



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Reference: Indigenous Law and Justice inquiry

THURSDAY, 19 AUGUST 2004

ADELAIDE

BY AUTHORITY OF THE PARLIAMENT

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to:
<http://parlinfoweb.aph.gov.au>

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Thursday, 19 August 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, Mr Charles, Ms Grierson 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.

WITNESSES

AXLEBY, Ms Cheryl Anne, Women’s Legal Service Indigenous Subcommittee, Women’s Legal Service South Australia Inc.....	62
CHARLES, Mr Christopher Joffre, Committee Chair and Member, Law Society of South Australia.....	49
CHARLES, Mr Christopher Joffre, General Counsel, Aboriginal Legal Rights Movement.....	77
DODD, Ms Susan, Coordinator, Warndu Watlhilli-Carri Ngura Aboriginal Family Violence Legal Service.....	91
FORTH, Mr Mark, Senior Solicitor, Warndu Watlhilli-Carri Ngura Aboriginal Family Violence Legal Service.....	91
GILLESPIE, Mr Neil Eric, Chief Executive Officer, Aboriginal Legal Rights Movement.....	77
HASKETT, Mr Peter John, Member, Council and Executive, Law Society of South Australia.....	49
NGOR, Ms Zita Adut, Solicitor, Women’s Legal Service South Australia Inc.	62
REDMAN, Ms Julie Joy, Committee Member, Law Society of South Australia	49
RICHARDSON, Ms Joanna Catherine, Manager, Civil Family and Human Rights Section, Aboriginal Legal Rights Movement.....	77
WATSON, Dr Irene M., Legal Officer, Aboriginal Legal Rights Movement	77
WITHERS, Mr Brian Edmund, Chair, Access to Justice Committee, Law Council of Australia; and Member, Australian Legal Assistance Forum.....	101
WITHERS, Mr Brian Edmund, Member, Justice Access Committee, Law Society of South Australia.....	49
WRIGHT, Ms Marilyn Sue, Acting Coordinator/Solicitor, Women’s Legal Service South Australia Inc.	62

Committee met at 11.03 a.m.

CHARLES, Mr Christopher Joffre, Committee Chair and Member, Law Society of South Australia

HASKETT, Mr Peter John, Member, Council and Executive, Law Society of South Australia

REDMAN, Ms Julie Joy, Committee Member, Law Society of South Australia

WITHERS, Mr Brian Edmund, Member, Justice Access Committee, Law Society of South Australia

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 public hearing. The committee has held hearings in Canberra, Sydney, Darwin and Alice Springs. We have heard from an array of providers of legal services to Indigenous Australians as well as peak bodies and community organisations that use and support these services. The public hearing phase of this inquiry will continue in September with hearings to be held in Dubbo in western New South Wales. Today the committee will take evidence from organisations that are responsible for providing legal advice and representation to Indigenous people in South Australia. Witnesses include representatives from two providers of Indigenous specific legal services in the state. The committee will also hear from a mainstream provider of legal services to women, the Law Society of South Australia and the Australian Legal Assistance Forum.

Before beginning, I advise witnesses that the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the House 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 will attract parliamentary privilege. Finally, I refer any members of the press who are here today to a committee statement about the broadcasting of proceedings. In particular, I draw the media's attention to the need to report proceedings of the committee fairly and accurately. Copies of the committee statement are available from the secretariat staff. I welcome representatives from the Law Society of South Australia to today's hearings. Thank you for coming today and for your submission. Before we start questions, Christopher, I do not think we are related.

Mr Charles—I was about to say the same thing.

CHAIRMAN—I got in before you. Do you have a brief opening statement that you would like to make?

Mr Haskett—Yes. The Law Society of South Australia endorses the Law Council's submission to this committee. South Australia, as you know, is a state that is large in area with a relatively small population outside the capital city and metropolitan area in comparison with the larger states. The 2001 census disclosed regional populations ranging from 23,600 in the city of Mount Gambier to 15,600 in the central area of the District Council of Mount Barker, which was

the fourth largest. The Aboriginal and Legal Rights Movement is South Australia's only ATSL and it has staff based in Adelaide, Murray Bridge, Port Augusta, Ceduna and Port Lincoln. Outside of those client areas, sizeable Indigenous populations reside west of Ceduna, in Port Lincoln itself, in the north-west lands and in Oodnadatta, Leigh Creek, Roxby Downs, Woomera and other areas in the state. Most if not all of those towns and regions I have just mentioned are serviced by magistrate's court. The movement's lawyers attend at those courts, except in the north-west lands and Coober Pedy, which are not usually serviced by lawyers from South Australia's legal aid commission.

The society and its members have supported the movement's operations in various ways since it was first formed; however, the movement's funding has not kept pace with increasing costs and higher levels of need and demand. From the society's view, the implementation of the exposure draft purchasing arrangements without increased funding will only add to those pressures already being experienced. Indigenous South Australians should have access to qualified and culturally aware legal practitioners who have either experience in assisting Indigenous clients or ready access to such practitioners. The movement's legal practitioners have that experience.

In relation to the Auditor-General's audit report No. 13, one of the key findings in that report suggested that legal aid commissions are in a position to deliver services to Indigenous Australians and that this capability should be taken into consideration by ATSL. South Australia's legal aid commission does deliver legal assistance to Indigenous South Australians; however, contrary to the general impression conveyed in the Auditor-General's audit report No. 13 at paragraph 2.48, the South Australian legal aid commission does incur costs associated with the provision of legal services to Indigenous South Australians. By way of example: in the 2003-04 financial year, the commission paid to private practitioners certified to its own solicitors costs and disbursements totalling \$860,000. In the five financial years commencing 1 July 1999, the commission approved costs and disbursements for casework services to Indigenous clients totalling \$3.44 million, with the great bulk of that expenditure being charged to the state government account. In addition to that, the commission provides duty lawyer services to Indigenous defendants at courts that it services, especially those in the north-west lands.

The society's submission is that Indigenous legal services are grossly underfunded given the generally remote locations of their clients, their social and economic disadvantages and the level of need for culturally relevant quality legal services. Legal aid commissions are not funded by the Commonwealth to deliver legal assistance in state law related matters; if they were to provide those services suggested by the Auditor-General they would need additional funding.

The society's basic position is that the types of services which can be provided to Indigenous South Australians, and their quality and accessibility, are a function of funding. Demand is increasing, costs are increasing, but funding for the movement is static. This is the problem that the Commonwealth government must address in order to improve access to justice by Indigenous South Australians. Mr Charles will address you on issue a) in the terms of reference, I will speak to issue b), Ms Redmond will address you on issue c) and Mr Withers on issue d).

CHAIRMAN—I am sorry, Mr Haskett, but if we do not get questions you might just as well have written it all in your submission, which I suspect you did.

Ms PLIBERSEK—Did you have something written down that you were going to speak about, because we can incorporate that into *Hansard*.

Mr Charles—I think I can bring it out as I need to.

CHAIRMAN—We can have it incorporated, if you would like. It is just that if we do not start asking questions we are going to run out of time and this will have been for nought—we might just as well have received your submission and moved on. In your submission and the words that you just spoke, I gather you are saying that in your view it is certainly the Commonwealth's responsibility to fund legal services, including family law matters, for Aborigines, that the state has no responsibility and that the legal fraternity in South Australia has no responsibility. Is that right, Mr Haskett?

Mr Haskett—I think the Commonwealth has a special responsibility for the provision of funding for Indigenous legal services. The profession in South Australia does bear a significant cost in providing those services when they act either on assignment—a brief—from the Aboriginal Legal Rights Movement or on assignment from the South Australian Legal Aid Commission. The rates of remuneration for practitioners in this state will be less than one half of scale rates as of 1 September this year. That is a reflection of both the level of Commonwealth funding for legal assistance and the level of state funding for legal assistance. The society's position is that the Commonwealth carries a special responsibility. It has assumed that responsibility over a period, on my understanding, of some 20 to 30 years.

Mr Charles—May I expand on that point. It is important to note that ATSSIS and ATSSIC were referring to themselves as being 'supplementary funders' of Aboriginal legal services, without making any provision whatsoever via the Commonwealth to get the state to assist ATSSILs when, in our submission, the primary responsibility for Aboriginal legal aid and Aboriginal affairs generally necessarily rests with the Commonwealth because of Australia's international obligations. If the Commonwealth is going to call itself a supplementary funder then we say that they ought to be actually making arrangements with the states to make that supplementation happen. It is hardly for the ATSSILs or the Law Society to be doing these high-powered political manoeuvres as between the Commonwealth and states on what is essentially a federal issue. That is a matter for the Commonwealth. That is to supplement what my friend Mr Haskett has said on that point.

CHAIRMAN—A few weeks ago we were in Alice Springs and we met with, amongst others, the Central Australian Aboriginal Legal Aid Service. We asked them if they needed more funding and they said, 'You know what lawyers are like—we can always manage to spend more money and find other things to investigate. The answer, Mr Charles, is no.' Why is your view so divergent from theirs? Do you have any relationship with these issues or those who provide services in Alice?

Mr Charles—We are also acutely aware, Mr Charles, of the evidence of the NPY Women's Council about the appalling underresourcing of the AP lands in South Australia in respect of civil law, family violence, family law, road accident, criminal injuries comp et cetera. The underresourcing in those areas in the AP lands in the north of the state is a matter concerning which ALRM has been making repeated funding submissions to the Commonwealth for years.

Furthermore, this goes directly to the comment ANAO made in *Audit report No. 13*, where they said:

The ANAO found that current program management and funding focuses on requests for inputs from grantee organisations rather than on an assessment of the resources required to achieve outputs or outcomes.

CHAIRMAN—Do you have any conversations about or understanding of what is happening in Alice Springs? Do you have a relationship with people there?

Mr Charles—Yes, of course we do. Indeed, I have spent some time with Ms Gillick within the last month speaking to her on these topics. I have spent time with Mr Bamber, and so have my colleagues.

CHAIRMAN—Okay. You do not have to get quite so aggressive.

Mr Charles—That is very kind. Thank you.

CHAIRMAN—It is not necessary.

Mr Haskett—The society is not aware of the detail of submissions made by other outsourcers in other parts of Australia. It is focused on what the position is in South Australia.

CHAIRMAN—So you reckon that your funding base in South Australia is very substantially different from that in Central Australia?

Mr Haskett—The reality is that it is inadequate to deliver the services which are expected of the organisation.

CHAIRMAN—In your submission you state that there is only one Indigenous family violence prevention legal service in South Australia, the one in Port Augusta, and that the only family lawyer in ALRM is not dedicated to the assistance of Aboriginal women. Tell us about that.

