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JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Reference: Indigenous Law and Justice inquiry

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JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Wednesday, 21 July 2004

Members: Mr Charles (*Chairman*), Ms Plibersek (*Vice Chair*), Senators Hogg, Humphries, Moore, Murray, Scullion and Watson and Mr Ciobo, Mr Cobb, Mr Georgiou, Ms Grierson, Mr Griffin, Ms Catherine King, Mr Peter King and Mr Somlyay

Senators and members in attendance: Senator Hogg and Mr Charles, Mr Cobb and Ms Plibersek

Terms of reference for the inquiry:

To inquire into and report on:

- (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.

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Committee met at 9.31 a.m.

CHAIRMAN—The Joint Committee of Public Accounts and Audit will now commence taking evidence as provided for by the Public Accounts and Audit Committee Act 1951 for its inquiry into Indigenous law and justice. I welcome everyone here this morning to the committee's third public hearing. Many different types of organisations provide legal services to Indigenous people. They include Aboriginal and Torres Strait Islander legal services, family violence prevention legal services, legal aid commissions and an array of community legal centres and private solicitors. Providers are funded through a range of sources. Some providers are mainstream, some are Indigenous specific and some specialise in particular areas of the law such as family or criminal law matters or in providing services to particular groups within Indigenous communities, such as victims, perpetrators or women. The committee is concerned to determine how providers can complement one another to ensure an adequate distribution of services to Indigenous people. We are particularly interested in determining how access to legal services by Indigenous women can be improved in domestic violence and family law matters.

This morning the committee will take evidence from representatives of a variety of organisations that provide legal advice and representation to Indigenous Australians in the Top End of the Northern Territory as well as the local ATSI regional council and the Law Society of the Northern Territory. The public hearing phase of the inquiry will continue tomorrow in Alice Springs.

Before beginning, I advise witnesses that the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the parliament itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded by Hansard and attract parliamentary privilege. Finally, I refer any members of the press who are present to a committee statement about the broadcasting of proceedings. In particular, I draw the media's attention to the need to fairly and accurately report the proceedings of the committee. Copies of the committee's statement are available from secretariat staff.

[9.34 a.m.]

HOWSE, Mr Christopher Damien, Executive Officer, Aboriginal Justice Advocacy Committee, North Australian Aboriginal Legal Aid Service

MORRIS, Mr Alistair Noel, Administration Manager, North Australian Aboriginal Legal Aid Service

PAYNE, Ms Sharon Maree, Director, North Australian Aboriginal Legal Aid Service

CHAIRMAN—Welcome. Thank you for coming. Do you have a very brief opening statement or may we proceed to ask you questions?

Ms Payne—I want to thank you for the opportunity to address the committee and welcome you to Darwin, as I am the first off the rank.

CHAIRMAN—Thank you very much. As I said in the opening statement, this is the third of our public hearings. As I also said, we seem to be talking to all kinds of different groups and getting different perspectives. We learned a lot in Sydney last week. Do you receive any funding from the Northern Territory government?

Mr Morris—No.

Ms Payne—That is an unequivocal no. Noel, as the admin manager, who looks after accounts, could answer that.

Mr Morris—We are totally funded by the Commonwealth.

CHAIRMAN—How large is your staff?

Mr Morris—We have about 30.

Ms Payne—That includes a librarian who works one day a week and the rest of us who work up to 60 hours a week.

CHAIRMAN—Because you are a legal aid service, how do you ensure that all people in the communities that you try and provide assistance for, which may be extremely remote—we understand that some may be almost impossible to access in the wet as well as being far away and expensive to get to—have the same access to services as people who live in Darwin or Katherine?

Ms Payne—We proceed to service all those communities where the bush courts actually sit. You will see from our submission that there are about six of them. At the moment, as you say, it is the dry. We send a team out the day before court. Our field officers will go and round up the people who have to appear in court the next day, which can be quite an onerous task, and then take instructions. So it is a sort of duty law situation—as in the Darwin court—where they go

and take instructions and then a duty lawyer attends to that. We then stay for the duration of the court sitting. After that we write to the clients to let them know what the outcomes were. Some matters have to be then arraigned to Darwin. Our lawyers then pick them up and look after them when they get to Darwin.

CHAIRMAN—You did say in your submission that you have made a conscious decision not to deal in domestic violence issues. Could you tell us about that?

Ms Payne—That is because the Commonwealth funds the Domestic Violence Legal Service in the Northern Territory. I think the Northern Territory Legal Aid Commission has the contract to provide that service. We also have had a situation in the past where we had a lot of conflict matters. 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. We are doing what we can in order to alleviate that.

We have also trained two officers—one in criminal law and one in civil law—to look after domestic violence matters. They work fairly closely with the Top End Women’s Legal Service, who service the remote communities, and the Domestic Violence Legal Service, part of the Legal Aid Commission. So while we do not provide an immediate service—or have not in the past—we still do provide advice and facilitate the ability of women to access those other services.

CHAIRMAN—I am going to quote from a witness we heard from in Sydney. Yuendumu is in the Northern Territory, is it not?

Ms Payne—Yes.

CHAIRMAN—Her responsibilities cover all of Australia. She said:

Community justice groups are not going to go away. They are on the increase in New South Wales. They are really taking over in the top end of Queensland and the Northern Territory. The big picture for community justice groups is that you have the community of Yuendumu looking now at different levels within that community justice. They call it their community high court. They are dealing with all the issues of safety, violence, law and lore too in that framework.

She was highly complimentary about that, yet I have not seen in any of the submissions from any of the people who are talking to us today anything about that model. Could you tell me if you have some idea why?

Ms Payne—Basically because we were not aware of it. Yuendumu is a community that is serviced by the Katherine Regional Aboriginal Legal Aid Service. The problem up here—and it is something that I have encountered since coming here; I moved here from Canberra recently—is that there has been a lack of considering alternatives to the traditional justice method. For instance, in New South Wales there are the circle sentencing courts and in Victoria there are the Koori courts. It is in those situations, it seems, that those sorts of endeavours are best developed in that the community, the circle, is able to get together and talk about those things. In order to

have a circle you have to have the community justice group. They have grown from there. It is also the case that some communities are more dysfunctional than others historically as a result of the sorts of resources. The Port Keats-Wadeye community is one that springs to mind. It is one that we have been supporting and very strongly advocating for in NAALAS—that we do have those sorts of groups around the communities that we service. As I said, we are now in talks with the Department of Justice, the Chief Magistrate and others in order to bring those sorts of forums to fruition in those communities.

CHAIRMAN—To follow up on that, the lady who made that statement, Ms Winsome Matthews, did go on to say that in many of the remote communities in the Top End they were learning to deal with their own problems better without outside interference. So the real need for lawyers—men—to fly in to try to help women when they are not particularly interested in men helping them and the need to fly in lawyers and a team to try to get to the bottom of something in a few minutes which may take several hours or days to deal with is diminishing. Do you have any comment about that?

Ms Payne—I certainly see the law as the last resort. We strongly advocate that there are different ways to mediate differences and most of them are preferable to the strong arm of the law, the black-letter law approach. A lot of our cases are for men who have breached DVOs through misunderstanding. The partners have reconciled, they have not let the court know that and the man is charged with a breach of the DVO because it has been a no-contact order.

We are now in the process of going out to communities. The Top End Women's Legal Service, TEWLS, have asked us to provide this service because women whom they speak to have asked them for someone to go out and explain to the men just what DVOs mean, just what the consequences are et cetera. We would certainly love to broaden our area in terms of more policy and project type work, but at the moment, because of the case load we have, it has been quite difficult. For instance, one of our field officers went out to the prison last Friday and spoke to the men out there. A lot of them were concerned because they were about to get out of jail and they have DVOs against them. He was able to explain to them clearly what the legal implications were, then tell them as a black man, 'It's just not proper, the way that you conduct yourselves, if you are going to be flogging your women or your kids.' That is the other thing: we do have community service officers who are able to speak to the community at that level.

Ms PLIBERSEK—You mentioned in your submission, as the chairman said, that by and large you have not taken up issues of domestic violence because there are other services to deal with them. Are the domestic violence legal services administered by the Northern Territory Legal Aid Commission and the Top End Women's Legal Service Indigenous-specific legal services?

Ms Payne—The Top End Women's Legal Service is, and the Legal Aid Commission has a woman who works specifically in this area and facilitates the thing.

Ms PLIBERSEK—One woman for the whole of the Territory?

Ms Payne—It is not an ideal situation, but we do assist. Our field officers go to the Legal Aid Commission with the women, if they are uncomfortable. They come back and sometimes we

explain what the orders mean and what they are getting into. It is a fairly good arrangement, I guess, the way that we work together.

Ms PLIBERSEK—You would say that part of the role of your field officers is to help Indigenous women access non-Indigenous-specific services?

Ms Payne—Absolutely.

Ms PLIBERSEK—Do you think that works well?

Ms Payne—It has so far. I do not know whether you can say that we are a success because a lot of women go to the law for domestic violence matters or that we are a success because women are not taking up that offer and are going to other forms of mediation and tribunals to resolve issues. As you say, a lot of the matters are resolved in the remote communities where you have intact, extended families—not so much in Darwin, though.

Ms PLIBERSEK—You mention in your submission that your service received \$2.25 million and dealt with over 3,000 matters in the 2003-04 financial year, compared with the Northern Territory Legal Aid Commission, which received over \$4 million for 1,100 matters. Was that partly because of the different types of matters? Are their matters more complex?

Ms Payne—There is some of that involved in it. But I think across the board, though, we do have some fairly complex matters. We have, for instance, an agreement or an arrangement with them where more complex matters are briefed to them. We have never briefed any to them; we try to deal with them all in-house. For instance, we have some pretty complex murder trials at the moment—stabblings and things like that. While we have that arrangement, the fact is we do have some pretty complex matters ourselves. I do not think that that could completely explain it, put it that way.

Ms PLIBERSEK—One of the things that has been raised by other Aboriginal legal services in our other hearings is the difference in pay for Aboriginal legal services employees, compared with legal aid commission employees. Do you have that problem here?

Ms Payne—Absolutely.

Mr Morris—We are paid less than our counterparts.

Ms PLIBERSEK—Do you know approximately by how much?

Mr Morris—Probably about 15 per cent.

Ms PLIBERSEK—We have heard amounts for some roles in some services where there is a disparity of up to 50 per cent.

Ms Payne—There may be when you get to the top levels, but our top pay for a senior is about \$70,000.

Ms PLIBERSEK—Do you find it hard to keep experienced staff?

Mr Morris—Very hard. We have a very high turnover.

Ms PLIBERSEK—Where do you lose them to?

Mr Morris—Down south.

Ms Payne—We seem to bleed them up here.

CHAIRMAN—Is that as a result of the pay or the weather?

Mr Morris—I think people come up from down south to get all the experience.

Ms PLIBERSEK—Straight out of uni?

Mr Morris—No. They have several years experience and they want to get the higher level experience that we can provide up here. Once they have done their one-year, two-year stint, they then go back down south.

Ms Payne—We have not lost anyone in the past six months.

Mr Morris—Touch wood.

CHAIRMAN—You are still providing incentives.

Senator HOGG—I will follow up on the pay issue. On page 3 of your submission that you have provided the committee, you talk about the problems that you have experienced as a result of the recent changes to the fringe benefits tax salary sacrifice arrangement. You also say, 'Note that our staff have not had a pay increase since 1998.' Is that right?

Mr Morris—Basically, yes. Our last enterprise bargaining agreement was in 1998 and that set the pay levels and that is where it has stayed.

Senator HOGG—That is primarily because of the funding that is available to you? You then go on to say that, whilst the workload has increased by 50 per cent, there has been a decrease in real terms in funding.

Mr Morris—Yes, our funding has remained static over the last five years. There has been no real increase at all and yet inflation, the cost of living, the workload—everything—has just increased.

Ms Payne—Our insurance and that sort of thing.

CHAIRMAN—Real increase or nominal increase?

Mr Morris—Real increase.

CHAIRMAN—There has been no real increase, but has there been nominal increase to keep up with inflation?

Mr Morris—There have been very minor increases—that is, more specific where we get a bit of extra funding to cope with one or two little areas, but our core funding has not increased.

Senator HOGG—That runs your general administration—it has not increased?

Mr Morris—Yes, it has not increased.

CHAIRMAN—In dollar terms, not in real dollar terms?

Mr Morris—In dollar terms.

Senator HOGG—Further on in your statement, at page 8, you talk about what can be done to keep legal service staff. You talk about your treatment by funding agencies, such as six-monthly releases, onerous reporting conditions, bureaucratic pettiness and inefficiency and no promise of further funding having an extremely deleterious effect. I think you have put your case very well. Could you just elaborate on the difficulties there in the red tape that ties up your service when it could otherwise be going to your clients and better used?

Ms Payne—An example of that would be our furniture. 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 et cetera. 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.

Senator HOGG—Do you think there is an over-scrutiny, if I can term it as such, of the work that you do and that that really hampers the capacity of your office to deliver the service that you should?

