal, civil and family law matters appears only at paragraph 3. There would appear to be an issue of potential duplication if successful tenderers were to set up legal advice services and duty lawyer assistance where such programs were already in existence through Legal Aid Commissions.

3.12 A more responsible use of funding would be to ensure that the funds available for legal aid services for Indigenous Australians were channelled primarily to legal casework services, including representation in criminal, civil and family law matters, rather than to duplicate programs already in place through Legal Aid Commissions which may be widely accessed by all community members, regardless of race.

(b) The co-ordination of Aboriginal and Torres Strait Islander Legal Services with Legal Aid Commissions through measures such as memoranda of understanding.

4.1 The ATSILS and their clients have always had recourse to the Legal Aid Commissions when they need assistance. Assistance can be in the form of referrals of clients in respect of whom the ATSILS have a conflict or for the provision of specialist advocacy services – the NSW Public Defenders Office, for example.

4.2 There are a number of reasons why the Legal Aid Commissions – as presently structured – are inappropriate to take over the work of the ATSILS. Some of the more obvious difficulties are:

- Many Indigenous people may find it difficult to observe, or accept, the bureaucratic rules of the Legal Aid Commissions. For example, form filling and the production of the last three months' bank statements will not be done easily. ATSILS staff generally know who is in receipt of a benefit or pension and also know the sort of financial commitments facing those who are in employment. Such an informal assessment of the means of clients would never be acceptable to the Legal Aid Commissions or the State Government auditors.

- The merits tests applied by the Legal Aid Commissions are inappropriate for Indigenous clients. The usual test of the Legal Aid Commissions in considering a grant of legal aid in a criminal matter, for example, is whether the applicant is at risk of imprisonment. That question is considered in the light of the actual charges and to some extent the prior record of the accused. Such a test is inappropriate for Indigenous clients. Statistical information available shows Indigenous people are far more likely to be given a custodial sentence than a non-Indigenous person with the same charges and prior record.

- A very valuable part of the service provided by the ATSILS is that of the Field Officers. Field Officers perform many varied duties related to the criminal justice process. They attend at police stations as "interview friends" under what have become known as the "Anangu Rules" which require proper explanation of the processes in terms the Indigenous accused is likely to understand and consideration of other cultural requirements and sensitivities. While these matters may appear to be particularly relevant to non-urban Indigenous people, they apply to

Indigenous people in all situations. The Field Officers frequently collect people to bring them to court and will often ask courts to stand matters down while they try to find the accused. This system is far preferable to the issuing of warrants which can result in time spent unnecessarily in custody, with all the attendant dangers that presents.

- Cultural compatibility is served because Indigenous people feel more comfortable dealing with a service run by people trusted by the local community. Even if the solicitors are not Indigenous, usually the reception and office staff are. The Field Officers are Indigenous and usually well known in the local community.

4.3 The Access to Justice Committee believes that the Legal Aid Commissions are not presently able to provide the services outlined above, nor have they been funded to develop such a capacity. Commissions are run in a structured way with formal methods of operation. In a busy Legal Aid Commission office, it is easy to overlook clients who appear to be unwilling to help themselves or be co-operative with the solicitor. Indigenous clients have special needs to be addressed. They frequently fail to attend for appointments and often fail to give meaningful instructions to their lawyers. Indigenous clients need quite a different service to that provided by the mainstream legal aid providers.

4.4 There can be no doubt that the ATSILS provide an enormous amount of assistance to the courts in their flexibility and willingness to undertake responsibilities on behalf of their client that a lawyer would not usually do, for example, making sure the client answers his/her bail.

4.5 While some ATSILS do have difficulties in the quality of the services they provide, those difficulties are more often than not the result of inadequate funding. They often do not have enough solicitors to attend every court in their region every day. Sometimes inexperienced solicitors are forced to appear in serious criminal trials in the superior courts without counsel. Field Officers, among their many other diverse duties, frequently make bail applications and appear on mentions after seeking the leave of the court. Such a practice can, and does, lead to serious consequences for the defendant when admissions are inadvertently made or elicited under cross examination by a Field Officer with no legal training.