Mr Haskett—What that last reference means is that that employed solicitor is there to represent or act in casework matters on behalf of both Indigenous men and Indigenous women. The position is not solely allocated or dedicated to representing women in family law disputes or matters associated with family violence. The submission refers to the one—

CHAIRMAN—Why would the position have to represent only one side of the debate?

Ms Redman—Could I speak to that? I particularly want to emphasise the appalling position of Indigenous women in regard to legal aid at the moment. I have a paper that I would ask you to incorporate in *Hansard* specifically on the issue of Indigenous women's services. In particular, the family violence service model that we have operating in Port Augusta is inadequate for servicing Indigenous women's needs and should not be thought of as adequate for Indigenous women. It should not be duplicated. Indigenous women require a service that is specific to them. There are real conflict issues if you expect Indigenous males and females to be in the same service.

We are supporting the submission of the Law Council of Australia that there really should be a properly funded Indigenous organisation able to provide for women. Women's needs have never been properly assessed, but the legal needs of Indigenous women are great and immediate. I certainly ask that you consider seriously the need for separate funding for an Indigenous women's legal service. That needs to be a service that has the ability to undertake complex casework and test cases, as well as handle family law matters and other areas that are specific to women.

At the moment in Adelaide the Aboriginal Legal Rights Movement is attempting to service both. But unfortunately women are going in to the same services. They are putting up a Chinese wall arrangement so that women can have separate services but the ideal needs to be that they have separate funding and they are in a different location. This separateness is very important. It needs to be perceived by the women that they have a separate specific service. So we say that the family violence service is certainly not an adequate model. And we also question very much the mediation model for Indigenous women. They have their own ways of working to resolve things in a mediation model which is more of a community resolution model. To then expect the legal aid service to adopt a mediation model is inadequate. We certainly endorse the Law Council's submission about the need for an Indigenous women's legal service.

CHAIRMAN—You said that you encouraged us to consider this. What this inquiry is all about is looking at legal services for all Aboriginal people, but basically we are focusing on women and on family issues, so I can assure you that we are trying to do that.

Ms PLIBERSEK—I will follow up, Ms Redman, on those comments that you just made. Do you think that there is a danger, in setting up separate services, that the existing service—in the case of South Australia, the ALRM, which, at least to start with, would certainly be the better resourced of the two services—would become de facto the men's service and the new one would become the women's service? What I would be worried about is that women would get a second-rate service not just for family law matters but for criminal matters as well. Is that a problem?

Ms Redman—We certainly do not want a second-rate service. We think the most appropriate model is probably that there be an adequately funded Aboriginal legal rights movement that can provide an independent service under its umbrella of services, so that the administration can be shared but the perceived independence is there for women, in separate premises.

Ms PLIBERSEK—Are you confident that the existing situation that you describe of Chinese walls being set is working, or is that not a good alternative as far as you are concerned?

Ms Redman—I do not think the conflict is the issue at the moment; the issue is the adequacy of the resources and the perceived independence because of the use of the same premises.

Ms PLIBERSEK—Do you mean that the barrier is with the clients?

Ms Redman—Yes.

Ms PLIBERSEK—Can you elaborate on that a little.

Ms Redman—It is extremely difficult for women to share the same offices with male perpetrators of violence, for example, or even with their spouses in a family law situation. They perceive it as an inadequate service for them and, because the funding is not there for family violence and family law in any event—I think there is only one family lawyer, as Mr Charles said—that is totally inadequate to service the great needs of Indigenous women at the moment in South Australia.

Ms PLIBERSEK—What is happening to the women who do not have access to that one family lawyer?

Ms Redman—Their legal needs are just not being met.

Ms PLIBERSEK—What does that result in? What is the worst-case scenario that is the result of that?

Ms Redman—For example, we see very few Indigenous women in the Family Court. Anecdotally, I understand that matters are just not being resolved, as the vulnerable women with fewer resources have no way of having their matters resolved and therefore they remain oppressed and the violent situation continues.

Ms PLIBERSEK—So one possible result might be that people stay in violent relationships.

Ms Redman—Definitely.

Ms PLIBERSEK—Another possible result might be that there is ongoing conflict about child custody matters that have not been resolved through a court process.

Ms Redman—That is definitely a problem.

Ms PLIBERSEK—Are there others?

Mr Haskett—I think an attempt is made, from what I have seen in the legal aid environment, to resolve matters at a different level than would be the case if the resources were there to have them addressed in Adelaide. A judicial registrar might, for example, go up to Marla or Coober Pedy to try to address family law matters that have not been resolved in some way outside the court process—but that has, on my understanding, happened only very occasionally. How those orders are enforced and what happens after a registrar has visited those areas in the far north of the state, I am not aware. But I have a sense that other pressures are brought to bear to resolve the problem, rather than the problem being resolved through the formal court process. What happens to children in that situation, again I am not aware.

Ms PLIBERSEK—Do any of you have any idea of the number of women—or the number of people—each year who are the victims of domestic homicide in this state?

Ms Redman—We could take that on notice and let you know.

Ms PLIBERSEK—I mean Aboriginal women in particular. I would be interested to know what the figures are for this state. If you could find out, that would be wonderful.

Ms Redman—Yes.

Ms PLIBERSEK—Mr Charles and Mr Haskett, you were both speaking very emphatically about Commonwealth funding responsibilities in this area. Can I ask you to put on the record exactly why it is your contention that this is a Commonwealth funding matter.

Mr Charles—I would really be only expanding on what I said before. It is a matter of what we submit is the falseness of the supplementary funding argument which was put forward by ATSI—the primary responsibility for Indigenous affairs flowing from the referendum and from Australia's international law obligations in respect of Indigenous peoples.

The society's view I think is that the Commonwealth and the states should determine between themselves how that relationship in respect of funding obligations will be resolved. It is not satisfactory for the Commonwealth to simply say, 'We are a supplementary funder—sort it out for yourself with the states.' The Commonwealth has to take responsibility in respect of ensuring that there is proper funding for Indigenous services, whether it is by the state or by the Commonwealth or by both. The Commonwealth must take responsibility to ensure that it is done and that it is seen to be done properly so as to satisfy our international position.

Ms PLIBERSEK—Would you be aware of the change in Commonwealth or state funding for Indigenous legal services? Do you have any figures on whether funding levels have been going up or down at a state or Commonwealth level in South Australia?

Mr Charles—You are going to be hearing from the Aboriginal Legal Rights Movement this afternoon and it would probably be appropriate to ask the CEO, Mr Gillespie, about that. He has a great deal of information on the topic. Could that perhaps be reserved for the ALRM?

Ms PLIBERSEK—Sure.

Mr Haskett—In relation to legal aid funding, for the three financial years commencing 1 July 1997 the Commonwealth provided the South Australian Legal Aid Commission with just under \$9 million a year for each of those three years. The funding increased in each of the four years from July 2000 to June 2004 up to a figure of \$10.8 million. It went from just under \$9 million to \$10.8 million over about seven years. In the third year of the first three years of that Commonwealth funding the Commonwealth closed off on transitional funding for state law related legal assistance. So all of the nearly \$9 million in 1999-2000 was allocated and only able to be used for Commonwealth law related matters and services. What has happened with the movement's funding over that period of seven years I am not aware. My recollection from the draft exposure tender document was that the proposed level of funding for a South Australian Indigenous legal service remained relatively constant, I think, with just a modest inflator at about \$3.2 million or \$3.4 million per annum.

Mr Charles—In real terms, it is going down.

Ms PLIBERSEK—Ms Redman, when you are talking about a separate Indigenous women's legal service, do you think that that service should also be dealing with criminal matters for women or do you think that criminal matters should properly stay with the ALRM? Do you have a view?

Ms Redman—I do not believe that the Law Society of South Australia has a view on that. Personally, it is probably better to have all Indigenous women's services in the one place. It is a very specific service to service the very particular needs of women. It should be for all of women's needs and it should be able to manage the whole range of legal needs. I did not make any comment about the needs of the children. Obviously, one of the side products of not adequately funding Indigenous women's legal needs is that children are particularly suffering as a result. Separate representation of children in particular is another issue. Because women are not going to the Family Court, for example, to deal with the real needs of violence within the family, the needs of the children are not being brought out. Certainly, the issue of child protection needs more funding, and that needs to be looked at within that service as well.

Ms PLIBERSEK—You have mentioned in your submission the findings of the state coroner in relation to the deaths of petrol sniffers. On page 4 you say:

The Findings indicate that there is an enormous unmet need for legal assistance to victims of domestic violence in remote communities, particularly in cases where petrol sniffing and other forms of drug and alcohol abuse are involved.

Could you tell us a little more about these findings—what the circumstances were and what the findings were?

Mr Charles—I think that the state coroner's findings are very eloquent. I ask you to simply read the state coroner's findings in relation to the death of Kunmanara Hunt. This was a young woman petrol sniffer who had a dreadful death and a dreadful life. She received enormous help from the women's council and was very likely the victim of domestic violence. The point that we make is that the coroner's records also indicate, from the evidence of the women's council through witnesses before the coroner, that there is a vast amount of domestic violence which is not recorded and not actioned. That was the coroner's finding and that was what he recorded on that point. It is a very serious issue and that, with respect, is the reason that I was referring to the evidence of Ms Gillick in the Central Australian hearings of this very committee. That was the reason I raised it.

Ms GRIERSON—I suppose that this inquiry concentrates on access to services and the mode of delivery of services but there has to be an assumption regarding the outcomes of the services as well. Do you have a view regarding how data is collected in this state—as to who is accessing services and what the sorts of cases are?

Mr Charles—Again, I think these are matters which can be properly raised with the Aboriginal Legal Rights Movement in respect of its services. We are certainly aware that, in terms of the funding allocation methods that are applied and since the failure of the ALSIS process, there has been a real problem as regards what ATSIC was trying to do to make a measurement of need. We make the point in our written submission that there has not been a proper or adequate measurement of the needs of Aboriginal women in general in South Australia or Australia as a whole. We adopt what ATSIC said to the Senate committee about that point, and that is in our written submission.

Ms GRIERSON—Do you have a view on the role of paralegal personnel assisting in this area of justice or on team models or different approaches that could be used? One of the resourcing

problems is obviously a lack of personnel. Do you see ways to complement the personnel that would be more cost efficient and perhaps even more effective?

Mr Withers—One of the findings of the Law Council's review of this area was the strong support for field officers in this particular area being able to get out into the communities and interact directly with those communities. The reality of the matter is that legal practitioners, whether they are employed by an ATSil or the legal service commission or whatever, are not sufficiently broadly spread to provide effective services in rural and remote regions. If smart use can be made of paralegals in the nature of field officers to open those channels of communication between the communities and the legal advisers, then that is a desirable thing to do. One of the concerns that many service providers have felt about the exposure tender draft is that it has the potential to seriously damage the existing network of field officers and community relation people and thereby cause significant harm to the services that are already available.