Ms Payne—Absolutely. For instance, when the agreement was being set up with the Legal Aid Commission so that they could have more of the conflicted matters at the time, the regional manager, I note, wrote to the then director and said, 'I hear you've been having discussions with the Legal Aid Commission; you realise that this could have an impact on the amount of funds we give you.' So we were getting this agreement because we were not getting enough funds, and

they were saying, 'If you're not going to do this work, we'll take some funds off you.' That level of scrutiny was quite unusual, I thought.

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 ATSIIC came through. We are subjected to a lot of those small things.

Senator HOGG—Who handles that? Mr Morris, do you handle that?

Mr Morris—It is a juggling—

Senator HOGG—It is a juggling of finances.

Mr Morris—Yes. It gets very difficult, especially at the end of a funding period, because money is getting a bit tight and you have to pick and choose how you are spending the money. You have to be very careful. If the funding is late—if the next release is late—it gets very close to the wire when paying wages.

Senator HOGG—Ideally there needs to be something far better than a six-monthly release of funds so that you can do proper budgeting and planning.

Mr Morris—Yes, you have to plan for the future. We cannot sign up another lease. Photocopiers and things like require a four-year lease. If we are only guaranteed funding for a six-month period we cannot sign up a four-year lease.

Ms Payne—We have not been able to take out a lease on our premises because we do not know from one six months to the next what is going to happen. Now the tender process has come in to muddy the waters even more.

Senator HOGG—I got your message on the tender process loud and clear—it stinks.

Ms PLIBERSEK—Why do you have this six-monthly release of funding? What is the rationale that has been given to you for the six-monthly release of funding? Has anyone ever explained it to you?

Mr Morris—While they are still working out the tendering process and contemplating how it is going to work they are going to let us go for only another six months.

Ms PLIBERSEK—This is the third six-month release, isn't it?

Mr Morris—Yes. It was first mooted about 18 months ago.

Ms Payne—We did not get a clear explanation. It was just a case of saying, ‘We’re not sure what’s going on so we’re just going to give you six-month releases.’

Senator HOGG—And, of course, as long as this tender process is in abeyance this is going to hang over your head, isn’t it?

Ms Payne—Yes.

Ms PLIBERSEK—Going back to the tender process, you mentioned that the domestic violence legal service was subjected to a tender process. The successful tenderer, who won the contract based on the claims of their very well written documents about the service they were expecting to provide, have been unable to deliver on their promises. In order to make the most profit from the venture, one junior solicitor was given the task of handling all matters. The result was a shambles with complaints about the inexperience of the solicitor, the lack of proper representation and the poor outcomes for clients—so much so that the government was forced to approach the Legal Aid Commission to take over the contract. Can you tell us a bit more about what happened there? That sounds like a disaster.

Ms Payne—It was a little bit before my time and I was certainly given that information but, yes, it is exactly as I said. The point I was making was that tender processes often do not give you the best person for the job—they give you the one that writes the best tender document. We had this experience there. It 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, although I believe the Legal Aid Commission will be able to tell you more about that.

CHAIRMAN—You do not mean to imply that that incident specifies a case against tendering, do you?

Ms Payne—In certain circumstances, yes. Like I say, we can place too much reliance on the fact that the tender process itself gives you the best person for the job. It is like when we are recruiting staff. It is not necessarily the person who has the best application or who can perform best at interviews who is going to be the best person for the job—it is merely one indicator. I would definitely say that, all things being equal, a tender process may give you the right answer, but there are some rather cynical views out there. We have already heard that people have tried to poach our staff because they wanted to put in for the tender process. They have said that they would cherry pick if they were successful, to ensure that their profits remained high. As I said, there are some fairly cynical views out there. Lawyers are not always the most honest or ethical people in the world, which will probably surprise you to hear my saying that.

Ms PLIBERSEK—Do you think it is possible to make a profit in the provision of services, particularly to remote Aboriginal communities? Do you think it is possible to make a profit doing it?

Ms Payne—Absolutely not. I think the figure around Australia is that the expenditure for legal services is about \$40 million. I would say at a guess that we provide about \$100 million worth of services for that amount. We have staff who work on weekends. If you pay those staff a decent pay there is no way in the world that anyone could make a profit.

Ms PLIBERSEK—Would you expect the additional services—that is, not simply the legal services but the other sorts of services that you were talking about, such as the officers going along with clients to access other services, such as those of the Legal Aid Commission, which was the example you gave, and interpreter services—to be picked up by someone who was trying to operate a business for profit in this area?

Ms Payne—I could not see how. A lot of this stuff is done out of hours as well. It takes a special sort of person, one who has empathy, to do this work. That is not to say that they could not work for a commercial legal firm. Given that we provide services so far and above what we are paid to provide, I cannot see how anyone would think we were not giving efficient, effective services. Put it that way.

Mr Howse—May I add something to those remarks. First of all, I agree with everything that has been said, but there are two clauses in the exposure draft tender document which put a dynamic into the whole process which would suggest that, in the first place, if a profit can be made it will be made at the expense of services and that, secondly, if a profit will be made it will be made at the expense of providing a culturally appropriate service. Paragraph 3.10 of the exposure draft document says that the successful tenderer has a discretion to refuse to appear for an individual who is charged with an offence of violence or who has a prior conviction for violence.

In the bush and in the town, in courts here, we find that about 10 per cent of cases are hybrids—traffic offences, alcohol related offences. The other 90 per cent fall into two categories: one is theft and related offences; the other is violence. Around half of the violence offences would involve people who had a prior conviction for violence. If you imagine a successful tenderer in the bush who is anxious to work to rule or perhaps not so anxious to deal with a large number of people appearing for court on that day, many of whom would have prior offences for violence, that discretion allows them to refuse to appear on that person's behalf and to refer them to counselling. The question that might immediately arise is how does a young man in, say, Port Keats—which is 600 kilometres from Darwin and the most populous community in the Northern Territory; 2,500 people live there—particularly in the wet season, get himself to Darwin to undergo counselling, and what is to happen to his rights? That is a major problem. It could impinge negatively on the rights of that person to the three things that one might normally expect, as an Australian, in a court: the presumption of innocence, the burden of proof on their side and trial by jury perhaps—because many of these assault offences can go to trial if need be. That is one problem.

The other problem is culturally appropriate service. There is an appendix in that exposure draft document that gives a long list of things that the successful tenderer must show to prove that there is a culturally appropriate service. There is no quota for Aboriginal field officers who go out to the bush to lend a hand. There is no quota for even a single Aboriginal staff member. That might mean, when you consider that there are four legal services here in the Territory which employ 80-plus Aboriginal people, that you might find that a successful tenderer will have not a single Aboriginal person even working as a secretary. You ask, 'Can you run legal services in the bush at a profit?' Experience might suggest that, if the successful tenderer comes from outside of the legal service framework, you are not going to get a single field officer—who has built up great familiarity with the Aboriginal legal service framework over 30 years with that community—employed to assist lawyers out in the bush.

Ms PLIBERSEK—Do you think that means Aboriginal people will not be interested in accessing the service or they will be intimidated to access—

Mr Howse—I think they will be very interested in accessing the service but they will be told they cannot on occasions where this discretion is invoked, which is the call of the lawyer. It will make it difficult to approach somebody, a field officer, whom they might readily know.

May I add one other thing. Mr Chair, you quoted some evidence given by Miss Matthews in Sydney, to the effect that community justice panels are not going to go away and that they would appear to be having a much wider role in the Territory. To my mind, that evidence is expressed way too broadly. Community justice panels and set-ups of that ilk do exist in the Territory, but their role is very small and informal at this stage. 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. What can be said with hope is that circle sentencing arrangements may bring much more active community involvement in the criminal justice process, but a magistrate in the bush deciding cases for a number of people who have been arrested and face charges and possible imprisonment is a fact.

CHAIRMAN—So are you maintaining that the criminal justice system is the only way to deal with these issues and that we should not let communities try to deal with them on their own?

Mr Howse—No, not so. But—

CHAIRMAN—I thought that was implicit from your statement.

Mr Howse—No, it is not, Mr Chairman. For example, take a young man who is charged with rape. A community justice panel cannot adequately assess a charge of that kind. That is an extreme example. In the criminal calendar there are many offences of less vigour than that particular one which also ought not be dealt with by a community justice panel. But may I add this—

CHAIRMAN—Our understanding, by the way, is that circle sentencing groups and community justice groups do not deal with violent sexual issues, full stop.

Mr Howse—Yes, right.

CHAIRMAN—It is explicitly stated—because nobody has figured out how to do it yet.

Mr Howse—In that case, I stand corrected. I should not have used the sexual offence example. Let us say murder, but let us also say assault with intent to cause grievous harm. Assault with that level of violence and seriousness is all too regular, and of course there are many offences of violence which would be not appropriate to be dealt with. Let us say, as a more typical example, 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.

Mr JOHN COBB—You have a lot of country to cover and not that many people to do it, I suppose, but do the courts take into account the fact that it might be the wet season?

Ms Payne—Not to my knowledge.

Mr JOHN COBB—So the date is the date and that is it.

Ms Payne—Yes.

Mr JOHN COBB—Mr Morris, you mentioned that a lot of your legal people are younger—people from the south who come up for experience. Do you have to put them through specific training to deal with a lot of Indigenous clients?

Mr Morris—Part of the requirement is that every employee must go through cross-cultural training.

Ms Payne—Yes. Certainly we find that most of our lawyers have a particular empathy with the client group. That is not always the case, but the turnover rate is not just a matter of bleeding people—

Mr JOHN COBB—My point is: do they have to do specific training that they would not otherwise do?

Ms Payne—They certainly do have to do a cross-cultural awareness course.

Mr JOHN COBB—And that takes time and money, or is it just a time thing?

Ms Payne—It is a time and money thing. We have to pay for it. There is a two-day course that takes them out of the work force.

Mr JOHN COBB—So in a lot of cases, it is a fair while before they can do a lot of work?

Ms Payne—No, they are thrown in straightaway. It is part of the recruitment requirement that they have knowledge and understanding of Aboriginal culture et cetera.

Mr JOHN COBB—I noticed that you said in your submission that you do double the amount of work that the legal aid service does, with 60 per cent of the funding that it has. I assume that, if you fully costed your expenses per head, then it would be quite expensive. I assume that you have to travel more than legal aid does per capita.

Ms Payne—Yes.

Mr JOHN COBB—Have you made this point? What do the powers that be say when you make these points about your funding requirements to them—the same points that you made in your submission?

Ms Payne—They largely ignore it, basically. We put it into our funding submission each year and they then write back to us and say, ‘This is the amount you are given. Please just do your submission according to this amount.’

Ms PLIBERSEK—Ms Payne, you mentioned that you are nearing completion in setting up Chinese Walls so that you have got criminal matters dealt with in one area and family and other matters dealt with in another area. Given that you have got this pressure on your resources and that the ATSILS keep telling us that criminal matters have to take precedence to stop people from going to jail, why are you bothering to do this?

Ms Payne—Because we saw there was a need for it. The Legal Aid Commission have done it with their arrangements, and we took advice from them. The other thing was that we wanted to be able to provide services to women. It has been something that has been lacking. We were not sure how to go about it until this idea came up and we approached other legal services and the Law Society, who gave us the advice. We now have confidentiality agreements that staff sign to say they will not talk about cases et cetera. It was something that we saw was lacking and, short of setting up another service, we wanted to be able to fill that gap to some degree.

Ms PLIBERSEK—How will you divide your funding within the service? Will you set aside part of your funding to deal with the family law and civil law cases or is it still first in, first served? How will you work out where the money goes?

Ms Payne—It is mainly first in, first served. When someone is guilty of a domestic violence offence, the first thing to happen is that they are charged by the police. They then come to the legal service for representation. As a result we cannot then help the partner in that situation. It is just the way the law is.

Ms PLIBERSEK—You will still only ever deal with one person in that couple at a time?

Ms Payne—Yes.

Ms PLIBERSEK—The Chinese Wall is so that you can deal with people whose partner may have, in the past, been a client of yours?

Ms Payne—Yes. We turn away up to 10 people a week—

Ms PLIBERSEK—For conflict issues?

Ms Payne—Yes, based simply on that. Now we do not have to, so we are picking up.

Ms PLIBERSEK—What sorts of services do you hope to provide once you have set up that Chinese Wall? What sorts of things will you do in the non-criminal area?

Ms Payne—Family law matters are a particular one, but we will certainly be able to better assist with domestic violence matters and where there have been breaches. Sometimes it is the woman who has done the breaching; she has approached the man and then she is charged as well. We will be able to represent her because it has been a different sort of the charge. Those are the sorts of things we would hope to pick up.

Ms PLIBERSEK—Do you have a view on whether, in an ideal world, you would be better off funding separate services for those family law, domestic violence and related issues? Or do you think a better model is the road you are going down where you have got one service, but division in the way you have set it up?