4.6 The Access to Justice Committee believes that if the Legal Aid Commissions were to take over the work of the ATSILS, such a course would only be effective if the ATSILS were taken “in-house” in the Legal Aid Commission and worked as a wholly self contained division of the Legal Aid Commission. Adjustments would have to be made to the usual procedures to take into

account the difficulties in having Indigenous people fill out forms or provide proof of income and assets. Further, Field Officers would have to continue to be employed with provision of a motor vehicle for their many unusual duties. The merits test applying to Indigenous clients would have to be appropriate for those clients and not simply the tests used for other clients of the Legal Aid Commissions. As employees of the Commissions, ATSILS staff would have to be entitled to the same terms and conditions as other Legal Aid Commission staff.

4.7 Because of their special needs, Legal Aid Commissions are not geared to handle Indigenous clients on a big scale. Indigenous clients tend to be very shy with people they do not know, particularly in "officialdom" and are unlikely to understand or believe that the solicitors are acting on the instructions and in the best interests of the client. Many Indigenous people are of the belief that strangers in a white bureaucracy are likely to be conspiring with other government agencies such as the police and that they will not understand them or their problems.

(c) The access for indigenous women to Indigenous-specific legal services.

5.1 The Access to Justice Committee believes that there should be properly funded Indigenous organizations able to provide women-specific legal services. Domestic violence is a major issue for Indigenous women and family law advice can also be important.

5.2 There are currently problems with both domestic violence and family law advice. Indigenous legal services focus on crime as this is often the first issue that comes to attention. As the person charged requires representation, it can be difficult for the Indigenous legal service to provide representation to the victim in a case involving domestic violence.

5.3 Indigenous legal services, in the Northern Territory at least, have tried to address this problem by creating separate branches within the organisation with "Chinese Walls' and other controls to ensure separateness and the perception of separateness. This can cause difficulties in a small Indigenous

community which can see both practitioners arrive in the same plane from the same organization.

5.4 The Access to Justice Committee believes that it would be better for there to be a separately incorporated and funded Indigenous women's legal service which deal with family law and/or domestic violence issues and which can brief out or refer matters to the Legal Aid Commission in appropriate issues. Such a development would allow other Indigenous legal services to concentrate on crime (including criminal matters concerning Indigenous women) and other civil matters.

5.5 Domestic violence and family law issues are major ones for Indigenous women. It is essential that these services are properly resourced, including costs associated with dealing with remote communities and have adequate coverage of these areas. This coverage is now a problem – for example, the Top End Women's Legal services only covers four remote communities. Similarly, in Central Australia, the Central Australian Aboriginal Family Legal Unit services the entire Central Australia from Tennant Creek to the South Australian border.

5.6 The Access to Justice Committee believes that better resourcing and training of staff would assist in better provision of services.

(d) The ability of Law and Justice Program components to recruit and retain expert staff.

6.1 The Access to Justice Committee believes that the major issues in retaining staff individually are the workload experienced, support resources available, and the difficult practising conditions encountered on a regular basis. In addition, salaries paid are often well below those available in Legal Aid Commissions or the private profession.

6.2 In criminal matters in the Northern Territory, many practitioners only see their clients on the morning of the case and in difficult circumstances, such as out of doors in the heat, and with a complete lack of privacy. Many clients have little understanding of the legal system and use English only as a third or fourth language, if at all. Because of lack of resources, support services back at the office are often minimal, with sometimes difficult conditions of work.

6.3 Many new staff are in need of cross-cultural training. Whilst keen to assist, they soon become “burned out” by the challenges involved and workload. For this reason, there can be a high turnover of skilled staff which in itself increases organizational costs.

6.4 One answer would be the provision of more resources and better cross cultural training for staff. This would assist in staff retention and see better service provision to indigenous persons.

6.5 In addition, there is a necessity to have an appropriate infrastructure for interpreters and field officers to firstly locate and then provide instructions from Indigenous clients to the organisations. Attracting competent indigenous Australians for these vital roles is particularly difficult. The appropriate plant and equipment, for example motor vehicles and satellite telephones, is also required and is costly.