Ms GRIERSON—So you consider that a possible outcome of a tender process is that it would be a very restricted service and it would have too many restrictions placed on it by the model that has been put forward?

Mr Withers—Yes, as originally released. The minister has said that that tender process is now going to be varied but, as far as I am aware, the new variation has not yet—

CHAIRMAN—Yes, it has been released.

Mr Withers—So it has been released, has it?

CHAIRMAN—Yes.

Mr Withers—If it has been released, then I have simply not been made aware of what the detail of it is. That was very important. One of the concerns was that persons or organisations entering into the tender process under the original intent might not retain the existing network, which has been regarded as highly effective—or at least as effective as it can be, within the resource limitations—in maintaining that communication.

Ms GRIERSON—Ms Redman, you mentioned community resolution and not mediation processes. Would you elaborate on that? Is that in the new paper that you have submitted to us today?

Ms Redman—No, it is not. It is not my area of expertise, but from discussions with Indigenous women it is clear that to expect that a family mediation model fits their needs is quite inappropriate—and particularly the model where it is a service dedicated to dealing with Aboriginal family violence but where the males and the females are being offered the same service. That is inadequate for Indigenous women, who want to feel that they are listened to and that they have the proper support that they need at that time.

Ms GRIERSON—Do you have a view on the ability of the legal profession to respond to these needs? Do they have a training component or experience model? Is there anything to assist the legal fraternity to take on these roles? Are they adequately trained to take on these roles?

Mr Haskett—In terms of family law matters only?

Ms GRIERSON—In terms of the Indigenous specific services.

Mr Haskett—Through the passage of time and by working in a regional and remote area some practitioners acquire cultural awareness and some affinity for and skills in dealing with clients who are Indigenous. There are practitioners in remote locations in South Australia who act for Aboriginal clients outside the ALRM and who represent people very well. But I am not aware of formal training that people can undertake to improve their skills. It is a process which is acquired more after admission than prior to admission to practice.

Ms GRIERSON—What about incentives? You are saying there are people who respond well and develop a rapport and an understanding. What incentives are there for them to stay in these sorts of services?

Mr Withers—Anecdotally there are very few. The demand placed on practitioners undertaking this work is extremely high. The burnout level around the country, as I understand it, is reported as being extremely high. One of the submissions that has been made to various of these bodies is that it would be very helpful to try to develop some sort of incentive scholarship scheme to encourage potential practitioners from rural and remote regions to undertake the study, return to those rural and remote regions and be available to deliver services. It is all very well to have culturally sensitive practitioners in Adelaide if the need is in Oodnadatta.

Ms GRIERSON—Yes. We have tried that in the medical profession, with rural bonded scholarships et cetera. How applicable do you think the family law model is to Indigenous family issues? Do you feel that it can be flexible enough to respond to specific issues of domestic violence, particularly for families that are part of wider communities?

Ms Redman—I have acted as a representative for Aboriginal children in remote areas. I think the use by the Family Court of Aboriginal consultants to assist in the preparation of assessments and to travel around and take evidence for the psychologist to use to prepare recommendations to the court is working very well. That is a very flexible model where they acknowledge that they need the expertise of anthropologists and people sensitive to Aboriginal culture, because obviously the Family Court does not have adequate training and the judges do not have adequate training. In the Indigenous cases that I have been involved in, the judges go as far as having Indigenous workers sitting alongside them to support them in understanding the differences. It is not ideal, but they do have the flexibility and I am sure they could use that model a lot more than they do at the moment.

Senator HOGG—I want to quote from the ALRM submission, at page 22, and get your comment, because it goes to a practical issue. Their submission says:

As a result of recent changes to legal practice requirements in South Australia, which mean a lawyer with a restricted practicing certificate (usually in place for 2 years after first being admitted to practice) must be directly supervised by another legal practitioner with at least 5 years experience, ALRM is no longer able to employ junior legal practitioners in our single lawyer offices at Ceduna and Murray Bridge.

Is that correct? Has there been a change in the legal practice requirements in South Australia? It seems to me that if there has been, that of itself is limiting the options that are available to an organisation that is severely underresourced.

Mr Withers—I believe that is correct. The admission requirements have been varied to accommodate the training provided to law graduates who have completed the practical legal training course. For an initial period—and I am not sure of the period but you have set two years—

Senator HOGG—That is what they say at this stage.

Mr Withers—there is a restriction to practising under supervision. Undoubtedly the consequence of that would be that those very junior practitioners who command the lowest rate of pay are not available to go out into single offices.

Senator HOGG—Those are the people who are most likely to be in this area of assisting the Indigenous community.

Mr Charles—The special needs of the Indigenous community are so extreme that in fact what is needed are experienced people who have been around for a long time and know exactly what they are doing. It is the same as the point that is made about doctors—because the circumstances are so difficult you need the very competent and experienced people. Putting people who are fresh out into the country is very much sink or swim and not a suitable response. It is again a problem that necessarily flows from the underfunding and the nonrecognition of the nature of the need for Aboriginal legal services.

Mr Withers—To add to what Mr Charles has said, the reason that practise under supervision is required is essentially to ensure that their legal skills and interaction with clients are appropriate and monitored. It does not contain any additional cultural cross-sensitivity training and it would be quite difficult for a young practitioner coming fresh onto the field to undertake that role unless they had a background that suited them for it or they had worked for a period of time within an office where there was that supervision and there was the ability to get that training.

Senator HOGG—Ms Grierson asked a question about paralegal training. Is there any formal or informal paralegal training in South Australia?

Ms Redman—Yes.

Senator HOGG—Is there any sponsorship of that training through the Law Society and/or other organisations in the state? How successful or otherwise is that training?

Mr Haskett—There is a formal course of study here, which used to be called a certificate of justice studies, that is conducted through the Adelaide TAFE. A number of units are available to people over three or four years. The Legal Services Commission—the Legal Aid Commission in this state—facilitates the attendance of members of its staff who wish to obtain that qualification. Other people, I think, attend it and take on that course of study in the hope of obtaining employment in legal practices. I am not sure whether the Aboriginal Legal Rights

Movement facilitates or sponsors the attendance of Indigenous South Australians at that course. To give you an example from the commission, there are now so many lawyers coming through law school that not all of them are able to obtain positions as legal practitioners. In the Legal Services Commission, adviser positions in the Adelaide office and in regional offices are being filled, essentially, by law graduates and admitted legal practitioners rather than by people with formal paralegal qualifications. That is because of the competition for places at the present time. What degree of sponsorship there is outside the Legal Services Commission I cannot say.

Mr Charles—The Aboriginal Legal Rights Movement has always recognised the centrality of the role of Aboriginal field officers in dealings between the solicitor and the client, and in sensitising the solicitor to the client's circumstances and, probably, to information and instructions which an ordinary white lawyer would not get. The need for training for Aboriginal field officers is primary. It has always been a matter which concerns us. We note that that is a matter which has been around since the time of the royal commission into Aboriginal deaths in custody. The recommendations, the curriculum that was done by Professor Dodson et cetera need to be addressed at a fundamental level and pursued vigorously to get proper accreditation.

Senator HOGG—But there is no specific Indigenous course as such?

Mr Charles—That is the point I am making. That was the recommendation of the royal commission which after 12 years has not been properly and finally put into place.

CHAIRMAN—Can I tell you, for whatever it is worth, that in the Northern Territory we heard quite a lot about field officers and the very positive role they play—

Mr Charles—Absolutely.

CHAIRMAN—with the limited number of qualified solicitors that were available. They could spend more time in the communities. I just point out that model to you, because I was quite impressed by what they said. I have one last question. Mr Haskett, you talked about the fact that there is not enough assistance to get family violence orders made with regard to people who live in remote communities. One of the things we have heard about over and over again—and you did not address this—is this: once an order is made, how do you enforce the order in a remote community, particularly if the woman does not want to enforce it?

Mr Haskett—That is a very good question. I do not have the answer to that. I do not know whether Ms Redman has seen examples of enforcements of Family Court orders in remote areas.

Ms Redman—With respect, I do not think that is a reason not to try.

CHAIRMAN—I did not mean it that way. What I am trying to find out is if you are aware of any successes in this area and how we progress so that women feel more comfortable about having the orders enforced. I understand the difficulties.

Ms Redman—No. 1, it is obviously a policing issue, although a breach of a Family Court order is another difficulty because it is not a policing matter; it is a breach of a Family Court order. Adequacy of resources to enforce orders is a major issue that needs to be addressed as well.

Mr Charles—I think you received some evidence from people in New South Wales that policing matters in relation to victims of domestic violence are dealt with somewhat more effectively in southern New South Wales. That is a matter that this committee might want to consider.

CHAIRMAN—We have heard about these issues in both the Northern Territory and Alice Springs. I do not think anybody has told us about anything that approaches a solution, but my memory could be faulty.

Ms PLIBERSEK—I have one technical question. Is it right that South Australian solicitors cannot practise in the Northern Territory and vice versa?

Mr Haskett—There is mutual recognition, and I do not think it is difficult for South Australian admitted practitioners to get admission in the Northern Territory, but they have to go through a process of admission. Once the national uniform model profession bill becomes law, my understanding is that there will be almost automatic movement across Australian jurisdictions.

Ms PLIBERSEK—So that will go some of the way towards fixing the problem of people in northern South Australia, with the possibility of them being serviced from Alice Springs rather than from, say, Adelaide.

Mr Charles—With respect, there is a broader issue there. I understand that consideration is also being given to empowering magistrates to hear interstate matters and to police having jurisdiction interstate. This cross-border matter is obviously a matter of great importance which was addressed by the state coroner in the petrol sniffing inquests. It is an area where I believe some progress has been made and various opinions between solicitors-general are being passed around. It probably is a proper matter to be raised with state and territory Crown Solicitors.

CHAIRMAN—Can someone move that Ms Redman's paper be accepted as evidence to the committee?

Senator HOGG—I so move.

CHAIRMAN—There being no objection, it is so ordered. Can someone move that Mr Charles's paper on reference (d) be accepted as evidence to the committee?

Senator HOGG—I so move.

CHAIRMAN—There being no objection, it is so ordered.

[11.53 a.m.]

AXLEBY, Ms Cheryl Anne, Women's Legal Service Indigenous Subcommittee, Women's Legal Service South Australia Inc.

NGOR, Ms Zita Adut, Solicitor, Women's Legal Service South Australia Inc.