Ms Payne—I see the better model is this way, simply because of the way the community regards us. The Legal Aid Commission can confirm this. When Aboriginal people in the Northern Territory say legal aid, they do not mean the Legal Aid Commission; it is NAALAS or KRALAS or CAALAS or Miwatj. Historically, and the way that it is today, we know that a lot of the clients that we refer to the Legal Aid Commission just do not turn up unless we go with them. They do not bother. The way things stand, we really do have to keep it in house.

Ms PLIBERSEK—When you have got a couple, and you are representing one of them, the other one has to have somewhere to go. What happens in that situation?

Ms Payne—As I said, we already have some services available, and we facilitate them accessing those services. It may be that they need to employ more Aboriginal people or something like that as well.

Senator HOGG—You say in your statement:

The relationship between police and court officials also warrants investigation. The tactical moves that such an alliance produces thwarts the efforts of law reformers to keep Aboriginal people out of the criminal justice system.

Could you expand on that, because it seems to be an important area.

Ms Payne—I have heard anecdotally that our clients in the bush think there is a fairly cosy relationship between the prosecutor and the police—that prosecutors are more likely to believe what the police tell them. I think I was quoting Greta Bird.

Senator HOGG—No reference is made. That is why I am asking for some sort of expansion on that statement.

Ms Payne—I guess it is also a mindset. I have just come to the Northern Territory and have found attitudes that are not so obvious in the south of Australia. It is almost a cosy sort of situation—in some aspects more than others.

Senator HOGG—What is the impact of that on the work that you do?

Ms Payne—Our clients are more likely to be found guilty because the police side is more likely to be believed. My staff have said to me that the courts do not treat them seriously as lawyers. In some instances the courts seem to be rather arbitrary. They will move things to suit the prosecution timetable rather than the ability of our staff to service them properly.

CHAIRMAN—Thank you very much. If we have further questions we will ask you to answer them in writing rather than come before us again.

[10.19 a.m.]

HUNTER, Mr Kimberley, Chairperson, Yilli Rreung Regional Council, Aboriginal and Torres Strait Islander Commission

CHAIRMAN—Welcome.

Ms PLIBERSEK—Do you have any comments to make on the capacity in which you appear?

Mr Hunter—I come before the commission as the current chair of the Yilli Rreung Regional Council, which covers the Darwin region. I also come with some other baggage. I was previously the acting director of the North Australian Aboriginal Legal Aid Service earlier this year, prior to the current director. For the past five years, prior to taking up the chairperson's position on the Yilli Rreung council, I was a family consultant mediator with the Family Court of Australia, working in the area of mediation and family law. Prior to that, I had seven years or so of experience as a probation and parole officer out at Groote Eylandt here in the Northern Territory and also in Western Australia in the Kimberly region, just over the border. I am just letting it out of the bag that I have had a range of experience in legal and related areas when it comes to Indigenous people.

CHAIRMAN—Mr Hunter, you do not really look 85! Could you tell us what your region is—where it goes from and to?

Mr Hunter—The Yilli Rreung region takes in a mostly urban region of the Northern Territory—Darwin and the surrounding areas of Humpty Doo and Belyuen on the other side of the harbour. That is virtually the ATSIC region. Here in the Territory we have seven regions of ATSIC. As I said, I am the current chair of that particular region. I have been sitting in the chairperson's position for two months now, but I have been on the council for the last 18 months.

CHAIRMAN—So the area you represent is largely urban.

Mr Hunter—It is urban and remote. We have a mix here. The beauty of this particular region is that our region also encompasses a remote area, involving people living in areas outside the Darwin region that Yilli encompasses. We are talking about some 10,000 Indigenous people in the region that I serve. I want to say that one of the regional council's roles is developing policies. In relation to our position on the justice area, this involves things like acknowledging the fact that we are the peak elected Indigenous body here in Darwin and talking about the fact that Indigenous people are important stakeholders in the community. We develop policies in a range of areas: economic, legal and educational—the whole range of things. That is one of the things that have prompted us to come here today and to put a submission in.

CHAIRMAN—We thank you for your submission, which we have read. You were here at the beginning of the day. One of the things that it is difficult for us to come to grips with is that there are so many different organisations that are, if you will excuse the euphemism, players in this area of Aboriginal law and justice. One of the things this committee has been particularly

interested in over recent years is the relationships between different formal organisations and how they formalise those so that we do not waste resources. It is easy to duplicate management structures and bureaucracies and build empires, but the outcome that we are looking at might be a reasonably focused outcome and you have too many players wasting too many of the resources on paper and chairs and desks. What is your relationship with the Legal Aid Commission, the Aboriginal women's legal service and the Aboriginal legal aid service, the Northern Territory Legal Aid Commission and the Law Society—all those groups? How do you work with them?

Mr Hunter—From the regional council's point of view, we certainly have had virtually all those particular bodies, from time to time throughout our term as council, come before council and give information about the types of services they deliver in the region. In the term of this particular regional council there has been a shift, with the breakaway from ATSIC turning into ATSIC-ATSI with the separation of powers. Ultimately that resulted in decisions on funding for those particular organisations being put in the hands of the bureaucracy, and regional councils have been there to look at policy and develop policy for the region. We have had those particular organisations before us raising concerns about their ability to deliver services in the region. We have had especially the North Australian Aboriginal Legal Aid Service come before council on a couple of occasions giving presentations to council about the fact that their ability to maintain the level of service that they have been delivering for some time was starting to be drastically reduced. Insurance was one of the issues that really came before us. It got to the stage—and I must say that I did not actually catch all of the presentation of the previous speakers but I did catch the tail end of it—where they came before us and invited us, obviously as stakeholders, to participate in a community forum because of the fact that they were seriously considering their ability to deliver legal aid services such as the bush courts that they service, which fall under our jurisdiction as the regional council, in remote regions.

CHAIRMAN—Almost everything that we have read and that the people that have come before us have said indicates that the majority of legal aid funding is directed almost entirely to criminal law matters and that it is only in recent times that women's legal services, particularly Aboriginal women's legal services, have been developed and funded directly by the Commonwealth. Do you think that division of responsibility is a good one? Is that a good model? Should we replace it? Are there better models? Is there some other way we can go about providing assistance? Nobody questions that it is necessary and desirable, but is there a better way to go about providing assistance to the people that need it for a whole raft of legal issues, including civil cases?

Mr Hunter—Take my involvement with the North Australian Aboriginal Legal Aid Service. I personally had concerns about the fact that 98 per cent of the budget was being utilised for criminal matters. Being somebody who has worked in family law and mediation, I have been really concerned about the ability of legal services to actually deliver services in that particular area. I went to a national justice summit, lobbying the national Aboriginal justice bodies about really considering the shift and looking at the actual utilisation of the funds in the particular areas. The ship has been heading in that direction for some time and I thought it was a bit unfair that all of a sudden, at the stroke of a pen, those particular agencies had to start looking at doing business in this particular way when historically our legal services have been really concerned about the area of incarceration and the fact that here in the Northern Territory we sit at 82 per cent of the prison population, as it is right now. I guess a lot of emphasis has been placed on and a lot of resources have been put into delivering services in that area.

I must say, though, that in the last five years or so, in my time working in family law and mediation—I do circuits in the Katherine region and the whole of the Top End—that, when it comes to mediation services and family law, Aboriginal legal services have been up here in this neck of the woods trying to assist clients to get representation in family matters. There has been a shift in trying to accommodate those particular services but with the level of funding as it stands right now. I think the fact may have been mentioned earlier about the ability of NAALAS, for instance, to provide advice and representation on solely criminal matters in remote areas, so that the six bush courts that they service have been confined to criminal matters.

There have been moves afoot to look at delivering a circuit in the civil and family arena. I commended them on that. The issue is that, whilst you take away from Peter to pay Paul in terms of the funding dollar, it certainly impinges upon the level of service and considering ways to do business. I personally have a suggestion about looking at the issue in line with some of the recommendations that came out through the tender doc process. After five break-and-enters, maybe we should send those people up the road to get services from mainstream legal aid commissions. I certainly must say that I was a bit biased simply because I was looking at how we could shift dollars from the criminal matter and start to utilise moneys in the family law area.

CHAIRMAN—That is understandable. Do you have a view about circle sentencing?

Mr Hunter—I certainly do.

CHAIRMAN—Would you like to share it with us?

Mr Hunter—Being a former probation parole officer, I have spent time at Groote Eylandt, which had the highest rate per capita of offending in, I guess, the world. That is going back to the late nineties. Circle sentencing needs to be considered. I guess it takes some really strong gall for people to actually put themselves out on a limb. There is a lot of politics involved. 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 bottom line is that, with the current system as it stands, we could not do any worse than we have been doing, when we talk about 82 per cent of people in the prison system being Indigenous. As soon as that happened, the media jumped on it and put some pretty negative comments on the front page of the *NT News*, saying that blacks want a separate court. That was pretty divisive. I was disappointed in our justice department not coming out with their own spin on it, because they too were considering looking at the option. There is some merit in the way that circle sentencing operates. We implemented that process in family matters.

Some time ago we had a court, right next door actually—prior to it being knocked down—where 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. Prior to my employment in the Family Court arena, the court was very unaware of the type of traffic that was coming through the courts. In the Family Court in this area, some 33 per cent of issues that come through family law now are Indigenous matters, as opposed to the guesstimate that they used to run on about five per cent. We had that model. There are some good things to be learnt from circle sentencing and the systems that are currently operating elsewhere.

CHAIRMAN—I might put you on the spot a bit. You are an Aboriginal male. What would your view be if it were suggested to you that perhaps a cultural shift in terms of the position of women in Aboriginal society needs to be made?

Mr Hunter—I certainly do not feel under the pump at all when you put that question to me. I currently sit on the Chief Minister's Domestic Violence Advisory Council. I am one of only two Indigenous male members on that council and have been for the last two years. I certainly am concerned about the level of violence in our communities. I spoke at Reclaim the Night rallies. I was the first male in this country to speak at those rallies about the plight of our nieces and aunties—the women in our community.

CHAIRMAN—Good on you.

Mr Hunter—The status of women is certainly clear. Proactive measures need to be put in place to actually address those issues. I, for one, welcome any move in that direction.

CHAIRMAN—Thank you very much for your positive statements.

Ms PLIBERSEK—On those last few comments, I am very pleased to hear that you have obviously taken a very public role in raising these issues. I think it is very important. Aboriginal and non-Aboriginal women have been doing it on their own for a very long time, and it is great to hear of your involvement. You mentioned that you have seen that historically the vast proportion of funding has gone to criminal matters. You have been involved in trying to bring some of that funding back into family law in other areas, and you mentioned that you think you have seen a trend in the legal services to start to address that. Why do you think that is?

Mr Hunter—The issue is to do with conflict, and I guess it comes to all legal services. It is pretty obvious when families are presenting at the Aboriginal legal service and people cannot get representation for the simple fact that their ex-partner may have been through the system—

Ms PLIBERSEK—A few years ago.

Mr Hunter—Yes, some time ago. I certainly have been vocal in relation to that issue. But I think it is about access to services. That needs to be made really clear. Prior to 1996, for instance, in the family area, I can really emphasise the fact that the Family Court made efforts and moves to go out to remote communities and tell people about what was available in the family law arena. People need to become aware of services that are available. Ultimately I am talking about giving people the opportunity. There are a lot of dormant family law matters all around the Territory. The more I speak out and talk to different community organisations and groups in remote areas, the more people say things like, 'Yes, I need to talk to you about my sister's kid,' and we find a lot of work that needs to be done and stuff that has not been addressed for some time.

When people want to make contact arrangements, for instance, they may have to go and see a lawyer, but we have been giving people the opportunity to try and sort things out through mediation. We have obviously been able to then get in touch with the legal service. There have been many opportunities to present with the client in the mediation area and go hand in hand with them to the legal service in their region and demand a service on warrant. The bottom line

is that the charter of Aboriginal legal services is their charter. When services are put in their faces, they start to try and shift resources in that area. That has been the trend for some time now.

At the same time there has not so much been outward pressure as pressure from people within the organisations who see the need in our communities when they go out to address criminal courts in remote areas. There is a whole sea of civil and family related matters, be they victim compensation, consumer issues or a whole range of things, that need to be picked up, and they have been slowly working in that area. Obviously that fact has come to light more recently. The tendering out issue has really pointed that out. I think it is unfair for services who have been predominantly operating in a certain mindset for so long, where the shift has been moving slowly. I was previously a board member of the Aboriginal legal service, and we had some good arguments about ways to move money around the organisation. But it has got to the stage where our services have been cut to the bone and their ability to even try and do some of those things has been very limited.

Ms PLIBERSEK—You are talking about a changing understanding by people within Aboriginal legal services that resources need to go to family law, domestic violence and those other areas. Do you think that there has been an attitudinal change more generally in the community in the Northern Territory which means that domestic violence, sexual assault and those types of issues are taken more seriously as criminal matters rather than things just to be dealt with within the family or within the community?