6.6 An experienced Northern Territory practitioner has advised the Law Council that unless the same, or substantially the same, professional and administrative staff and infrastructure were in place, then it is unlikely indigenous Australians would support a "new" organisation. Due to Indigenous Australians dislike of bureaucratic rules and lack of trust in people they do not know, it would be extremely difficult to gain the confidence of Indigenous Australians without the same professional and administrative staff (particularly Field Officers) already known to them being in place. Those already known and trusted by the local community would have to be transferred to any new organisation. The issue is how this could be achieved. There is the real possibility of a "meltdown" of the current system.

6.7 If the current ATSILS do not tender or become absorbed by a new organisation that does tender, then it is difficult to envisage how their respective infrastructures, professional and administrative staff and resources could be utilised by any new organisation. For example, if the Northern Territory Legal Services Commission were to tender and be successful, which current professional and administrative staff of the current Northern Territory ATSILS would transfer? If the appropriate professional and/or administrative staff did not transfer, who would co-ordinate the Field Officers and interpreters if indeed those people were convinced to transfer also? In such a scenario (absorption) the new organisation would have to create "Chinese Walls" as regards the inevitable conflicts that would occur. These few issues would become even more difficult to overcome if the new organisation was from interstate or was a hybrid organisation.

6.8 The above comments relate only to the infrastructure in the main regional centres. The difficulties envisaged also apply to the network of contacts that Field Officers and interpreters have in the more remote communities. The tyranny of distance would wreak havoc.

(e) Tendering of Indigenous legal services.

- **What will be the impact of tendering on the quality and availability of legal aid, particularly in remote areas?**

7.1 The difficulty in assessing the impact of tendering is that suitable tenderers will not be identified. Further, the current salary levels of lawyers and other staff employed by Aboriginal Legal Service organisations are very low. To provide an equivalent service employing adequately paid private lawyers would be virtually impossible. It follows there is a significant risk that legal services to Indigenous Australians in rural and remote areas will completely disappear, or at least be significantly reduced.

7.2 Further, the experienced providers currently involved with Aboriginal communities may not be employed by the tenderers and will be lost from the system. The loss of the current infrastructure, if not maintained, such as Field Officers, appropriately maintained offices and appropriately qualified support staff, would be a devastating blow to the effective delivery of legal aid services to Indigenous Australians, particularly in rural and remote areas.

- **Are the policy directions accompanying the tender an improvement over the old ATSILS policy framework?**

8.1 The involvement of Indigenous people in the provision of legal services is important in building and maintaining the confidence of their clients.

8.2 If a successful tenderer employs non-Indigenous private practitioners and support staff, this may result in Indigenous people being unwilling to utilise the service.

8.3 Legal Aid Commissions are not positioned to provide alternate services. They do not have the rural and remote office structure that is presently available to the ATSILS. There is presently very considerable inadequacy in Commonwealth, State and Territory funding to enable that to occur. The services do not have Indigenous or appropriately experienced staff. They are not well set to provide extensive travel in outback areas to remote locations.

8.4 The priority categories set out in paragraph 2.6.2 of the Exposure Draft list criminal matters as a third priority, yet at present the greatest pressure on core services is in that area. If the implementation of the priorities resulted in a fall off of representation in that area, then there would be a serious risk of higher conviction rates, longer sentences and extra pressure on Legal Aid Commissions and Courts. Such results are to be avoided at all costs.

8.5 The Access to Justice Committee understands that past difficulties in management of some ATSILS have been largely resolved in the past five to ten years.

8.6 The Access to Justice Committee has no difficulty accepting that publicly funded services must be accountable and transparent in the delivery of those services and that the funding should be used in the most efficient way. But these requirements will not necessarily be produced by putting all of these services to tender. This is particularly the case when the organisations appear to deliver very extensive services on minimal funds.

8.7 The Access to Justice Committee does not support the total dismantling of the current arrangements and the institution of any new scheme unless there are strong reasons for doing so. Those reasons should be clearly articulated. To the present time, those reasons are not apparent. There has been insufficient consultation in the development of tender conditions to ensure that any new scheme will achieve any real tangible benefit.