WRIGHT, Ms Marilyn Sue, Acting Coordinator/Solicitor, Women's Legal Service South Australia Inc.

CHAIRMAN—I now welcome representatives of the women's legal service. Do any of you have any comments to make on the capacity in which you appear?

Ms Axleby—I am a representative of the Indigenous subcommittee of the women's legal service. Also, I have had probably close to 18 years working experience in the legal area, particularly previously with Aboriginal legal rights, so I come with a lot of knowledge of cases in that area.

Ms Wright—May I just say we would like to acknowledge that we are on Kurna country and we would like to acknowledge the ancestors of the Kurna people.

Ms Ngor—I am the solicitor of the Rural Women's Outreach Program Port Augusta, which is part of the women's legal service.

CHAIRMAN—Are you the only solicitor?

Ms Ngor—Yes.

CHAIRMAN—That is what we understood, what we wrote and what the law counsellor just said to us. Would you like to make a brief opening statement, or will we start asking you our penetrating questions?

Ms Wright—Very briefly I would like to tell you a little about the women's legal service.

CHAIRMAN—That would be good.

Ms Wright—We have been in operation since 1996. Some of our sister organisations in other states have been open for 20-odd years or more, so we are a very new service. We have three programs: an Indigenous women's program, the Rural Women's Outreach Program and a general program. We have two Aboriginal community workers, one who works in the Port Augusta office with our rural women's program and one who works in the Adelaide office with our Indigenous women's program. We work with the most disadvantaged women in the community and we prioritise family violence, domestic violence and Indigenous issues, including discrimination and assistance with various government departments.

CHAIRMAN—One thing that has confused people a bit is that everywhere we go we wind up talking to a whole range of organisations that seem to overlap and that have different names from those in other parts of the country. For instance, in South Australia it appears that there is no Aboriginal women's legal service. Is that right?

Ms Wright—That is right.

CHAIRMAN—Could you tell us why that is?

Ms Wright—I think the Aboriginal women's legal service comes out of a felt need in the community. I think the need is there, but it may not have been voiced before. The Aboriginal Legal Rights Movement, which has been in South Australia for 31 years, has been the appropriate place for Aboriginal women to attend for legal representation and legal advice. However, what any organisation does changes and shifts, and at this point in time there may be a need for an Indigenous women's legal service. There is an Aboriginal family violence service in Port Augusta, and our rural women's program there also fills in the gaps, providing a legal service to Aboriginal women, because we have seen that need. Before I hand over to Cheryl, I will tender to the inquiry a list of recommendations that came out of a recent Aboriginal women's gathering in Port Augusta. The women gave their permission for us to tender this document today. One of the recommendations is for an Indigenous women's legal service.

Ms Ngor—Can I interrupt for a minute? I also think there is no Aboriginal women's legal service in South Australia because there is an assumption by those in positions to fund such services that there is less of a need because South Australia is a smaller state. In actual fact, because of the geographical distance and the dispersion of populations in South Australia—especially Indigenous communities—there is a real need to have a service that caters specifically for Indigenous women's needs, especially when we have high conflict rates between the different legal service providers.

CHAIRMAN—Do you want to tell us about that?

Ms Ngor—I suppose I will speak from my perspective, being based in Port Augusta.

CHAIRMAN—Yes, be honest.

Ms Ngor—The Rural Women's Outreach Program is funded with an amount of about \$79,000 a year. With that amount we are supposed to provide a service to all women, including Indigenous women, women from culturally and linguistically diverse backgrounds and non-Indigenous women. With \$79,000 a year we are meant to cover Port Augusta, Leigh Creek, Marree, Oodnadatta and Roxby Downs—and up to the AP lands. The geographical area that we are supposed to cover is huge, and for one solicitor it is almost an impossible task.

CHAIRMAN—I do not understand why there are Aboriginal women's legal services in the northern part of the Northern Territory and in central Northern Territory but none in South Australia.

Ms Axleby—That has a lot to do with the priority of funding and where funding is usually directed.

CHAIRMAN—First of all, where does your funding come from?

Ms Axleby—Ours is Commonwealth funding.

Ms Wright—We receive Commonwealth Attorney-General's funding.

Ms Axleby—I will just take a step back to your previous question about why we do not actually have an Indigenous women's legal service here. The Aboriginal Legal Rights Movement is an agency that was established 30-odd years ago by concerned Aboriginal men and women in our community. At that time it particularly dealt with criminal justice and social justice issues. There has been quite a demand on the services of the Aboriginal Legal Rights Movement, predominantly in the criminal justice system, where there is over-representation of Indigenous people. It is not that the services do not cater for the needs of women; it is a matter of priorities and the limited funding. A lot of the men, because they are in the criminal system, probably have a lot better access to the legal services. A format needs to be developed, I suppose, for Indigenous women to have their needs met. On the criminal side, a lot of our men get represented by the legal services, particularly by ALRM, and that causes conflict, because women receive services within that service—and possibly from lawyers who already represent men. That has been an ongoing issue for Aboriginal legal services for many years.

CHAIRMAN—What percentage of your organisation's work is done for Aboriginal women versus everybody else?

Ms Wright—In our Adelaide office it may be somewhat less than in our Port Augusta office. The Port Augusta office sees a high percentage of Aboriginal women. When we take on a matter, for example, we may look at financial circumstances—whether there is any disadvantage—and the merit of the case. We are working more and more with Aboriginal women because there is a need to provide services to Aboriginal women, and they often reflect the most needy in society.

CHAIRMAN—In the sense that you cover women only, don't you have a conflict of interest with the South Australian Legal Aid Commission?

Ms Wright—No, we do not have a conflict of interest.

CHAIRMAN—Don't you compete for clients?

Ms Wright—No. In fact, as a community legal centre, we are funded to pick up clients that legal services cannot accommodate for whatever reason. However, our service does have a policy whereby, in rural and remote areas—because there are no solicitors available and maybe no appropriate solicitors to work with these women—we will take on those matters and provide advice and representatives to those women. We also do community legal education and law reform, as you are aware.

Ms Ngor—And we do not compete with the Legal Services Commission, because, in the way the Legal Services Commission is funded and prioritises its funding here in South Australia, they generally tend to focus on criminal law matters and they only deal with family law and family violence issues if there is urgency, and that tends to be in very limited cases. Regarding the way that they structure the merit system, we might consider a case to have substantial merit and the

Legal Services Commission might not. For example, there was a case that we had recently in Port Augusta that we believed had substantial merit. The case involved an Indigenous couple. The woman approached the service with regard to a particular situation where their child was removed by a non-Indigenous couple through a process of deception, and Legal Aid would not fund the Indigenous couple's application to the Family Court so that they could get some sort of contact or residence with the child. Legal Aid would not view that as being an urgent matter because the child was being well cared for, even though the couple had lost their child.

CHAIRMAN—Could you tell us briefly about the work that you do in Port Augusta and in the other communities? You said that the funding of \$70,000-odd does not go very far. I understand that has to do with the distances and the number of people involved. I can well appreciate what you are saying. Tell us a bit about what you do, the kinds of the cases you undertake and how much you can do in the way of community education.

Ms Ngor—There is high demand for the Rural Women's Outreach Program from women that we cover within the region and also from outside of the region. We get a lot of referrals from the Legal Services Commission of women in Whyalla, even though there is a Legal Services Commission based in Whyalla, and we also get referrals from the other community legal centre in Port Pirie. We get those clients as well as the regions that we cover.

Ms PLIBERSEK—Is that because they have a conflict of interest issue?

Ms Ngor—For conflict reasons and also, because of the way that legal services fund certain matters, they might not be able to assist the women. Generally they will refer family law matters on to us. With the other community legal centre in Port Pirie, it is because of conflict and I suppose because they only have a family law solicitor there for two days a week. He is unable to take on a huge volume of work, so that generally gets transferred to us.

Ms Wright—I would like to add something about the importance of women in that area having face-to-face contact. Often English may be their second or third language and there are other important considerations, so it is very important. Also, to have a woman solicitor to work with—particularly where there is violence or sexual assault—is crucial. That is why Zita gets so many referrals in that area.

Ms Ngor—I am the only female solicitor in Port Augusta and I think there is one other female solicitor in Whyalla.

CHAIRMAN—Do you have a hard time keeping track of your files?

Ms Ngor—Yes. We get a lot of demands. Unfortunately, it tends to get very hard because we get a lot of cases where you think, 'We should really help that individual,' but you tend to have to prioritise the most urgent cases, take on what is most urgent and then try and see if you can refer any. We also do help women to self-represent, but that is like almost taking on the file anyway because they come back to you to ask, 'Can you check this document for me?' or 'Am I doing this right?' The Women's Legal Service has tried to go on outreach on a consistent basis. It is not as often as we would like. It tends to be every four or five months, which for those women in those areas is not as often as they would like. A lot of those women complain about services going into their regions and saying, 'Here we are' and then not coming back for 12 months or

something. The Women's Legal Service has to work on getting more funding to provide a more consistent service to women in rural areas.

One of the problems that we have also had is distance. For example, I have just picked up a women's case in Oodnadatta. She had to get documents signed for the Family Court and, since I am not there, I cannot witness her signatures so she had to find a JP. Luckily for her, she could find a JP when the documents had to be signed but, if we had been about a week later, she would not have been able to access a JP for a month, which would have been detrimental to her case because it was an urgent case and the Family Court would not have taken a very good view of her application being a month late. Those are some of the difficulties that we have to work around at the Rural Women's Outreach Program.

Ms PLIBERSEK—Overall, about how many women do you work with in a year?

Ms Wright—We have an advice line from our Adelaide office and we provide legal advice on a consistent basis every day except Sunday. I think our advice line figures are around 3,500 a year. The number of clients that we take on is generally about 500. We are a small organisation. That would include the Port Augusta office and the Adelaide office.

Ms PLIBERSEK—So you take about 500 clients a year. Have you got any idea about what the unmet demand for your services is?

Ms Wright—When you say unmet demand, what do you mean?

Ms PLIBERSEK—How many women who really need help in a family law matter, for example, just do not get it?

Ms Wright—There is a huge unmet demand.

Ms PLIBERSEK—But it is difficult to quantify, I suppose?

Ms Wright—Yes, and many women who do not fit into the particular category cannot get legal aid because they may work and earn an income. It is a very low income, but that would cut them out of getting legal aid. There may be other problems that mean they cannot access the Legal Services Commission of South Australia. As has been said before, there may be problems accessing the Aboriginal Legal Rights Movement as far as family law problems go. There is a family law solicitor here in Adelaide in the Aboriginal legal rights service but, as I understand it, it is just one person and that is not enough. We may refer to them and they may refer back to us, or legal services, as Zita says, will refer to us, so there is a huge need. A lot of women do self-represent, but quite often that is not appropriate either.