Mr Hunter—I think communities have in the past been able to have their own mechanisms to resolve disputes, especially in areas such as family breakdown and disputes amongst family groups. At the same time, it is fair to say that, historically, people stuck to relationships within their own groups, but I guess in this day and age people are marrying people outside their regions, their own skin groups and their own cultural systems. People are having relationships with non-Indigenous people and Indigenous people from other states. I think a lot of our Indigenous matters that have been in the family arena have been the result of non-Indigenous partners who have come before the court. They are quite happy to live in, say, a remote community whilst they are living in the relationship, but I have found that when the relationship has broken down a high percentage of non-Indigenous people say, ‘I do not want my child growing up in this filthy, stinking, little remote community.’ But five minutes earlier they were quite happy to be there. Inevitably, they get legal advice and file an application in a court, and a lot of our women, mostly, have found themselves having to go into litigation disputes over their children. That is one of the things I have found.

Yes, there has been attitudinal change, and, like all communities, people have become aware that domestic violence is a crime and nobody deserves to be treated in that way. At the same time, there needs to be a whole sea of other services that warrant some of our women coming and reporting, because the reality is that there need to be support mechanisms for people to use. It was probably mentioned in your trip around the country that the reality is that there are a lot of internal and external pressures on family groups, coming from everybody, about reporting it or trying to deal with it in-house.

Ms PLIBERSEK—And not disclosing—

Mr Hunter—Yes, and not disclosing. Obviously, a lot of the children’s matters have come to the attention of the authorities now, and we all can be heartened by that.

Ms PLIBERSEK—Do you think there is still pressure not to disclose in issues of child abuse?

Mr Hunter—Personally, I have not had a lot of experience in that area, but I am suspicious of that.

Ms PLIBERSEK—Finally, this is only the third day of evidence we have taken, so we are still feeling our way a little, but we have heard two conflicting views on the better way of handling the fact that traditionally ATSILS are not dealing with a lot of non-criminal law matters. Some people are saying that the better way to deal with issues such as family law and domestic violence is to set up separate services aimed at women. The alternative is to make the Aboriginal and Torres Strait Islander legal services take more responsibility and perhaps quarantine funding within their services or, as we heard this morning, set up of a sort of Chinese wall so at least this issue of conflict that has arisen in the past is not an issue. Would it be better to have parallel services dealing with civil, family law and criminal matters and separate them into different services or to have one service with a good reputation to deal with all of these matters and, I suppose, flick off where you have issues of dealing with a couple at the one time and send one of the couple off to a non-Indigenous specific service?

Mr Hunter—In the opening address I mentioned duplication of services—one for blonde-haired people and one for people with different coloured eyes. But the reality is we are talking about culturally appropriate services, and it is clear that the funding allocation methodology applied to Aboriginal legal services nationally certainly failed to take into consideration a whole range of issues. As a result, the ability of Aboriginal legal services to actually deliver services right across the board has always been limited—for instance, education for young people and people in the community about the law and law reform, policy officers working within legal services and considering issues like mandatory sentencing. I think it is very clear that legal services has the ability and the professional staff—and I am talking, as I said earlier, from the perspective of having been an acting director at the North Australian Aboriginal Legal Service. The legal service definitely does have the ability to provide a whole gamut of services. You heard earlier about the Chinese wall issue. Aboriginal legal services are able to do that, provided they have the support and the resources to do those sorts of things.

What is happening now with the Aboriginal legal service is that it is looking at how it can actually deliver that particular service to a whole range of clients, be they husbands and wives having a dispute or whoever. We are talking about Indigenous matters, especially in family law, and we are talking about language barriers—making sure that what people say is understood in the right context—and ensuring that culturally expert evidence is attached to the agency. For instance, when we are talking about our traditional adoption and child-rearing practices—all those sorts of things—the assistance of Indigenous views and ideas are needed to help deliver a service.

This need is clear from my dealings with non-Indigenous agencies when we have sent Indigenous clients to them. On occasions we have had to basically go hand-in-hand with the client to make sure they go there. The reality is that we are talking about a customised service to

try to encourage and enthuse people to actually follow through and exercise their legal rights. People do need encouragement. If I make an appointment for you and I send you a letter and you do not turn up, there is a bit more to it than saying, 'They didn't bother.' The reality is that there is a whole sea of issues and that some of us are a little bit more mindful of the circumstances of our mob.

One of the reasons for the difference between an Aboriginal legal service and, say, Australian legal aid agencies is the field officers or client liaison officers. 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.'

There are issues about the community that are of concern. When we are talking about getting somebody out on bail there are implications for the community. The right people in the community need to be consulted—not the non-Indigenous town clerk. We are talking about the family group, the clan and people within the community—the people who are rightly placed to speak for that particular family member. Yes, I think that organisations are able to deliver services. Yes, there may be some encouragement and enthusiasm required. Obviously, more than anything else, it is resources.

Mr JOHN COBB—I want to go back to something the chairman brought up, Mr Hunter—and I must say that I thought your submission was very clear and succinct. On the issue of circle sentencing, did I understand you correctly to say—and I think we have said it in the past—that it is not appropriate that anything to do with violence, certainly violence against women and abuse of children, be dealt with by circle sentencing?

Mr Hunter—I think it is clear that if we are going to sell circle sentencing to the community we need to consider, I guess, the backlash. We are talking about nursing the political backlash that governments go out on a limb for. Personally I think that domestic violence matters should be dealt with in the circle sentencing arena.

Mr JOHN COBB—They should?

Mr Hunter—Yes, they should be. But at the same time, when we move into that area we are talking about uncharted waters. I think that, like any pilot, you need to get the runs on the board. You need to be able to look at running a pilot based on some good outcomes and eventually, over time, to take on board those issues.

Mr JOHN COBB—Can I rephrase it then to say that it is not appropriate at this time?

Mr Hunter—It is not appropriate at this time. But I certainly say that there are obviously models in other countries that have had some good results in the violence arena.

Mr JOHN COBB—To get to the nitty-gritty of it, one of the things we have seen, which I think was alluded to by you and by the chairman, is that the status of women has not always

been that great in terms of Aboriginal culture—certainly not in this day and age—and that definitely applies with child abuse as well. Until that is recognised as something that has to be dealt with publicly as well as within a group, I do not see how circle sentencing can work in that instance.

Mr Hunter—My council comprises two males and 11 females.

Mr JOHN COBB—There are nine in my family and I am the only male; I know what it is like.

Mr Hunter—I raise that in the sense that we probably stand alone in ATSIC regional councils in relation to the gender balance. In relation to the submission, yes, some of our female participants on the council were concerned about lenient aspects, things not being addressed, people getting off scot-free and all those sorts of, I guess, off-the-cuff comments. Those are reasonable concerns. But I think the other side of circle sentencing is about recidivism.

Mr JOHN COBB—Sorry?

Mr Hunter—It is about people coming back to the court system, reoffending. What is important, as I said earlier, is the pilot concept. We are currently having a lot of dialogue with the NT government in relation to this issue. We make up roughly 30 per cent of the population in this state. When it comes to this concept of circle sentencing and Koori courts and Murri courts—the terminologies—they have actually gone out on a limb to do what they have done. I think there are some things that we need to build on.

Mr JOHN COBB—You mentioned that there is a preponderance of women on the council, which is fine; but I think it is the women as well as the men that have to look upon themselves differently. It is not just a case of women making a judgment.

Mr Hunter—When it comes to this issue, in the past that has been women's business. But the reality is that, of the people administering the violence, certainly there is a majority of males and anything to address those issues needs to have male involvement and men talking about these issues. Around the country there are Indigenous men's groups. Here in Darwin some 150 men are members of a men's group that is looking at a whole range of issues. Some 2½ years ago we ran a forum about Indigenous men and domestic violence, which men participated in. I think there is a long way to go. I seriously say that men need to be brought to the table to talk about these issues consistently.

Mr JOHN COBB—Thank you.

CHAIRMAN—Mr Hunter, thank you very much for your submission and for your participation. We value your comments. If we have any further questions, you won't mind if we put them in writing, will you?

Mr Hunter—Not a problem. Thank you.

Proceedings suspended from 10.54 a.m. to 11.05 a.m.

CRAWLEY, Ms Sabina Mary, Solicitor, Top End Women's Legal Service Inc.

DOWLING, Ms Angela, Coordinator, Top End Women's Legal Service Inc.

MARTIN, Ms Joanna Leigh, Principal Solicitor, Top End Women's Legal Service Inc.

CHAIRMAN—I welcome the representatives of the Top End Women's Legal Service. Thank you for coming to talk to us, and thank you for your submission. Do you have a brief opening statement, or may we start to ask you our penetrating questions?

Ms Martin—We do have a brief opening statement.

CHAIRMAN—Could you make it extremely brief—

Ms Dowling—Yes, I will.

CHAIRMAN—because we think our questions are better than your statements, generally—only because of what we learn from you after we ask the questions.

Ms Dowling—If you will excuse me, I am going to read from a paper. I was a little bit too nervous to start by thinking off the top of my head. I am hoping that, after this, I will be right to answer questions. The Top End Women's Legal Service—we refer to it as TEWLS—would like to thank the committee for the opportunity to participate in this inquiry by addressing you today. We also hope our submission has provided assistance and an insight into issues facing, in particular, Indigenous women living in remote communities in the Top End. TEWLS would like to extend an invitation to any members of the committee to accompany TEWLS workers when they visit any remote community, if you would like a better insight into what the service does.

We would like to reiterate that our submission is based on certain beliefs that TEWLS holds. At TEWLS we believe that legal services cannot be delivered by traditional means in remote communities. Furthermore, every community is different. Therefore, any services need to be delivered in a way that is not only culturally appropriate but also appropriate within these different communities. From what we understand, the model used by TEWLS is unique in Australia. As outlined in our submission, TEWLS employs women who are from and who live within these remote communities that we visit. We call them community legal workers. Our community legal workers train us—the workers in Darwin—in culturally appropriate behaviour and liaise with their wider community to inform us of which women in the communities require our services. Such relationship building is a slow and crucial process—without it, legal service providers will never be entrusted with access to personal business, such as family violence issues in traditional Top End communities.

At TEWLS we also believe that legal services must be delivered within remote communities in a holistic way. By holistic, we mean that legal services need to take into account the community and the community solutions to the problems. This is because community members respect and fear their own traditional law. Traditional laws are very important to Indigenous people in remote communities. For example, rather than a restraining order, banishment to an

outstation may be a deterrent. It is the experience of TEWLS that 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 with moving into Darwin if they wish to do so. The majority of women, however, wish to stay in the community and for the perpetrator's behaviour to change. For such solutions to be successful, family violence needs to be brought out into the open as a community issue and worked through by the community using Indigenous workers from that community in a community legal education process. Our provision of legal services cannot be separated from such an approach. Issues such as these must be kept in mind when you are considering the provision of legal services in remote Indigenous communities.

Chairman, you asked earlier today about the relationship between organisations and a possible overlap of services. I would like to reassure the committee that TEWLS is the only organisation that provides legal services and support for women who live in the Top End of the Northern Territory. Thank you.

CHAIRMAN—Thank you for that. What percentage of your work is with Aboriginals?

Ms Crawley—An estimate would be 80 to 85 per cent.

Ms Martin—That is based on the fact that our service also provides free legal advice for women in and around Darwin. That has a separate funding stream to our Family Violence Prevention Legal Services unit, which is outlined in our submission. So 75 per cent of our funding is purely for the Family Violence Prevention Legal Services unit, which only provides services to Indigenous women in remote communities. We also provide free legal services in Darwin. Our clients come from all different backgrounds—non-English-speaking backgrounds, Indigenous women and anyone else who is female or identifies as female.

CHAIRMAN—Where is Yuendumu physically?

Ms Dowling—Yuendumu is not one of the communities we cover. Yuendumu is out of Katherine.

CHAIRMAN—Is it out of Katherine 2,000 kilometres? West? North? East? South?

Ms Dowling—I have never actually been to Yuendumu.

Ms Crawley—Yuendumu is way outside. As I understand, it is in Central Australia. Our services are for three communities in the Top End, so we do not have any clients in Yuendumu.

CHAIRMAN—Were you here at the beginning of today's hearings?

Ms Crawley—I was here halfway through NAALAS's evidence.

CHAIRMAN—In the beginning I quoted Miss Winsome Matthews, who would be known to you, I suspect. She said:

Community justice groups are not going to go away. They are on the increase in New South Wales. They are really taking over in the top end of Queensland and the Northern Territory.

Would you agree with that?

Ms Martin—We do not come across any community justice groups working in the communities we go to.

Ms Crawley—Not at all. As I understand it, they are only operational in three areas in Central Australia, one of which is Yuendumu. There are none operating in the Top End that I know of.