Ms PLIBERSEK—Can you clarify whether, if that family law solicitor with the ALRM has previously represented the male partner in a relationship, they can subsequently represent the woman partner?

Ms Wright—No, they cannot.

Ms PLIBERSEK—So they have a strict no conflict rule?

Ms Axleby—There is a strict conflict policy which is there for a number of reasons, including the connections in community and also Aboriginal workers in the legal service as well. In particular you cannot have the same solicitor acting for a person when they have actually already acted for the partner previously. That is a really big issue. It could be addressed, particularly if the family law section was adequately funded and there were more lawyers able to do that. How that service would be delivered could be worked out, but only having one family lawyer for the whole of South Australia is unbelievable.

Ms PLIBERSEK—In Darwin witnesses were telling us that they are setting up a process of separating their family law so that there are strict protocols to be observed of no information sharing or no crossing of information, but that does not happen here. There is a strict policy of not representing two people from the same—

Ms Axleby—Yes, but that is also backed up by a fund called the briefing fund where services are delivered by a private practitioner maybe in that respect—so they are not left to their own devices.

Ms PLIBERSEK—We have received a lot of evidence that Indigenous women prefer Indigenous service providers.

Ms Axleby—That is right.

Ms PLIBERSEK—Do you think briefing out to private practitioners is appropriate then?

Ms Axleby—Personally, I am an Indigenous woman—and based on experiences I have had in many years of working in the legal field—I would have to support the view of our Aboriginal women that they would not access the mainstream services, particularly those provided by private practitioners. To be open and honest about it, we have to look at not turning this into a dollar-making venue for private practitioners out there. That could be a reality, particularly when tendering out services. The thing about the Aboriginal and community legal services is that there is a format there not only for legal requirements but also for community education, human rights et cetera. There is a whole perspective of areas where the needs of Indigenous people in particular are met, which is something you will not get from private practitioners. We are going to have segregated little concerns and people will have to keep going to different people to get their needs met. That is going to be detrimental, I think. People will give up and will not access services.

Ms PLIBERSEK—We have had quite a lot of evidence from a variety of people saying that they believe that a separate Indigenous women's service is the way go, but there has not been universal agreement about whether the division should be that an Indigenous women's service concentrates on issues like family law that are not being dealt by the larger Indigenous services—in the case of South Australia, the ALRM. Do you think that the division should be that the blokes get looked after by one service and the women by another, or should the division be that one service is about criminal law matters and one service is about family law, civil law and other issues like that? Do you have a view on how, if there were a separate service, it should be divided up?

Ms Axleby—I think we strongly need to advocate for separate premises where Indigenous women can go to access their legal needs. We cannot segregate our community, because I think there is a danger in that as well, but there is definitely a need for Indigenous women to be able to go to a safe place, a safe environment, and know they can have their issues dealt with. Whether, particularly in South Australia, it sits under the umbrella of an agency such as ALRM but as an outreach service or whether there is another way of doing it, it has to be done within an Indigenous format.

Again, it is about the community connection stuff. One of the things we do not take into account when talking about legal services is that these services were developed by Aboriginal communities for Aboriginal communities. It has come from that level, so people are very much aware of what the services are about, who the people are and who the lawyers are, and they develop relationships based on connections. I think that is a very important aspect to think about, whereas with mainstream services you are not going to have that same relationship.

Ms PLIBERSEK—In one of the other hearings, we heard that people saw the Aboriginal legal service as a service for blokes. Women already saw it as that because of the way that criminal matters dominated their caseload. Is there a perception that the ALRM is a service for men?

Ms Axleby—I would say that what we are facing at the moment is an escalating number of Aboriginal women also being incarcerated.

Ms PLIBERSEK—In the criminal system.

Ms Axleby—Yes. So we are seeing a definite growth in that area for women as well. The needs in regard to family law issues, domestic violence and those issues need to be provided for Indigenous women through those venues. Indigenous women are asking for a separate Indigenous women's legal service so that those areas can be adequately addressed for them. Currently, in the legal services commission in regard to providing services there are barriers for Indigenous women in terms of accessing those services, based on money and contribution, and that is another reason women are not getting those services. The women's legal service can pick those women up but, with their lack of resources with respect to what Aboriginal legal services have, not being adequately funded, you are not able to fully represent the people who come to you for a service.

Ms PLIBERSEK—I have a final question, about the Aboriginal field officers that we were talking about earlier. A couple of communities in the Northern Territory have people who live in the community—usually two women in each community—and who are paid a day a week. They are local people who are trained up to do it, rather than people who are parachuted in from outside. Do you think that is a good model?

Ms Axleby—I think it is. The paralegal officers and particularly the Aboriginal field officers play a very important role, because Aboriginal people in the community know who they are and know that they can go to them and get the support and assistance they need. As with any community, you have to be careful: once we take on that role as field officers we—and I was a field officer for ALRM for many years, so I can speak from that experience as well—are people

that the community will identify and come and talk to about the issues. You develop that relationship with them.

Ms PLIBERSEK—Probably 24 hours a day, seven days a week, I suspect.

Ms Axleby—Yes. I have been to many a party where I have been held up in the corner because people want to ask me questions in regard to their legal rights, which is great. The sense of people coming from that community is very important. Also in that respect field officers play a very important role, both in regard to the courts and the court system, supporting lawyers and going out and visiting clients, and also in the prison system, which lawyers cannot get into. So they do play a very big role. Particularly here in South Australia, in comparison, I do not think there has been in the Aboriginal field workers area what there has been with lawyers. That is something that could be addressed as well.

CHAIRMAN—I did not understand that exactly. You think there has been an expansion in the field officers?

Ms Axleby—No, in criminal lawyers, lawyers in agencies and Aboriginal legal services, but we do not actually see the same—

CHAIRMAN—But not an expansion in field officers?

Ms Axleby—That is right—we do not see that same expansion.

CHAIRMAN—Thank you. I sort of gathered that from all the submissions.

Ms Axleby—Yes. And that is, again, about funding limitations.

CHAIRMAN—Have you pushed for it?

Ms Axleby—Yes—oh yes!

CHAIRMAN—Well, I've got to ask.

Ms Axleby—You only get funded what you get funded. In respect of all Aboriginal legal services, I do not think they have received any substantial increases in the last 20-odd years—and that is not even emphasising the fact. The Women's Legal Service have employed an Aboriginal woman to engage with Aboriginal women in the community so that they are aware of the service and they will come in and access the service. It is important to have people in those roles.

Ms GRIERSON—There is the Women's Legal Service and the Aboriginal legal service and the family violence legal service and the rural service. What is the interaction like?

Ms Axleby—As in?

Ms GRIERSON—Do they cooperate? Do they compete? Do they know each other? Do they try to complement each other's roles? Do you think it is a positive one?

Ms Wright—Yes, I think so. It is very positive. A solicitor for ALRM, for example, may be on the opposing side but there is always a cooperative basis that we come from. As Cheryl was saying, we are very badly funded, but the women who go into those areas and work in those areas, particularly in rural areas, are very committed. The salary is appalling, compared to what one would get if one was a legal officer in government or in private practice. But there is a common understanding that people are in there for the best interests of the clients and for the community. We have people like Cheryl who have worked in the area for many years, and that is through commitment and dedication to the Aboriginal community.

Ms GRIERSON—Yes, she could make a lot more money for herself somewhere else, I am sure, with her skills. Ms Ngor, you have told us that you suffer from that isolation and you have to do that by yourself. What support structures have been there to encourage you and what would you have liked to have had there to encourage you? What has helped you on the ground and what would you like to see?

Ms Ngor—Women's Legal Service have been very good with putting in support structures for me because I am away from most practitioners. I am the only practitioner in the office in Port Augusta. They have made their mobile phone numbers available for me to call up at any time if I need to ask questions or discuss a certain matter with them. They have also provided a network of other solicitors that I can liaise with—they are all based in Adelaide but I can liaise with them in case I need to talk about a certain matter. Probably the biggest disadvantage about being in a rural place was that I was initially from Adelaide, so when I moved to Port Augusta to take up the position I did not know very much about the town or the social climate within Port Augusta or the surrounding regions. I had to learn that very quickly. It would have been nice if there had been another solicitor there to ease me into the workload and the environment.

Ms GRIERSON—Trial by fire!

CHAIRMAN—How long have you been there?

Ms Ngor—Twelve months.

Ms GRIERSON—What about referrals on children's matters and family violence, and relationships with magistrates and police: do you find that there is a culture that encourages women to seek your support or your services for their legal representation or is there a culture that women are left to find out by themselves?

Ms Ngor—I can only speak for Port Augusta and the surrounding regions that I know, not for Adelaide. From what I have seen and from anecdotal evidence I have gathered from clients and from talking to women within the region, there is not very much support for women to obtain restraining orders or to report incidents to police. There generally seems to be a failure with enforcing breaches, and even granting restraining orders can be very difficult. I am not quite sure why that is so. I have had police officers tell me it is easier for private practitioners to get restraining orders than the police, because the magistrate is more lenient in terms of the evidence required from a private practitioner than from the police. But generally it is very hard for women to get restraining orders.

Ms GRIERSON—Do you think that is true, or is there a reluctance to act?

Ms Axleby—Speaking from experiences with police, I think Indigenous woman in particular are very disadvantaged in trying to get police assistance in those kinds of matters. The other aspect of this is that a lot of Indigenous women want to be protected but some of them do not want to leave the home environment. That is a big issue from the police point of view. Then when it comes to court time, we have women taking steps to try to withdraw. Also, particularly in smaller communities, police have developed relationships with the men in communities and so are more reluctant to take them up in front of the court system. So there are a number of factors but, again, our Indigenous women are not being taken seriously when they go to the police for help.

Ms Ngor—There is also the issue of police intimidation of the Indigenous community. It does not help foster a relationship between the two groups.

Ms GRIERSON—What are the advantages and disadvantages of team models—of using other people to support the legal services with women and families? Is it sometimes best for the legal services to stay out of the community models, or is it only possible for them to be effective if they work within community models?

Ms Wright—I would say that Aboriginal legal services—the ALRM; Warndu Wathilli, the Aboriginal Family Violence Legal Service in Port Augusta, who are giving evidence this afternoon; and the specialist services that Women’s Legal Service provide—are better able to work within that community model. The important thing for women in particular and for all the community is that there be a model of self-determination as well so that there is some control over whether their matter goes to court, whether it is their choice to proceed with a restraining order or whatever decision they make—and that that comes from the community.

Ms Axleby—On the community aspect, I come back to the point I made earlier about these being not just legal matters but also social justice and human rights matters for groups of Indigenous people within communities; so it is very important that the community aspect be maintained.

Ms GRIERSON—In your submission you suggest delaying the tender process so that proper data is collected and proper needs analyses are done. Could you elaborate on that? That is probably going to be a vital part of our work.

Ms Wright—We had some concerns about whether, when the tender process came into effect and there was a possibility that private practitioners or private legal firms would be given the work, the Legal Services Commission would be the successful tenderer. There are some church organisations that tender for community legal centres. There are concerns that they may not provide an appropriate service. We have seen that the Aboriginal Legal Rights Movement and the Rural Women’s Outreach Program in Port Augusta provide an appropriate service. We are saying that the ALRM should not be placed in the position of using their resources to tender to government for funding and that it should be a given that ALRM are given government funding.

Ms GRIERSON—On their track record and experience alone you would say that.

Ms Wright—That is right. Now, in 2004, there may be some gaps in the provision of legal services—certain areas that are not being provided for. The Women’s Legal Service have tried to

fill one of those gaps, and we are doing it to the best of our ability with very limited resources. The Aboriginal Family Violence Legal Service are doing it in the Port Augusta area with very limited resources. We also provide some funding to the NPY program—the cross-border program that services the women in the Anangu Pitjantjatjara lands—and to the domestic violence court circuit, because the area is too remote for us to get to; but we know that that particular area has a dire need for services regarding family violence.

Ms GRIERSON—Ms Axleby, did you want to add something to that?

Ms Axleby—In regard to the tendering process, there is a great fear that Indigenous legal services in particular are going to be losing their autonomy and that we are going to have the same barriers—as I called them when I discussed the Legal Services Commission and accessing legal aid. I have great concerns that, once the tendering process has taken place and if it goes down that track, Aboriginal people will be even more disadvantaged because there will be new criteria put in place as to how you are going to get legal services. When we are looking at the overrepresentation of Aboriginal people in the justice system, I think we are doing a whole big turnabout and completely ignoring the recommendations of the Royal Commission into Aboriginal Deaths in Custody. We are not taking those on board to say how best we can provide a service; we are actually pushing that aside in respect of this process. That is the point I want to make.

Ms GRIERSON—You talk about empowering women and women's ignorance of their rights, services and entitlements, and you mentioned earlier in your evidence that you do provide some forums occasionally or try to outreach to women so that they will know about the services available to them and their rights. Do you think the tender document should take that into account? Do you think it takes it into account? Do you think it should look at that? Is the issue just accessing the services in response to a matter, or should there be some more inclusion of the empowerment and certainly ways to assist women to know about their legal rights?

Ms Wright—Yes, that is why we have a particular focus on community legal education: that is a good avenue to inform women about their rights in the first instance. A lot of women do not know about restraining orders, for example, or there may be myths within the community regarding sexual assault. So it is very important to get to the community with community workers, as Cheryl said. It is more and more difficult, of course, to get to those remote communities, but it is essential. The preventative things as well are very important. If we can talk to women and provide information and advice before the crisis happens, that is—if we are looking at it from a rationalist perspective—going to save dollars in the end. If these kinds of things could be put in place, I think it would be wonderful.

Ms GRIERSON—You also mention in your submission that often you are helping women interface with Commonwealth departments, because they do not know their rights and they do not know their entitlements. Are we going about that the wrong way? Is there something we can do about all Commonwealth departments so they are more in tune with the fact that people do not understand those things? Or is an expansion of the legal services required to support women?

Ms Axleby—I think it is a matter of two things. In regard to Commonwealth agencies, the rights of all people are not actually being promoted in a community manner. The perception out there is basically that you do not know until you ask. A lot of Indigenous women are actually

caregivers of family children. We have grandmothers and people who are looking after other children who do not know exactly what their entitlements and rights could be in that respect. Again, it is that 'don't know until you ask' sort of thing. Even from my own personal experiences in trying to find out and get through that bureaucracy, it can be very daunting. A lot of our Indigenous women do not feel empowered even to have a discussion with mainstream services in that respect.

Ms GRIERSON—Let alone accessing them in remote communities.

Ms Axleby—Absolutely. So the community legal education side of it is very important, because it is about not just the legal aspect but a lot of broad issues that affect women and their rights.

Ms GRIERSON—There has to be some cost effectiveness in that, I would have thought, in the long term. Thank you very much.

Senator HOGG—I am acutely aware of the time, so I would just like a brief comment. At the top of page 4 of your submission, where you talk about the tender process, the second sentence refers to the 'extreme level of family violence and child abuse'. Those words leapt out at me. Could you elaborate on that and on how the lack of resources is affecting your operations in both of those areas?

Ms Wright—My colleagues may also like to quickly talk to that. I will just say that, again, particularly regarding our Port Augusta office, there is the Aboriginal Family Violence Service and the Rural Women's Outreach Program but those two services are not enough to cope with the level of family violence in that area. The Aboriginal Family Violence Service is funded to provide a service in Port Augusta and the Davenport community only. We are funded to work with all women in South Australia. Zita may work with women north of Port Augusta and to the west in the main, and our Adelaide office pretty much works with the rest of the state.

Although those two services are in place, because there are particular issues in a rural area and in a country town that affect people, a woman may not want to go to the Aboriginal Family Violence Service and she may come to our service even though she is eligible for the other one. There are perceptions of confidentiality, which is extremely important in a rural community. But the level of violence that women are faced with is acute in Adelaide and in the rural and remote areas in particular. Women in remote areas have less access to services and are more vulnerable. In some areas, there is not even any public transport, as you are probably aware, so a woman trying to get out of a violent situation has nowhere to go.

Senator HOGG—There are no safe houses?

Ms Wright—That is right; there are no safe houses.

Senator HOGG—What about the issue of child abuse?

Ms Wright—Can I say too that there is an overlying sense of violence in many communities that comes from the institutions that have been put in place and the oppression that Aboriginal

women are faced with, and that may be reflected by the attitudes of the police or it may be reflected in the provision of services of government departments, the lack of services or racism.

Ms Axleby—Also, when we are talking about family violence and child abuse and we are looking at the assistance provided to women, they are particularly ostracised from a lot of agencies because the focus is usually on children. The men are dealt with in the criminal system but there are no support processes available there for women. If they continue to reside in those environments then their children are going to be removed. In that respect, women are damned if they do and damned if they do not. If they move away from communities they will not have the support of the family base and they will be isolated and ostracised. So we need to have services in place in those communities to provide them with that support and advice.

Senator HOGG—How prevalent is the child abuse? I would like to clarify that one, because we have asked questions about this before in other places.

Ms Ngor—In Port Augusta and the northern regions, it is very prevalent.

Senator HOGG—Is it something that is hidden, though?

Ms Ngor—I would not say that it is exactly hidden. The community knows that it happens. You cannot just look at the issue of child abuse in isolation. It is tied in with family violence and a whole lot of different factors.

Ms Axleby—There are a lot of intergenerational issues that have been carried from the beginning of colonisation and have impacted on Aboriginal communities. The removal of children from their families has impacted on parenting practices and cultural practices. I would also like to stress that, as much as we put it in here because we are talking about Indigenous specific issues, it also happens in non-Indigenous communities.

Senator HOGG—I accept that.

Ms Axleby—But there are serious concerns regarding family violence and child abuse. There have been national strategies to work on family violence, but I think there is still a lot of work that needs to be done in naming child abuse within Indigenous communities and empowering people to come out and talk about it. It is no use encouraging that if you are not going to have support agencies to assist families to get through it.

Senator HOGG—But my point is that currently there is no funding for that at all, is there?

Ms Ngor—No. When we did an outreach last year at Coober Pedy, the magistrate who was doing the court circuit brought us to the front of the court and said that he really appreciated that the Women's Legal Service was going on the outreach. He felt there was a need for us to assist women who were pressing assault charges or obtaining restraining orders against their spouses. There is no support at all for women when they go to court. He just felt that it was really important for the women to have somebody there that they could talk to. Even if they were considering withdrawing those charges, they should be given the opportunity to make an informed decision. A lot of women in the north of the state do not get the opportunity to make informed decisions concerning their safety and the safety of their children. That is what the

Women's Legal Service is really advocating—that women be given the opportunity to make informed decisions.

Ms Axleby—One of the advantages of having an Indigenous women's legal service is that those topical areas can start being addressed and that community information and awareness is increased in respect of those areas. They can get lost because of other pressing and conflicting matters. There can be loads upon loads of issues affecting an Indigenous person at any one time with regard to the legal system.

Ms PLIBERSEK—I asked someone who presented to us earlier whether they knew the number of women who die through domestic homicide in South Australia each year. Would you know that?

Ms Wright—I do not know it offhand but I think it would be very useful to have that figure.

Ms PLIBERSEK—You would not have an idea of how the figures for domestic homicide compare with the figures for deaths in custody, for example?

Ms Wright—No, we do not have those figures.

Ms Axleby—We could say that a lot of deaths of Indigenous women is through domestic violence.

Ms PLIBERSEK—The reason I ask the question is because so much emphasis in these discussions has been on keeping predominantly men out of jail because of the issue of deaths in custody. You talk about the lack of support for women who are pursuing what we call in New South Wales apprehended violence orders, restraining orders or whatever. Anyone who has worked in the field as long as you have would know that there are times that, if that man stays in that house, something really bad is going to happen to the woman and children. Keeping him out of jail is actually a problem, isn't it?

Ms Axleby—That is right. You have tapped it on the head with regard to Indigenous women's concerns. Addressing the issue through the court system so the men do get a sentence out of it and a death in custody does occur is a prevalent, realistic concern for Indigenous women.

Ms PLIBERSEK—It is a real fear?

Ms Axleby—It is a real fear.

Ms PLIBERSEK—But the solution to that is not leaving the men in that house.

Ms Axleby—No, that is right. It is also about educating our women and having those supporting agencies that women can go to get that strength. It is not going to be 'leave your man' sort of stuff. A lot of agencies are actually saying, 'Until you leave the family home we're not going to help you.' So, again, Indigenous women are further disadvantaged. Then they have no one to turn to.

CHAIRMAN—Cheryl, is it fair to say, 'It ain't easy'?

Ms Axleby—It ain't easy.

CHAIRMAN—Thank you. I just want to tell you very briefly that the revised tender selection process will require that prospective tenderers respond to a range of criteria, including their ability to provide Indigenous leadership and culturally sensitive legal services. In addition, the first to go through the revised process will be Victoria and WA, then Queensland and South Australia. It will not happen until after 1 July next year. Do you have the revised schedule?

Ms Wright—It is on the Net, isn't it?

CHAIRMAN—I am sure it is.