CHAIRMAN—In your submission you allege that two workers from two different Aboriginal legal aid services expressed a whole series of opinions. Evidently one of the representatives believed that it was culturally appropriate for men to hit women and that there are just as many male victims of family violence as there are females, and the other witness said the opposite. I want to get this on the public record because I think it is a pretty powerful statement. You are not giving us names or places—that would be totally inappropriate—so thank you for that. Would someone like to talk to that issue—

Ms Martin—I will talk to that issue.

CHAIRMAN—and explain why you put it your submission?

Ms Martin—I put that in the submission. That was my experience. I was at a seminar—I will not say where—where those views were expressed. At the seminar I had a very heated argument with two men who were expressing those views. There were other men agreeing with them. At the end of that seminar a person who did not agree with those views, who was an Indigenous man, told me that I should not ‘arc up’. That is all I can say on it. Those views were clearly expressed to me. I argued them ferociously to absolutely no avail. I was also told, ‘You shouldn’t worry about that because someone expresses a view like that at every one of these seminars.’

CHAIRMAN—Have you ever spoken with an Aboriginal woman who believes that it is appropriate behaviour for a man to hit his wife?

Ms Dowling—I am an Aboriginal woman. I am not only from the Darwin area. My mother is from Central Australia. I was at the seminar but I was not in that particular workshop. If I had been I believe that maybe some of the views would not have been expressed so verbally.

CHAIRMAN—But have you ever heard an Aboriginal woman state such a view?

Ms Dowling—No.

CHAIRMAN—Have you ever heard an Aboriginal woman state that when a man and a woman are arguing and violence is involved it is inappropriate for there to be police or legal intervention?

Ms Martin—I cannot speak on behalf of all Indigenous women, but I would say that there are Indigenous women who probably do hold that view; we could spend hours discussing why.

CHAIRMAN—Would you know many Aboriginal women who would agree with this statement:

Men in many remote communities are disempowered because women's groups have (finally) gained some power and say in how funds may be distributed within those communities.

Ms Martin—No.

CHAIRMAN—Have you ever heard any female say:

There are as many male victims of family violence as there are female victims.

Ms Martin—No.

CHAIRMAN—Or have you heard the following statement:

Family violence is the fault of women and it is women taking out restraining orders which causes family violence.

Ms Martin—No.

CHAIRMAN—I am glad that we have cleared all that up. I might be encroaching on a sensitive area, but to what extent do you think that a change in culture, particularly in remote communities but perhaps also in places like Darwin, Sydney, Brisbane, Cairns and so on, and the traditional place of women being in the background need to be addressed? To what extent do you think that women need to be more empowered in their own communities?

Ms Dowling—I think that, to a certain extent, women are empowered in remote communities. If you go to any remote community you will see that nearly all the initiatives in that community are headed by women. They sit on the councils. They may not be as vocal when there is a full council meeting with, say, other men in that room. I have been in meetings of all women councils and they have definitely set the drive for things that are happening within that community.

CHAIRMAN—If that is so, could you tell me whether those communities are also violent communities?

Ms Dowling—Yes, they are.

CHAIRMAN—Have you a view on why in communities where women have a larger say in how the community operates there is still an unacceptable level of violence?

Ms Dowling—At the council meetings I have attended there have been, maybe, 10 women out of the whole community of 2,000-plus. These 10 women are extraordinary and they are very strong and powerful women within that community, but they represent a small number in that

community. There are not enough Indigenous women in these remote communities that have the power of the 10 women that I have had the privilege of working with.

CHAIRMAN—I will go back to my original question that started this train of thought. How do we as a nation go about helping Aboriginal women and/or groups to change to a culture that more empowers women and tries to decrease the amount of violence?

Ms Martin—I think what Angela was trying to say is that there are women who are empowered, but there are still a lot who are not. 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.

CHAIRMAN—Ms Martin, wouldn't you also say that family violence is not exactly a dinner table conversation in the non-Aboriginal community?

Ms Martin—I agree with that entirely.

Ms PLIBERSEK—I wanted to ask you about your AWOU, the Aboriginal Women's Outreach Unit. How long is the funding for that going to last?

Ms Martin—We have been told that we are funded for the next 12 months.

Ms PLIBERSEK—Is there no indication beyond that?

Ms Martin—Not that I am aware of.

Ms Dowling—The history of the unit is that when it was first set up it was only ever a 12 months at a time funding agreement. There are talks, but nothing has been signed up to yet, for entering a three-year contract—so there would be a change from an agreement to a contract. I am yet to see those papers.

Ms PLIBERSEK—So you may get a three-year contract?

Ms Dowling—Yes. That is what is being talked about.

CHAIRMAN—Would you like that?

Ms Dowling—Yes, we would.

Ms PLIBERSEK—The chair asked you earlier about different sorts of models of community justice. In New South Wales there is circle sentencing; in Victoria, Koori courts. We had a witness in Sydney who was saying that she believed that there were a number of models being run up here. We had quite a discussion about whether it was appropriate to deal with issues of violence in a forum like circle sentencing, where you, once again, put a degree of responsibility back onto the victim of the crime to decide what happens to the perpetrator in a domestic

relationship. Women are often unwilling to pursue legal action against someone who may well have committed a crime against them. As a legal service specialising in this area, do you have any view about whether issues such as domestic violence or sexual assault could be appropriately dealt with outside the mainstream legal service in a setting where victims have to take quite a degree of responsibility for the outcome of the process?

Ms Dowling—I have actually thought about this one, and I have thought of my clients. For every client for whom I thought, ‘Yeah. She could have done with circle sentencing,’ there is another client for whom you would think, ‘Hell, no. No way would we send her there.’ So it is really hard, and it has not been tried up here. I get mixed responses when I ask about the other centres and how much family violence has gone before circle sentencing and whether it is working. I have not received enough information to see whether it is working appropriately in other centres, but I do not know if you would want to trial it.

Ms PLIBERSEK—Too early to tell in that area?

Ms Dowling—Yes.

Ms PLIBERSEK—It is quite high stakes as well if you get it wrong.

Ms Dowling—It is.

Ms Martin—Also, in those circumstances it can depend. We talk about family violence and sexual assault. If it comes to family violence, there are different levels of violence. You can think of family violence as a hit, a punch; or you can think of family violence as stabbings. We come across all levels of family violence. It has been going on for years in many cases. It is ongoing; it does not stop because there is a restraining order. So, yes, in some respects it is good to try other means, because traditional means clearly are not working, but you have to be very careful. You are often dealing with a woman who is a victim, who has suffered for many years and does not have the confidence, the self-esteem and the strength left to be involved in something like circle sentencing. So if you were going to trial it, you would have to be very careful in the circumstances where you would use it.

Ms PLIBERSEK—Ms Martin, you identified some of the attitudes towards domestic violence in the submission. If you have people with these sorts of attitudes towards domestic violence working in legal services—I presume they are not confined to legal services; I presume they exist in the broader community—and you put them in a circle sentencing situation, you would have to have doubts, wouldn’t you, as to whether you would get an appropriate outcome for a victim of domestic violence, for example?

Ms Martin—I would agree with that to an extent. However, I also think that circle sentencing may provide some form of community shaming, which may actually drill home that it is not appropriate—rather than the white man’s law, so to speak, which is, say, a restraining order, an assault charge and a prison sentence, which may have less emotional impact. Ideally, you would have other Indigenous men in the community standing up and saying to a young fella, ‘Actually, no; it isn’t okay. It’s against white man’s law but it’s also against our culture and our law.’ So, in some respects, circle sentencing could be appropriate, providing it is done in a culturally

sensitive way, utilising people in the community who have influence and can drill home those messages.

Ms PLIBERSEK—Ms Dowling, I think you mentioned earlier changing the behaviour of perpetrators of domestic violence, for example. Are any of you aware of any programs up here that have any measured success in changing the behaviour of perpetrators of domestic violence?

Ms Dowling—No. There was a program that was run in the prison for perpetrators. I was asked to attend one of their training days to provide them with an insight into how women feel. The reports from the guys in there show that their major concern was, ‘This is really good; we’re learning a lot. We learn how to control our anger and direct it towards other sources et cetera.’ But what happens to these guys when they walk out that door and they are put in a situation where they cannot stand there and count to 10 or look at a sign? It just does not work; it is something that needs to be followed up. That was their major concern. That was the only perpetrators program that I am aware of. I think there should be more. I have spoken to several young guys in the communities who are truly ashamed and sorry for what they have done to their girlfriends and their wives. They will ask me, ‘Is there any place that I can go and get help?’ I feel really bad because I do not know the answer—‘Sorry, but you have to go to prison. It has to be your second or third offence before you are eligible to go into that perpetrators program.’

Ms Crawley—I think when we are talking about, say, going from the traditional court system to circle sentencing, either is not going to be completely successful unless there are educational initiatives in the community to help lessen this violence in the first place rather than what is happening at the end. A big problem that we have when we go out to communities is that as females we really cannot communicate that much with the men on the community; it is not appropriate. A lot of times our clients do ask us to explain a restraining order to her client’s husband, and we do so. But what is really missing is male Indigenous workers on the community, as well as ourselves, in the area of family violence so that the issue is brought out in the community, it is discussed amongst the men and the men take responsibility for it. If that is happening in conjunction with circle sentencing there is more of a chance of success. I am all for circle sentencing but, in itself, it is not going to reduce family violence, as I see it; it needs to be run in conjunction with other community legal education.

CHAIRMAN—I will follow up briefly on this education you speak of. Do you think it is appropriate that outsiders like yourself take that education in or is that the responsibility of ‘the community’?

Ms Crawley—First of all, I think family violence workers should be Indigenous. They will not necessarily be from that community, but they do need to live in the community and train the workers. Each community is specific to itself and the community are going to listen to the rest of the community; they are not going to necessarily listen to me as a white woman.

CHAIRMAN—That is the way I intended the question.

Ms Crawley—Yes. And that is why our service is so very dependent on our community legal workers. They train me, Jo and our other solicitor when we go in. They are that link. Also, at the very beginning, you asked me about different justice initiatives in the Top End, and I have found

the information. There are community justice programs in Ali Curung and Lajamanu—they are both in Central Australia—and they are being implemented in Yuendumu.

Senator HOGG—I will just follow on from the question. Since you might be viewed as an outsider going in and taking the advice to the males, as opposed to the females, do you employ any males to take in that information to the males? How do you network and liaise with the males?

Ms Dowling—No, we do not employ any males. We are strictly a women's legal service, although—

Senator HOGG—No, I understand that, and I do not want you to take what I am saying the wrong way.

Ms Dowling—It was not taken that way. We have definitely considered it, to the extent that a submission was put into ATSIC for this specific position. The submission was denied. If the money had come through, we would have definitely worked with the Aboriginal legal service to have the man trained up by us and we would have worked together in the communities, but it came down to funding, and the answer was no.

Senator HOGG—So how frustrated is your work, then, if your advice and counsel can be given and accepted by an Aboriginal woman but it then stops there and—as I understand what you are saying—you cannot break through that gap to the Aboriginal males? That must frustrate your work a great deal. Is that a fair assessment?

Ms Crawley—Yes, I think it is.

Ms Martin—I think it would be fair to say that our job is frustrating overall.

Senator HOGG—Yes, I picked that up from your submission.

Ms Martin—We love it, but it is frustrating.

CHAIRMAN—Try ours from time to time!

Ms Martin—I am sure it is!

Senator HOGG—It sounds easy!

Ms PLIBERSEK—I will just ask you one final question. One of the areas that has come up most often in the evidence that we have been taking so far is how best to make sure that women are not missing out on access to legal services, how best to deliver legal services in areas such as family law or violence and how to make sure that the funding for legal services is not all consumed by criminal law matters. Do you think that your model, a separate service, is the best way to deliver those services to Aboriginal women? Or do you think that the other Aboriginal and Torres Strait Islander Legal Services should be encouraged to set aside part of their resources to deal with non-criminal matters, which are more likely to assist women, rather than criminal matters, which are more likely to assist men?

Ms Martin—In terms of family violence, I was sitting there when NAALAS made their submissions and it is clear from their experiences and ours that, when you have a male perpetrator being represented by the ATSILS, they cannot at that time represent the woman who is the victim of the violence, Chinese walls aside. The Chinese walls may assist, if it is someone who was dealt with 10 years ago or last week, but not in a current matter. I do not think it is good enough to say in those circumstances that we will then just send them off to another service.

I think it is more appropriate to have a service specifically for women in the area of family violence, and I think our service—and what we tried to portray in our submission—goes beyond just traditional legal services. Just having someone there to take out a restraining order is not enough. You need someone who can spend time in the community, develop relationships in the community, develop trust in the community and provide that community with education and support—who can basically be a face in the community that they know and that they will come to when they need to seek help. I do not think that a NAALAS or an ATSILS can do that.

There is also the fact that 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. Even if you tell them there are Chinese walls, to them that means absolutely nothing. I do not see how it can work in the area of family violence.

Ms Dowling—I can give a very short personal example of that. I worked at the Aboriginal Legal Service in Darwin for 6½ years as one of their field officers. I left that service to come to TEWLS where I am now. I visit the same community that I visited as a field officer with NAALAS. Going back into that same community now—back then my position was the Aboriginal community development worker—the community members found that very hard. Although I am now with a different service, I am the same person. So they found that confusing: I was still with NAALAS but I was helping the other side. I know the community found that quite hard, but we got over that, though it took a little time.

Mr JOHN COBB—I assume, though it does not actually say so, that you deal with child abuse, sexual or otherwise, as well as violence against women?

Ms Dowling—Sexual assault is a relatively new area for us. We are just in the process of receiving funding to employ a sexual assault worker as part of all the family violence units around Australia. I have dealt with clients in matters of sexual assault. It is even more taboo than family violence. It is really hard to get a client to come to you to talk about sexual assault.

Mr JOHN COBB—But it is part of your area?

Ms Dowling—It will be now.

Ms Martin—Now that we have funding for a sexual assault worker.

Ms Dowling—I do not think any one of the staff in the service at the moment has the ability to actually deal with the issues of sexual assault. To me, this is a very specialised area and you need specific skills to be able to sit down and talk to someone about sexual assault.

Ms Martin—Since my time at TEWLS, I have not had any female clients presenting with that issue. But that is not to say that it is not there.

Mr JOHN COBB—Not even on behalf of their children?

Ms Martin—No. I have only been there a very short time though.

Mr JOHN COBB—In a funny way you have half answered my next question. Are most of the people who come to you referred from the Aboriginal Legal Service?

Ms Martin—No. Our clients come through our community legal workers.

Mr JOHN COBB—They come directly.

Ms Martin—And they come through bush court when it is sitting. We get there a day before court and we say to our community legal workers, ‘Who needs to see us? What’s going on?’ We will also go and see the police and ask them, ‘Who needs to see us and what’s going on?’ The other thing is that we will be in and out of court, and they know the next day when court is sitting that we will be there and they come and find us.

Mr JOHN COBB—So really you have direct contact. You have boundary riders who go out and put their hand up and say, ‘We’re here.’

Ms Martin—Yes, that is correct.

Mr JOHN COBB—Is it successful doing it that way?

Ms Martin—Yes.

Mr JOHN COBB—Are you saying that on behalf of your separate unit?

Ms Martin—Absolutely. One of the things is that because we are there every month for a week, they know who TEWLS is, they know who the women’s legal service is and they come to us.

Ms Crawley—The workers live in the community all the time.

Ms Martin—They are local women.

Mr JOHN COBB—Getting back to where I started on the child abuse as well as family violence in general, have you thought about how you are going to break the barriers there?

Ms Martin—We have the funding for a sexual assault worker and we are about to put in place a three-month project. We will be employing someone who has expertise in that area to come to the communities with us and look at how we can best use that funding to delve into the area of sexual assault. Again, that would cover child abuse in those communities. That is starting very

soon and will go for three months. After that we will be able to give you a better idea of what we will be doing.

Mr JOHN COBB—In a sense you are dealing with the unmentionable.

Ms Martin—That is correct.

Mr JOHN COBB—If you will forgive me saying so, to me it is as bad as or worse than the abuse of women.

Ms Martin—Yes, that is correct.

Mr JOHN COBB—It seems—and this is certainly not peculiar to Aboriginal people—very prevalent, by all accounts. Do you see the way you are set up as being the best way that we at the moment can deliver help to Aboriginal women and families?

Ms Martin—Yes.

Ms Dowling—TEWLS had a review of the unit done several years ago by ATSIIC, the funding body. The recommendation was that it is the best practice model in this area.

Mr JOHN COBB—I am happy to accept that. I am trying to work this out because this is a terrible area not to deal with—as it is to deal with, I guess. I am a bit stunned that you have only just now got into the area of child abuse, which I do not think is correct in other places in Australia.

Ms Dowling—From my experience, when someone presents for child sexual assault they will end up at the clinic. You have family and children's services workers going out to these remote communities who have solely dealt with sexual assault within the communities. I have spoken to the welfare workers about when they go out to the communities. If there is a legal issue that they want sorted, they will come to us—they will ring our solicitors about that. We provide court support in the communities, but for sexual assault, particularly of children, they will send workers from the victim support unit within the Department of Justice.

Ms Martin—Also, those sorts of court matters are held and heard in Darwin, generally.

Mr JOHN COBB—It all comes here?

Ms Martin—Matters as serious as that. The bush courts are just local courts.

Mr JOHN COBB—Yes, we saw that.

Ms PLIBERSEK—Are there Indigenous workers in that unit?

Ms Dowling—There are. There is an Indigenous male and an Indigenous female.

Ms Martin—And the female Indigenous worker in that unit is on our management committee as well.

CHAIRMAN—You are telling us that you have no idea how extensive the problem is. Is that right?

Ms Dowling—Yes, I think that would be true.

Ms Martin—I would say it is a bottomless pit, to be honest. We will never run out of work and we will never be able to deal with everything.

CHAIRMAN—I am very interested in the issues that John raised, because you seemed reticent to address this. You said that finally you now have funding but that when you have gone out into the communities these issues have not been brought to your attention. Is that really right? Is it kept behind veils?

Ms Dowling—I think it is, to a certain extent. By the time we go out to the communities, which is once a month, the incident may have happened three weeks before we get there. There is a blow-up stage and then it goes through other stages. By the time we get there, the major part of it has been dealt with. The police have come in. They may fly her in here to be assessed and get counselling. When we go out there, another face is not what she wants to see, particularly knowing that we are not counsellors. If there are any aspects of the law involved, we would encourage family to bring her to speak with us.

Mr JOHN COBB—I would have thought a one-off incident is more likely to be a more mature woman being attacked. My understanding is that most child abuse is ongoing. It is not something that would have happened three weeks before.

Ms Dowling—But brought to the attention of officials.

Ms Crawley—I would have to say that the reticence to discuss child abuse is quite different up here in the remote, traditional Top End communities—different from anywhere else in Australia. We find it is difficult for women to talk to us about family violence between an adult male and female. That is so taboo; it really is an unlooked at area up here. It does need to be looked into, and there needs to be specific funding for it and studies of it. I have looked for statistics on child abuse and have only been able to find them for Western Australia and Queensland, not the Northern Territory. The other thing is that we are recognised very much as a family violence restraining order service. It just has not come to that yet up here. I know it is difficult for people from down south to comprehend, but that is the reality.

Mr JOHN COBB—No-one is very public about it anywhere, but we need to be.

Ms Crawley—In traditional Aboriginal communities, it is so taboo. I know it is taboo everywhere else, but it is completely silent in those communities.

Mr JOHN COBB—You mean talking about it is taboo?

Ms Crawley—Yes.

Ms Martin—The communities that we visit are very traditional, which is why it would be great if you would like to come with us one time.

Mr JOHN COBB—I have been out with you.

Ms PLIBERSEK—Ms Dowling, you were saying that often by the time you arrive in a community someone may have been charged—things are down the track. Could part of the reason people are not coming to you with sexual assault or child sexual assault matters be that, if someone has been charged, there would be a police prosecutor liaising with the victim—or, as you mentioned earlier, the victim support unit of the Attorney-General's Department or justice department?

Ms Dowling—Yes, the justice department.

Ms PLIBERSEK—Are other people advocating on behalf of the victims in these situations or is there a real gap in legal services, in particular?

Ms Dowling—I think they are pretty well covered on the legal side of it. As I said, the victim support unit are a very good unit and they will look after them. They deal with what they class as the more serious offences. I mentioned Family and Children's Services before. They have field officers who go out to the communities all the time. From my understanding, it is the field officers who have a lot of dealings with victims of sexual assault.

Ms Martin—I think the gap was identified by Mr Cobb—people are not coming forward with a lot of things. The gap is in getting it recognised, talked about and reported rather than, when it is reported, having it acted on.

Ms PLIBERSEK—Do you see a role for legal services in encouraging reporting? Are you able to do that with the resources that you have?

Ms Martin—With the resources that we have, no. We have CLWs—community legal workers—who are local women. It would require the employment, training and education of people within that community. We have money to employ two people five hours a week—that is, 10 hours a week—which I do not think is enough. They are overwhelmed with family violence work without adding on top of that sexual assault and child abuse. A service like ours could be funded to employ and train people in the community to work in that area and liaise with the lawyers when we go out bush in dealing with those issues.

Ms PLIBERSEK—You have made a very good case as to why it is so important to have people living and working in a community and building relationships of trust, but does it also have a downside? Sometimes it is very hard to stand up and speak up on issues like domestic violence in a community where you and your family live.

Ms Martin—As Angela said, the women who are working for us are genuinely extraordinary. They are very strong and, yes, it is a huge challenge for them to do what they do for us. I have great admiration for all of them and for the work that they do. It is incredible that we can find people who will do that. I think the benefits of having them there outweigh those detriments. Because there are two of them in each community, they have the support of each other. They also

have the support of their families. The husbands of some of our community legal workers are amazing as well. They provide support for their wives in the work they do and also provide a male voice. We do not employ them but we might as well in some respects because they do a great job as well.

Ms Dowling—The women know their boundaries within their communities. If there is something they feel uncomfortable about or cannot deal with, they will go to the other legal worker. If she cannot deal with it, they will ring us and we will do it.

Senator HOGG—In respect of family violence, in your submission you say that support services are needed. Are services such as safe houses, funding for emergency relief and travel to Darwin supplied by you? Do you get any of that funding currently? If not, how do you go about addressing the issues of safe houses and emergency relief?

Ms Martin—There are no safe houses in any of the communities that we go to.

Senator HOGG—I understand that.

Ms Martin—Currently on Groote Eylandt—the town is Alyangula and the community we work in is Angurugu—the police have been doing some fundraising to try and get money for a safe house. Anglicare have set aside some money and have got some funding to look into a proposal over the next 12 months for an appropriate safe house. I think a 12-month time frame is too long. It is just a question of getting funding from wherever you can and getting the time.

Senator HOGG—Currently there are no safe houses for any victims of family violence?

Ms Martin—Not in any of the three communities we visit, no.

Senator HOGG—What happens to those people? Do they have to be taken out of the community for safety purposes? Is that cost met out of your recurrent funding or do you get special funding for it?

Ms Dowling—We receive a very small amount of emergency relief funding to assist us—\$2,000.

Ms Martin—Per annum. That covers two communities. We do not get emergency relief funding for Groote Eylandt. They ran out of emergency relief funding for Groote Eylandt—let me hazard a guess—five months ago. So there is five months to go in the 12 months of funding.

Ms Crawley—That is from Family and Children's Services, so it is for women who have children. It is always a scramble. If a woman does have to be removed from a community, we do what we can and sometimes we do use our own funds to get her out of there. That is really a last resort. As we said earlier, most women want to stay but often they do want to go and we do assist them when we can.

Senator HOGG—How many of these cases would you have in a particular community on an annual basis? Would there be two or three—just to give us some idea of the extent?

Ms Martin—We could get back to you with those figures.

Senator HOGG—If you could that would be interesting.

Ms Martin—I would hate to hazard a guess on that. I would rather get back to you with those figures.

Senator HOGG—It seems as though it is a real gap in your service, though.

Ms Dowling—It is. If we do not have funds and if she has children that are at risk, we will utilise Family and Children's Services.

CHAIRMAN—Whatever numbers you give us are only going to be the tip of the so-called iceberg—is that correct?

Ms Martin—Yes.

Ms Dowling—There are cases where we have to make a judgment call whether we do get her out of that community or not.

CHAIRMAN—This has been very valuable and we would like to continue—I know I have more questions and I am sure my colleagues do, too—but we are under some time constraints and we are going to have to move on. You will get back to us on that issue. If we have further questions, would you mind if we ask you in writing?

Ms Martin—No, we would appreciate it.

CHAIRMAN—Thank you very much again for both your submission and your straightforward answers today.

[11.55 a.m.]

HARDY, Ms Jennifer, Deputy Director, Northern Territory Legal Aid Commission

CHAIRMAN—Welcome. I invite you to make a brief opening statement.

Ms Hardy—I am sure by now, having heard the evidence this morning, you would be aware that the Northern Territory presents many challenges for the delivery of legal services to Indigenous people. The long distances to travel, language and cultural barriers, alcohol abuse and high imprisonment rates for Indigenous people—all of these factors result in high costs for the delivery of legal services to Indigenous people. The Aboriginal legal services and the specialised Indigenous women's legal services in the Northern Territory are the main providers of legal services to Indigenous people. They all do a very good job under very difficult circumstances and with inadequate resources.

The NT Legal Aid Commission is of the view that the Aboriginal legal services and the specialised Indigenous women's legal services provide a specialised and culturally appropriate service to Indigenous people and that they are the best organisations to deliver these services. All of the legal aid service providers in the Northern Territory work well together to try and cover the unmet legal needs that exist, but there is a need for more resources to meet these current needs. Some examples of where those resources are needed are for the specialised Indigenous women's legal services to deal with domestic and family violence and for the Aboriginal legal services for all areas of law, including criminal, family and civil. Some other areas which are often overlooked are community legal education and, particularly, policy and law reform.