Ms PLIBERSEK—If you had a court support worker travelling with the travelling magistrate, would that help, or is there not enough connection with the community if someone flies in and flies out?

Ms Wright—I think your idea of having somebody in each community who is employed maybe one or two days a week is a good idea. Then when somebody does a circuit with a magistrate they can connect with all those workers in that community. Women will know when the circuit is coming to town, when the court will be sitting and all those things. A good model can be put in place to address all these issues.

CHAIRMAN—They have told us some nice things in the Northern Territory about field officers. It is not uniform but people who have talked to us seemed to think it was working well.

Ms Axleby—They have been doing some great stuff in the Northern Territory in addressing those issues.

CHAIRMAN—Very good. Would someone move that the recommendations from the women's gathering for a women's legal service be accepted as evidence?

Senator HOGG—I so move.

CHAIRMAN—There being no objection it is so ordered.

Proceedings suspended from 12.45 p.m. to 1.19 p.m.

CHARLES, Mr Christopher Joffre, General Counsel, Aboriginal Legal Rights Movement

GILLESPIE, Mr Neil Eric, Chief Executive Officer, Aboriginal Legal Rights Movement

RICHARDSON, Ms Joanna Catherine, Manager, Civil Family and Human Rights Section, Aboriginal Legal Rights Movement

WATSON, Dr Irene M., Legal Officer, Aboriginal Legal Rights Movement

CHAIRMAN—Welcome. I understand that you have a very brief opening statement.

Ms Richardson—Yes. I have some observations on some of the matters you have discussed so far. My first point is that if, as seems the case, the funding model to be used by the Australian government is to be based on criminal law case loads, one cannot hope that ATSILs can meet the needs of women. Our experience is that women mainly use civil and family law services, so they have not been factored into the equation. Assessing the costs of services cannot be on the basis that each type of case is of equal value. There must be a weighting process that reflect resources needed to deliver the service, and one family law matter can sometimes be the equivalent of 50 guilty pleas. That has not been factored into any funding process.

Present government policy and the Indigenous legal service policy framework—which I understand is or has been in the process of being revised, and we have not seen any revised paper—is not the product of a consultation process. The percentage of Indigenous funding that goes to Indigenous legal services is not very high. It is part of the seven per cent of the discretionary funding which was the responsibility of ATSIC, so it is less than seven per cent of funding. I refer you to a briefing paper prepared for the parliament of Australia by Angela Pratt on 26 May 2003 entitled *Make or break? A background to the ATSIC changes and the ATSIC review*. It gives a break-up of funding—not of Indigenous legal service funding, but we know that it is a proportion of what was discretionary expenditure.

The funding of services for Indigenous women and criminal representation services cannot be an either/or question. It is like suggesting it should be either hospitals or schools. ATSILs were developed over the years, as you have heard, in response to the overrepresentation of Indigenous people in the criminal law system and were generated from communities. We now have a previously unidentified, emerging and pressing need which is access to civil law services, especially for women and children, and developing responses to issues of family violence. Previously unidentified problems need new money. Access to pro bono services in South Australia are virtually non-existent, unlike in the Eastern States. We cannot even get firms to accept ALRM briefs, because we pay the rate the legal services commission was paying in 1998, and people are not available to take our briefs when we seek to brief private practitioners.

Women need case work assistance not just advice and referral. There are resource implications flowing from that. You can have 100 telephone advices, but that is not equal to effective casework delivery. The state makes no contribution to the funding of Indigenous legal services as far as the Aboriginal Legal Rights Movement is concerned apart from funding one small

position, which is a financial counsellor, and some support to the volunteers who visit Indigenous prisoners held in police custody.

My last point is contestability, which has been given as one of the rationales for the tendering of Indigenous legal services. The purpose of contestability was the empowerment process whereby purchasers, the communities, were able to purchase the service that they required. That has changed: it is now the Australian government that is the purchaser, not the communities, and one of the basic underpinnings of, or justifications for, contestability in this service delivery area has been lost. Those are my brief comments on some of the matters that you have just discussed thus far.

CHAIRMAN—In your submission you referred to women who seek help from women’s legal services, and family law and family violence areas. One of the things you said was that the implication of statements that Indigenous people are disadvantaged by possible conflict when only a single Indigenous specific legal service is available is that there should be more than a single Indigenous-specific service available to all Indigenous people. I would like your comments on what led you to say that. Were you here first thing this morning?

Ms Richardson—Yes, I was. Could you tell me which page you are referring to?

CHAIRMAN—Page 5.

Ms Richardson—I am not sure that is our submission.

CHAIRMAN—It is in the summary of your submission, with the greatest respect.

Ms Richardson—Sorry.

CHAIRMAN—I assume my secretariat had it right. One of the things that has interested me—and, I suspect, my colleagues as well—is that there is such a diversity of different organisations and groups around Australia that in this area there are sometimes services that overlap. One person might access the service in one jurisdiction and one in another. I was interested in an explanation of why there should be more than one Indigenous-specific legal service and what you had in mind.

Ms Richardson—It is a question of conflict—legal conflict and community conflict. It is not possible for one lawyer to represent both sides of the party. If a lawyer has already represented one party and obtained information which would prejudice their ability to act for another party in another matter down the track, it is a legal conflict situation.

CHAIRMAN—Do you recommend gender-specific services, or do you envisage that they should cover different areas—that is, one type of service that covers civil cases and then one to cover criminal? How do you divide family violence, which is certainly a criminal issue? How does that impact on family law matters?

Dr Watson—It is clear that there is a critical need for greater access for Aboriginal women to legal service providers. It may take the form of being an Aboriginal women’s legal service. However, I think the point was made earlier by Cheryl Axleby that there is also an increasing

number of Aboriginal women who are now profiling before the criminal justice system. So there are a number of tensions there. A simple model is gender specific, and that would be versus the notion of a service being specialist in its civil family law human rights representation. The Aboriginal Legal Rights Movement has become highly specialised in representation in criminal matters. The increasing profile of Aboriginal women within the criminal justice system needs to be factored into the question of whether it makes sense to split the service to be gender specific or whether there is a better model. There is certainly a critical need for a service whose primary focus is service provision to Aboriginal women and children. However, that other question remains. I do not think that you can simply create that gender divide.

CHAIRMAN—I do not know that you helped us reach any recommendation point. Why was it that for your outreach service you chose the one location in South Australia outside of Adelaide that had a service for women?

Ms Richardson—We have regional offices in Ceduna, Port Augusta, Port Lincoln and Murray Bridge, and those offices have been in place for many years. If you are talking about Port Augusta and the provision of the family violence prevention legal service, that is a recent creation under federal government funding. They came to where we were because that is a place where Aboriginal people live. The Aboriginal Legal Rights Movement wished to create outreaches that address the needs of women. One area of absolute need is the greater metropolitan areas, where the majority of Aboriginal women, children and families live. The spread of population in South Australia is different from some of the other states, and it is about addressing greatest need. I know that the needs of women and children and all Aboriginal people in South Australia in rural and remote areas are also pressing. They are different and competing pressing needs. On the point that we have not established an outreach anywhere, we would like to establish one somewhere but we have been there for a long time, so I would not call it in outreach.

CHAIRMAN—The rural women's outreach program?

Mr Richardson—That is not our organisation. We are Aboriginal Legal Rights Movement. We are the Indigenous legal service provider in South Australia.

CHAIRMAN—Yes. Where do you get your funding?

Mr Gillespie—Our funding comes from the Attorney-General's Department as of 1 July 2004.

CHAIRMAN—All of your funding?

Mr Gillespie—All of the Law and Justice Program funding, yes. We do have some subprograms funded from the state government, which amounts to less than \$200,000.

CHAIRMAN—Why are you called the Aboriginal Legal Rights Movement rather than, as is prevalent in other states, Aboriginal legal women's service or Aboriginal legal service?

Mr Gillespie—One of my colleagues can answer that, in because there is a long history and I have not been with the organisation for that long.

Dr Watson—The name is historic. The Aboriginal Legal Rights Movement was constituted in 1973. That is the name that it was originally constituted under. It took its activities as being more than simply a service provider. It also took that it was an advocate for Aboriginal rights and a body that responded to government policy and law reform initiatives. So it has a much broader activity than representation, and I think that is reflected in its name.

CHAIRMAN—Like other groups, most of your activity is for criminal rather than family law matters.

Mr Richardson—If you look at casework numbers, you see that we certainly have a preponderance of our resources devoted to representation in criminal casework matters. However, we do have, and have for over the last 15 years, four staff in the section in which I work, which means that we are providing services—not all the services required, but many services—to Indigenous people, covering civil, family and human rights. Those services are also provided in our regional offices, albeit there is less capacity to do that because of other needs. So, in South Australia, we have developed services that are unique to those provided by our counterparts in other states. For many years we have attempted to address those issues because the delivery of services enabling people to understand and exploit their rights in addition to responding to their obligations as members of the Australian society is a critical element of membership of the Australian society. It is the long-term path to economic and social welfare.

Mr Charles—Furthermore, you will note that our written submission details the areas we do cover from our various offices. I think there are also statements about the areas we perceive we do not cover but that we ought to cover, and they are not merely geographical areas but also areas of service.

Senator HOGG—You raise an issue in your submission which I thought was an interesting point. You say:

There appears to be an over emphasis on post events service delivery rather than preventative services.

It seems as if there is a real tension between funding the legal requirements that an Indigenous community needs and funding the prevention so that people do not get into difficulties in the first place. There does not seem to be any coordination between them, from what you have said, because your funding now comes from Attorney-General's but the Attorney-General does not have responsibility for preventive measures. How does that issue get addressed?

Dr Watson—I think it is more than a question of coordination: it is a resource issue. For example, you have the Aboriginal Legal Rights Movement identifying and being on the frontier of dealing with Aboriginal community issues and identifying the resources that are critically needed in the prevention area. So it is more than a question of coordination; it is the ability to even get to that stage of coordinating, because of a critical lack of resources.

Senator HOGG—How does one bring that together?

Mr Charles—There is an important point about the difference between a legal service and a legal aid service: the conventional understanding of legal aid is that you are responding with a bandaid to a perceived problem. The legal service goes to a community, works out what the

community's needs are and works with that community to solve its problems in the broader sense. In our written submission we make some reference to what we have done at the Yalata community. That is an example of the sorts of things that can be done and that ought to be done more often but which the exposure draft and the current arrangements make much more difficult to do; they are proactive and useful things that assist communities to deal with their fundamental problems.

Mr Gillespie—Our organisation has consistently sought funding for that widening gap to provide services to our clients. Unfortunately, we have not been successful in increasing our funding in real terms since 1997.