I think you have a submission from the New South Wales Legal Aid Commission that refers you to the history of the Commonwealth's funding for the special responsibility for Indigenous people. The Commonwealth has funded legal services to Indigenous people to date and should continue to do so. The Commonwealth imposes—and I talk about this in the submission—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. In our submission the tendering out of Aboriginal legal services in the Northern Territory will not improve services to Indigenous people and is much more likely to lead to a reduction in the quality of services being provided. I am happy to answer some questions.

CHAIRMAN—Could you tell us what percentage of your work deals with Indigenous issues?

Ms Hardy—At the moment our figures are that about 19 per cent of applications received in the last financial year were from Indigenous people seeking services. A large percentage of them were for domestic violence. For the last 12 months the Northern Territory Legal Aid Commission has operated the Domestic Violence Legal Service in Darwin alone, and a large percentage—about 25 per cent—of the clients for that service are Indigenous. Many of them are now becoming family law clients as well, as a result of the initial service provided by the commission. A large number are represented as well in criminal law, largely as a result of conflict referrals from the Aboriginal legal services.

CHAIRMAN—It would not be usual, except in the funding stream, for you to get cases directly from Indigenous people?

Ms Hardy—A fairly small percentage of Indigenous people choose to come to Northern Territory Legal Aid Commission—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—but by far the overwhelming majority would prefer to use 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.

CHAIRMAN—You heard our last discussions with the Top End Women’s Legal Service. In your submission, you said:

Indigenous women are disproportionately affected by domestic violence, rates of violence are high in many remote communities and the primary need of many Aboriginal women is in the area of protection from violence.

You went on to talk about funding and models. You have said things that the Aboriginal women’s legal service was not willing to say. We are trying to find out where things really are and where people think they are. We understand that not everyone is going to agree—and we will not all agree when we come to write a report but we will manage to make consensus work. Can you tell us whether you have statistics to back up what you said, or is this anecdotal or intuitive?

Ms Hardy—In terms of the violence rates against Indigenous women, I do not. I guess in some ways we just accept that that is the case. I have not included them in the submission and have not brought them with me this morning, but I can certainly provide them to you. An indication is in looking at the criminal court list, for example, both in Darwin and in the bush courts—an enormous percentage of people are charged with assault against Indigenous women, generally in a domestic violence context. I am certainly happy to provide those figures to the inquiry.

CHAIRMAN—What about violence against children?

Ms Hardy—It is certainly there. Again, I agree with what the previous witnesses said to you in that it is an untapped area and perhaps a very high unreported figure. There are not many figures available. Every now and then there are figures available from Family and Community Services about injuries to children and clearly the child abuse that is going on. I do not have those figures now but I can try and make those available.

CHAIRMAN—You are a lawyer?

Ms Hardy—Yes, I am.

CHAIRMAN—From your background and your training you are likely to look at legal issues from a legal viewpoint, and that is understandable. Let us put that aside for a minute and dwell in the land of the hypothetical. We are not here to talk about anything other than outcomes and solutions to problems or perceived problems—or at least what will ultimately be our view of what some solutions might be. They will not be absolute either. None of us has a boundary

around what we think, that we are right and everybody else is wrong. The world is not like that. But should we consider other models, other than the legal system, in order to try to come to grips with the very high rate of incarceration, violence and criminal law matters in the Indigenous community?

Ms Hardy—I absolutely agree with you. Even though I am a lawyer, I am absolutely aware of the limitations of the legal system in dealing with many of these problems. They are trying a number of things. One of the things they are looking at, for example, with young people is a juvenile diversion program that has been running up here for about five years, which apparently has had great success. That involves diverting people out of the criminal justice system, looking at all of the issues that are affecting a young person's life and then trying to address those problems. That is a far more holistic approach to dealing with the problems and will probably result in less chance of that juvenile reoffending. Apparently the figures they are now providing are that the recidivism rates are reducing as a result of that. So, by all means, any alternatives that may break the cycle are well worth exploring. Certainly the Koori Court model in Victoria, circle sentencing and all of those things should be tried.

CHAIRMAN—How do we help and empower Aboriginal communities, including larger communities like Sydney, Melbourne, Darwin, Cairns, Brisbane and Perth, to come to grips with these issues themselves, which is what some Indigenous people recommend and advocate constantly? How do we go about helping communities help themselves so that we are not imposing our law, our will or our determinations on them and their culture?

Ms Hardy—I would absolutely support trying to assist communities to come to their own solutions. It has been shown that solutions proposed by Indigenous people and implemented by Indigenous people tend to work better in the long term than solutions imposed by outsiders. The danger in that argument is that it is sometimes an excuse for saying, 'We'll just leave you to it,' and not provide resources to do that. If communities are going to be asked to come up with their own solutions it is very important that they are supported to do so but that they are also given access to other solutions, so that if, for example, people want to leave a community to escape violence and that sort of thing they are given opportunities to do so.

CHAIRMAN—Do we put everything at risk by trying some of these new ideas, understanding that some of them will fail or fail some part of the time before they ever achieve success?

Ms Hardy—No. I do not think anybody would suggest that the system is working particularly well at the moment so I do not think there is anything to lose by trying other solutions as long as they are evaluated properly and proper comparisons are made between existing solutions and alternative models.

Ms PLIBERSEK—You mentioned that you are running the Domestic Violence Legal Service. That underwent a tendering-out experiment. Is that right?

Ms Hardy—That is right. It was a bit of an experiment. It was the first for the Northern Territory, anyway. It was tendered about four or five years ago to a private firm and that was not particularly successful. It was then tendered again about 18 months ago. Because of the small amount of money that was available a number of community agencies could not afford to do it.

It used to be provided by the Darwin Community Legal Service before it went to tender. The Legal Aid Commission agreed to do it for 12 months and to subsidise it out of our own resources.

Ms PLIBERSEK—You had to rescue it when it originally went out to tender. Is that right?

Ms Hardy—It was out to tender for three years. It was being provided by a private firm and then it was retendered and we tendered for it then. I am not sure whether that same firm tendered or not but we won the tender 12 months ago.

Ms PLIBERSEK—We had evidence from someone earlier today that it was not a terrific success when the tender was won by a private firm.

Ms Hardy—There were some major concerns about it. 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. That is something we have concentrated on for the last 12 months.

Ms PLIBERSEK—You won the tender this time round.

Ms Hardy—Yes, and it has been extended for a further 12 months.

Ms PLIBERSEK—Do you think there is an inherent problem in opening up these sorts of services to tendering, particularly where you are expecting a service to deliver tailored services to Indigenous communities? Do you think that there are for-profit operators that could successfully make a profit and provide an excellent service in an area like this?

Ms Hardy—No, absolutely not.

Ms PLIBERSEK—Why?

Ms Hardy—That is a major concern. Given the level of resources that the Aboriginal legal services have at the moment I do not think anyone would argue that they are properly resourced. We certainly do not argue that. We argue that they are very underresourced and do a fabulous job. They tend to do a fabulous job because they have very committed people working there who are prepared to work under very difficult circumstances. They are not making any money out of it. Clearly, it is not a profit organisation. On a commercial basis, given the high costs involved, the only way you could make money out of it would be to cut corners—and that would be to cut either the number of services or the quality of services that are being provided. It is very hard to believe that you could make any money out of providing the same specialised, culturally appropriate services that the Aboriginal legal services currently provide if you were trying to make money. I just cannot see that that would be possible.

Ms PLIBERSEK—What sorts of things would a for-profit organisation that won the tender be likely to cut? Would it be things like interpreters or community support workers? Can you give us some concrete examples?

Ms Hardy—Sure. One of the concerns would be interpreters. That may be one of the first things to go. They may not rely so heavily on the Indigenous client service officers who are really an integral part of the Indigenous legal services and make them work properly. That would probably be one of the things that would go. There would be no money to be made out of any community legal education or community information sessions that are currently being run, for example. I think one of the concerns, particularly for the Legal Aid Commission, would be that if you are a commercial firm providing it on a commercial basis you would probably refer as much as possible to the Legal Aid Commission—for example, in the urban areas. That was clearly what the exposure draft of the proposed tender was aimed at doing: if there was a Legal Aid Commission in an urban area, a provider should be referring those people off to the Legal Aid Commission. It would be all of those sorts of things that I think would happen. Perhaps they would reduce the amount of time they spent out in the communities. The implications could go on and on, I think.

Ms PLIBERSEK—Do you have many Aboriginal staff?

Ms Hardy—We actually do. I think there are 43 staff and six Indigenous staff working in the commission. That is in various aspects. There is one Indigenous lawyer working in the community legal education area and a number of Indigenous admin staff. We have one specific Indigenous client service officer who is working with the Domestic Violence Legal Service.

Ms PLIBERSEK—Do you think it would be beneficial to extend the family violence prevention legal services run by the Top End Women's Legal Service to more communities?

Ms Hardy—Absolutely. They do a fabulous job. The Top End Women's Legal Service model, which uses community legal workers, is a great model. It is probably the most successful of the models around for delivery of services to Indigenous women. Because of the high cost of providing those services and doing it properly using community legal workers, it is fairly resource intensive and they cannot afford to go to all of the communities that require services. At the moment I think there are six major communities in the Territory that are not getting services from a specialised Indigenous women's legal service. If there were additional resources provided to women's legal services, that would be by far the best way to go.

Ms PLIBERSEK—One of the issues that has come up in discussions that we have had so far during this inquiry about providing those services to women—services around domestic violence and family law and so on—is whether you are better off supporting separate services that are targeted specifically at women, like the Top End Women's Legal Service, or whether it is beneficial to try and force Aboriginal and Torres Strait Islander legal services to quarantine some of their funding or change their priorities so that some of their resources are set aside for dealing with matters other than criminal matters. Do you have a view on that?

Ms Hardy—Absolutely. I think the reason that the women's legal services and the family violence prevention units were set up in the first place was a recognition of the huge level of conflicts that the Aboriginal legal services have. I have tried to set this out in my paper. I used to

work for the Aboriginal legal services in Darwin. In fact, while I was there I wrote a paper looking at whether we could provide better services for Indigenous women because we were conscious that people were missing out. It is really about the conflicts. It is not a deliberate policy of the Aboriginal legal services—they are not saying, ‘We will put our energies and priorities into crime.’ It is really just the order in which things happen. If an offence is committed, the police act fairly quickly to charge somebody. The offender therefore appears at the Aboriginal legal services 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. So there are a huge number of conflicts. Even though the Aboriginal legal services is now setting up some Chinese walls and trying to keep more matters in-house, as the previous witness has said, that is only going to solve the problem to a certain extent. In a current case or even a case that was run several years ago, there will still be a conflict and they will not be able to act. So I think that specialised Indigenous women’s legal services are far better able to provide domestic violence assistance for Indigenous women than the Aboriginal legal services.

Ms PLIBERSEK—What do you think is the best way in that case to separate the services? You do not have a men’s service and a women’s service, presumably. Do you have a criminal service and a family service?

Ms Hardy—Do you mean the Legal Aid Commission?

Ms PLIBERSEK—No, I was thinking more of Aboriginal and Torres Strait Islander legal services. Do they become specifically a service that deals with criminal matters and then you have another service that is aimed at helping victims of violence or those involved in family law matters? You are saying that separated services are good. What I am asking is: how do you draw the boundaries?

Ms Hardy—I do not think the Aboriginal legal services necessarily have to become specialist criminal services and do nothing else. For example, up here the Aboriginal legal services do a fair amount of family law, and they have a separate family law section to deal with those matters, because not all of them will have had a criminal matter that preceded them. Again, the preference from Indigenous people is to use the Aboriginal legal services for those matters. So where there are no conflicts there is still a fair amount of legal matters where they can act, and there is no reason why they cannot.

The way it works up here, with the Indigenous women’s legal services concentrating most of their efforts in the remote communities, you really do have to have two separate services. When you are talking about communities where there are several thousand people, there are no private lawyers out there. 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—and in terms of Law Society rules that is really not going to be enough. In those cases I think you do need two separate services.

Ms PLIBERSEK—Would you end up with the Aboriginal legal services becoming default men’s services, because in family law matters they may well have acted for the fellow in some previous matter anyway. That is the evidence we are getting a lot.

Ms Hardy—Certainly the majority of clients of Aboriginal legal services are men, but that is largely because of the enormous amount of criminal work that those services do. If Indigenous women are charged with criminal offences, they are certainly eligible—but they are a minority in terms of those sort of needs. Certainly the concern the Aboriginal legal service had when I was working there, and I was asked to try and address this issue, was to avoid it being seen as a men's service. I think the fact that they are creating Chinese walls so that they can provide greater services in family and civil areas where there is not a conflict is a really positive move, and I think that will mean they will be able to address more of the women's legal needs.

Mr JOHN COBB—When an Indigenous person comes to the legal aid service in the Northern Territory do you try to deal with them there or do you automatically point them towards the Indigenous services?

Ms Hardy—No, we certainly provide a service for anybody who chooses to come to the service. If they are referred from the Aboriginal legal service, 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 those sort of things, just to make the person feel more comfortable. Certainly if an Indigenous person comes through the door, they are treated the same as anybody else and are provided with a service.

Mr JOHN COBB—I noticed that in your submission you talked about the Commonwealth abrogating its responsibility at some stage. But what about what we are doing with the Top End group, for example.

Ms Hardy—I think that is fabulous. What I am suggesting is that the amount of resources being provided to the specialised Indigenous women's legal services is very small compared to the amount that is being provided to the Aboriginal legal services for crime, for example, by the Commonwealth. I am not criticising the use of Commonwealth money for the specialised Indigenous women's legal services; my submission is really designed to say that the specialised services need a lot more.

Mr JOHN COBB—Does the Northern Territory service or your service believe in specialisation?

Ms Hardy—Yes, it does. For example, the Domestic Violence Legal Service in the Legal Aid Commission is a separate unit within the family law unit. Is that what you were suggesting? I think there is a need for that sort of specialisation, as the Aboriginal legal services are specialised—they have developed an expertise in dealing with Indigenous legal issues.

Mr JOHN COBB—I think you were here earlier when we were talking to the Top End Women's Legal Service Inc. I was somewhat surprised that they had only just been given the area of child abuse. Have you been dealing with that in Indigenous communities in any way?

Ms Hardy—No, I do not think anybody has been, to be honest. If somebody has been charged with a criminal offence, the Aboriginal legal service will have acted in those matters. I guess the only service we would provide in those areas is in the area of crimes compensation. We would fund a civil legal claim in cases where there is an application. I am not aware of many at all from Indigenous kids in child sexual abuse cases, but there are some.

Mr JOHN COBB—You probably noticed that the first group, NAALAS, in their submission gave a description of the way funding happens. Do you agree with that description—that, with less funding, they deal with far more cases per capita than you do?

Ms Hardy—It is very hard to know. I have also worked with National Legal Aid, the organisation that represents legal aid directors, for several years. One of the things that we have been trying to work on for a number of years is to try to get comparative data between the legal aid commissions and the Aboriginal legal services. Those sorts of claims, even though we would not have any doubts that they are underresourced, are really difficult to either prove or disprove because we simply do not collect data in the same way. 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. At times, we have contemplated putting a fair amount of resources into trying to find that out and then have decided it was not necessary because there is an acceptance they are underresourced.

Mr JOHN COBB—Without being 100 per cent accurate, do you agree with the general thrust of what they are saying?

Ms Hardy—I agree that they are underresourced.

Mr JOHN COBB—That is not quite what I said.

Ms Hardy—No. When they go out to bush courts, they certainly deal with 60 matters in two days, and the circumstances in which they are required to provide them are dreadful. Nobody has any doubts that that is the case. 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.

CHAIRMAN—Ms Hardy, thank you very much for your submission and coming in to talk to us today.

Ms Hardy—Thank you for having me.

CHAIRMAN—If we have further questions, would you mind if we put them in writing to you?

Ms Hardy—Absolutely not, and I will provide those figures on the incidence of domestic violence.

CHAIRMAN—That would be helpful. Thank you very much.

[12.22 p.m.]

BRADSHAW, Ms Barbara Vivien, Chief Executive Officer, Law Society Northern Territory

CHAIRMAN—Welcome. Do you have a brief opening statement that you would like to make?

Ms Bradshaw—I am here in the capacity of making some general comments from the point of view of access to justice issues and filling you in on some details about our members, because our members include private practitioners, government lawyers, legal aid lawyers and people who work for organisations like TEWLS. I will give you a bit of an overview and back up some of the statements made by other speakers here today.

CHAIRMAN—Thank you. How do you view the wide distribution of responsibilities and/or organisations which someone from outside, without any intimate knowledge of these issues, would deem to be a whole disparate group of organisations and people trying to deal with what would seem to be the same sorts of issues—that is, law and justice.

Ms Bradshaw—I think there are some very different factors involved. One of the most important things up in the Territory is the nature of our population, particularly the fact that a lot of Indigenous people live out in remote communities and many, particularly in the Top End, live very traditional lifestyles and have English as a second or third language. As everybody is aware, there are a number of problems out in the communities, including, as we said, domestic violence, high crime rates, child assault and the like.

I have worked in the Indigenous area for a number of years in other capacities as well and I have some experience of remote communities. What might work in a capital city—even Darwin—may not necessarily work in a remote community in Arnhem Land, and what works in a remote community in Arnhem Land might not necessarily work in Central Australia.

The other concern we have is conflict of interest. I do not think you should have an amorphous legal aid organisation that deals with all issues for all different people, because of the issues raised by the previous speakers, particularly in areas such as domestic violence and sexual assault. I think you have to keep areas separate, where possible, and if there is a conflict of interest in a criminal area where there could also be domestic violence I think there is definitely a role for separate legal services.

The other thing I see as particularly important is the strictly non-legal representative role. I think community education is essential. Support for victims on an ongoing basis, following up in the community, outreach programs and the like are all essential if you are going to deal with these particular problems.

The other factor I would like to comment on is the tendering issue and whether we see it as effective to have legal services tendering for services, particularly in the communities. We think that very few private legal firms would be capable of doing the job while still making a profit—

which they obviously have to do—and would have the capacity to deal with all those other issues.

CHAIRMAN—You talk about setting aside domestic violence and child abuse from criminal matters. Are you implying that they are not criminal matters?

Ms Bradshaw—No. I mean setting them aside in the way you deal with them in providing appropriate representation to the victims.

CHAIRMAN—But, when we talk about these issues as separate and do not classify them as criminal, are we doing them a disservice?

Ms Bradshaw—No. I think we have to deal with them on a criminal basis, but I think we need to have a wider approach as well and deal with the factors that lead up to them and with following on and providing victim support and the like.

CHAIRMAN—I am interested not just in your personal views but whether the Law Society in the Northern Territory has a view about the appropriateness, or otherwise, of some alternative justice streams, particularly for our Indigenous population, to deal with domestic violence and women's issues. Women seem to be terribly underrepresented in court statistics.

Ms Bradshaw—Yes. I think the Law Society's view is that all of these areas should be properly resourced. I think people going through the criminal justice system, particularly if they are Indigenous, need to have the best possible legal representation to help them through the process. But I also think the victims of crime and people involved in these situations need to have appropriate services to help them. That includes things like domestic violence legal services and TEWLS.

CHAIRMAN—I do not think I made myself clear. I am interested in whether the Law Society has a view about completely alternative mechanisms, outside our so-called Australian-British law, such as circle sentencing, community trial and punishment, and these sorts of initiatives.

Ms Bradshaw—Yes. These initiatives, particularly things like circle sentencing, have to be explored. But we have to make sure that they are appropriate in each case. I think we should do that by having trials, and again they might work better in one community than in another, depending on the people and all the other factors in the communities. There is certainly a role for community education and getting together with the people in the communities and explaining the issues. I particularly like the thought of the community workers that work for the Top End Women's Legal Service and the role that they have in the communities. That is a community generated initiative, and those sorts of things are particularly important and should be supported.

Ms PLIBERSEK—The Law Council of Australia's submission says that it supports 'a separately incorporated and funded Indigenous women's legal service which deals with family law and/or domestic violence issues and which can brief out or refer matters to the Legal Aid Commission in appropriate issues'. That is the crux of a lot of what we have been discussing over the last few days. Do you want to expand on that a little bit?

Ms Bradshaw—It comes down in part to a couple of issues: firstly, providing proper resources to deal with them. One issue the Indigenous legal aid services have is that, as Jenny Hardy pointed out, they have to deal with people who come through the criminal justice system and who need to have appropriate representation. I think providing additional resources for women's legal services would help deal with domestic violence and those sorts of issues in a more appropriate manner.

Ms PLIBERSEK—Is that because of the conflict of interest issues we have discussed, or because the amount of money you could spend on criminal matters is limitless so, if you do not quarantine funding, you end up spending it all on criminal law? Is it a funding issue or a policy issue?

Ms Bradshaw—It is probably both a funding issue and a policy issue. You still have to provide appropriate representation for people who come through the court system so that they can be best dealt with, and that helps the courts as well as the people concerned. I do not think you can say—as was said in a former tender document—that, if someone has had more than one conviction, they should not get representation on a subsequent occasion. That is counterproductive. But you have to have proper representation for women. There is obviously a lot of unmet demand in the Northern Territory. I note that the Top End Women's Legal Service is only in a few communities, and it is of concern that other major communities do not get the benefit of their services. I think that has to be expanded into those communities.

Ms PLIBERSEK—So you would support expanding the existing Top End Women's Legal Service?

Ms Bradshaw—Very much so, yes.

Ms PLIBERSEK—Do you have a view on how many other communities it should be operating in?

Ms Bradshaw—There are a number of Arnhem Land communities where it is not represented, and it should certainly be operating in those.

Ms PLIBERSEK—You have mentioned some of the issues that you find worrying in the proposed tendering out of Indigenous legal services. You have said pretty clearly that you do not think a service can be properly provided by a for-profit operator. I find that interesting, given that a number of your members would be for-profit operators. Is that their view also?

Ms Bradshaw—It is certainly the view of the council of the law society. That was taken noting that possibly some of the members of the law society were interested in being part of the tender process. It really just comes down to practical issues. A lot of the law firms located in Darwin are small and there are only probably a couple that would have the cultural knowledge and everything necessary to provide an effective service. They would have field officer issues, interpreter issues and all of those sorts of problems. They still have a role in appropriate cases, and they do work from time to time. In major matters barristers, for instance, will obviously be appearing, and that sort of thing. A lot of lawyers have a good knowledge for dealing with Aboriginal people, but I do not think that they could provide an effective service, given the mechanics and dynamics of most law firms and given the fact that they have to operate in a

commercial environment, pay support staff, rent and all the other things involved in running a small business. They operate on a profit motive.

Ms PLIBERSEK—So it might be cost-effective for private firms to pick up briefs from the Legal Aid Commission or from other sources, but—

Ms Bradshaw—Yes, or barristers.

Ms PLIBERSEK—Yes, but in terms of providing all the other associated services that make the service really valuable for Indigenous clients, you do not think that they could do that?

Ms Bradshaw—I think it would basically be impossible. Also, the anecdotal evidence suggests that the tendering out of the domestic violence legal services that took place a couple of years ago was not a particular success.

Ms PLIBERSEK—We had a little bit of evidence about that, but I would like you to tell us in your words what you think the problems were with the tendering out of that service initially.

Ms Bradshaw—I was not involved with the Law Society at the time, but I think the problems came from the amount of money made available compared with the particular needs that the service had to meet. Certainly there were also issues of conflict of interest, which is a major concern to the legal profession, obviously. You might have someone acting for, say, the perpetrator, and that might be in the case of a non-Indigenous person, what happens to the victim and who deals with her issues?

Ms PLIBERSEK—Thank you.

Mr JOHN COBB—Quite obviously one of the problems, as with most remote communities, is retaining staff. What suggestions do you have about what can be done for the various services, especially the specialised ones, to retain legal representation up here?

Ms Bradshaw—I think what you need initially—and I am speaking as somebody who worked for an Indigenous organisation for a while—is quite a strong commitment by the staff members concerned. Obviously they need to have an adequate salary and that sort of thing, but it is more than that. I think they need to have the commitment, the interest, and the ability to deal with all the different situations that occur from time to time, and a desire to work hard in most cases. The legal aid staff might go out to court and do lots of matters. They might be seeing clients just before the hearing—under a tree or something like that—without proper backup facilities. But I think you have got to have the commitment to that, a commitment to deal with Aboriginal people, and a desire to get the understanding that is required to deal with them. The problem is, I think, that a lot of them do end up suffering from burnout and then might go and get another job. I think in relation to retention you need to just make life a bit easier for them, give support to the services, and make sure they have proper resources so that if people have to go to a case out in the community they do not have to drive their own car for eight or nine hours—which happens in some places out of Katherine. But you could get a flight out or something like that.

Mr JOHN COBB—Does the Law Society work with the various legal aid groups to try to overcome any of these things?

Ms Bradshaw—We do to some extent. There is probably a limited amount of support we can provide, but we certainly help by providing CLEs and trying to take into account any concerns that they have with government—issues with government and the like. I regularly meet with Sharon Payne, the Director of NAALAS up here, so that I am across the issues.

CHAIRMAN—Ms Bradshaw, thank you very much for coming and talking to us. We thank you, also, for Law Society Northern Territory's submission. As I have asked other witnesses, if we have further questions you will not mind if we put them to you in writing, will you?

Ms Bradshaw—Certainly not.

CHAIRMAN—On behalf of the committee, I thank all the witnesses today and all the people who have come to listen to the hearings. I thank my colleagues. I particularly thank the secretariat for their excellent work; and, as always, God bless Hansard.

Committee adjourned at 12.40 p.m.