Senator HOGG—Yes, I saw that.

Ms Richardson—If our role is to be only one of advocacy, which is all that it is at the moment, it will necessarily involve the kind of work that we have been doing—that is, participating with the state and federal governments in developing programs that implement preventive and restorative measures. It is not our brief to provide those services as yet but to advocate them.

Senator HOGG—But you are not getting the funding to participate in that either.

Ms Richardson—No. That is exactly it.

Senator HOGG—That is the point I am trying to make.

CHAIRMAN—You have confused me a bit because you are talking about your interaction with the state government, yet you do not receive state funding.

Ms Richardson—You are confused!

CHAIRMAN—Are we funding you to go and play footsie with the state government?

Mr Gillespie—This is one of the key concerns that ALRM has been expressing for a number of years. In fact, I did send something around to all members of parliament earlier in the year. The Commonwealth regards itself as a supplementary funder for Indigenous issues. When we have approached the state on numerous occasions the state says, 'No, Aboriginal affairs are a Commonwealth responsibility.' We hope that one of the outcomes of this inquiry is that leadership will come from either the state or the Commonwealth to try to overcome that impasse. Rest assured that this organisation has been pushing for increased funding to fill that widening gap, even including within our constitution those preventive type activities. We have provided for that but, unfortunately, we are not funded either by the state or by the Commonwealth.

CHAIRMAN—What percentage of your work and expenditure is on civil cases versus other cases?

Ms Richardson—Because of the weighting issue it is probably best described by talking about the resources we put into it rather than the case load numbers. At the moment we have a

dedicated team of seven in Adelaide, plus part of the services of all our staff in regional offices—which is a bit more than a quarter but less than a third—

CHAIRMAN—A quarter of what?

Ms Richardson—of our resources being channelled towards legal service delivery other than criminal casework delivery.

CHAIRMAN—By comparison, I would think that is quite high.

Ms Richardson—It is high. That is because historically we have responded to the desires of the community that we serve. It was their request and therefore we responded.

CHAIRMAN—Do you fund field officers in the remote communities?

Ms Richardson—We have one stand-alone field officer in Port Lincoln. We have no stand-alone field officers out in the communities. We have field officers in all of our regional offices and in our Adelaide office. It is one of the defining features of an Aboriginal legal service that it recognises and uses those resources.

There have been suggestions made about training staff in communities to act as a liaison. I have personally had some concerns about some of the things that you were suggesting, such as paying someone two days a week to fill that role. As Cheryl Axelby explained—and from my experience of working with Aboriginal liaison officers employed by government departments—it is not a nine-to-five job and it is not part-time job. It is a lifestyle and, therefore, if staff fulfilling that role are to be retained, they require support and proper remuneration. It is a full-time job; it is a lifestyle. To say that someone can be paid two days a week to do the job I think underestimates the different demands and experience needed.

CHAIRMAN—I do not think you would find that we were advocating that. I said that we heard the Northern Territory had a very good program.

Ms Richardson—It was raised, and I just thought it was important to mention. I represent Indigenous people in work conflict situations, and that is a common issue and one which destroys retention.

Ms PLIBERSEK—I was wondering whether you have figures for the number of domestic homicides in South Australia. I am asking everyone today.

Ms Richardson—We will take it on notice, but I think you should also be asking about the number of victims of family violence who are not necessarily homicides.

Ms PLIBERSEK—The comparison I want to make is the number of domestic homicides and the number of deaths in custody—but you do not have those figures.

Ms Richardson—No.

Mr Gillespie—A statistical compilation like that is something that is beyond our organisation's mandate or role. It is more the role of, say, a state government agency. Added to that, our organisation has identified and has had people in the information monitoring unit collect data. However, our organisation has been running on empty for quite some time, to the extent that to maintain our existing level of services—and I think we have mentioned this in the report—we have had to transfer our corporate support type service resources into the service delivery just to maintain services. So we have a number of unfilled positions. It would be lovely if we could gain that information, but we cannot.

Ms PLIBERSEK—If you cannot that is fine. We can ask, for example, the state bureaus dealing with crime statistics to follow up with that. It is not something that I need you to follow up. I just thought, in your line of work, it was possible that you would have heard someone talking about these figures recently.

Mr Gillespie—It would be desirable for us to do it.

Ms PLIBERSEK—Recommendation 5 in your submission states that a 'comprehensive study should be undertaken to accurately determine Indigenous women's needs for legal services and access to justice'. Do you think it is necessary to do one more study, or do you think we know that there is a huge unmet need out there and that we should focus our resources on meeting it?

Ms Richardson—If it is recognised as a huge unmet need, then I agree that we would rather see the resources put into service delivery than yet another study. But it seems at times that we keep going back to square one, where we have to justify the need for everything. If that is necessary, so be it, but if that is not necessary services must come first.

Ms PLIBERSEK—But you agree that the need is there. You do not want the survey done for your own benefit; you just want to convince unfriendly bureaucrats that you need your funding increased.

Ms Richardson—Precisely.

Dr Watson—But that is an area that has been properly focused upon. There are a number of unmet needs in the Aboriginal community that, in general, should be taken into consideration.

Ms PLIBERSEK—Do you want to elaborate on that?

Dr Watson—I think the issue of women and children is particularly obvious. It is critical, and it has been for a while, but it is not an issue that has evolved over the past decade of this particular government or any government. It is a historic situation, as it is in a number of other areas of unmet need regarding the ability of Aboriginal services to be able to adequately provide the service that is needed. In the area of the representation of criminal matters, I do not think we should draw the impression that the need is being met, because clearly it is not, given the fact that a whole range of civil and political rights are rarely framed and the capacity for the representation of a number of areas of violations of Aboriginal people's civil and political rights does not get to the table. I am not denouncing the critical importance of the issue of women and children's right to representation. I just note that there is a general unmet need for services in a

whole range of areas. Here we are specifically talking about legal services that are not met adequately by the Commonwealth or state governments.

Ms PLIBERSEK—On page 8 of your submission, you say:

The experience of ALRM is that the majority of potential clients for such services actually live in suburban Adelaide and surrounding areas.

I think you are talking about family violence services. Is that the case?

Ms Richardson—Yes.

Ms PLIBERSEK—Do you mean the majority of people who approach you or the majority of people who need help?

Ms Richardson—ATSI, ATSI or Attorney-General's would be able to provide you with the demographics, but my understanding of the demographics in South Australia is that the majority of Aboriginal people live in the greater Adelaide area.

Ms PLIBERSEK—I see. I misread that. I thought from your submission that you were saying that family violence was more prevalent in urban areas than it is elsewhere.

Ms Richardson—We can make no statement about the prevalence of family violence, because we have neither the resources nor the knowledge to undertake studies. We can only speak anecdotally.

Ms PLIBERSEK—But in the submission are you talking about the number of Indigenous people rather than the number of people who need help with family violence legal services?

Ms Richardson—It also leads into the issue that Neil was going to raise about isolation.

Mr Gillespie—With regard to isolation, the tyranny of distance is not one of the causes. People are isolated because of issues such as institutionalised discrimination. Joanna and I were talking about this yesterday, and I highlighted the fact that when I was a national director in the tax office that organisation had an absolutely wonderful Indigenous strategy. It looked good on the shelf, but it was not implemented. The staff were isolated. The tick and flick performance measures were done, but there was no emphasis on helping people develop and just fit in. They were doomed to failure because there was no support mechanism, particularly for people who come from certain disadvantaged backgrounds.

That is the type of isolation we are talking about, if you can visualise that, and within the Aboriginal population in the greater metropolitan area of Adelaide the same thing applies. The services are not conducive. That is one of the key points that has come out of many of the reports about Aboriginal organisations which provide services to Aboriginal people. There is a sense of ownership and a sense of belonging. The feeling is, 'It is one of our organisations'. This is something that the Indigenous community of South Australia keep on emphasising—the Aboriginal Legal Rights Movement is their organisation. They are the members and they actually own the organisation. That ownership and connection is very important. Hopefully that

message will get through to the inquiry members and, ultimately, influence the policies and strategies that are developed at the government or bureaucratic level.

Ms PLIBERSEK—Dr Watson, when we were talking earlier you quite rightly raised the issue of whether it is better to divide services on the basis of gender or on the basis of the areas of law they deal with. I was not actually clear from your comments what your opinion was on that.

Dr Watson—I think there is a real need for the development of an Aboriginal women's service, but it needs to be within an Indigenous service framework—such as, for example, the Aboriginal Legal Rights Movement, which has a historic presence and a relationship to the Aboriginal communities in this state. The point I was raising was the difficulty with it just being simply gender specific—and some of the problems of it then just being the service provider on all issues that are relevant to women and children when there is already a historic development of expertise of criminal practitioners within the Aboriginal Legal Rights Movement. I am looking at it from a pragmatic point of view and an economic point of view. Is it better for the women's service to focus on family and civil expertise and have that ongoing arrangement and relationship with the Indigenous service providers such as the ALRM?

Ms PLIBERSEK—In most states where there are no existing Aboriginal women's legal services—and there are a number—you could have an organisation like the ALRM to do all the back office stuff but you could have separate premises and all the rest of it. Is that the sort of model that you envisage?

Dr Watson—In terms of it being autonomous, clearly a separate location is important for all of the reasons that have been raised by previous speakers here today.

Ms Richardson—And a quarantined budget.

Dr Watson—Yes, and a separate budget.

Ms PLIBERSEK—Is it true that your organisation has a very strict policy on not representing Indigenous person against Indigenous person? That was mentioned to us in another state.

Ms Richardson—It was a very strict policy, coming from the community, until a couple of years ago when the board of the Aboriginal Legal Rights Movement changed that policy. We set that out in our submission to you. We have changed it. We now provide in-house services, because they are the most cost-effective and effective services to people. We give priority within the civil-family-human rights section to victims of family violence. So we provide them with assistance, even against other Indigenous people, and we refer out the others—although at the moment we cannot afford to pay any private lawyers in that process of referring out. So, yes, we have consciously changed our focus in response to community needs. We by no means provide all the services needed. That reflects the shift.

Ms PLIBERSEK—How has that worked?

Ms Richardson—With great difficulty. It has caused a high number of complaints, which Neil has received, because for 30 years it has been a case of us not taking sides. We are now taking sides, and some people are unhappy with that. Other people think it is fantastic.

Ms PLIBERSEK—Why do the people who are unhappy say they are unhappy and why do the people who are happy say they are happy?

Mr Gillespie—In a recent family law case that involved violence as well, the perpetrator was upset because we were providing a service to his wife and not to him. He was asserting that it should be both. We just said, ‘We’re sorry; we can’t. Current policy dictates that we look after your ex-wife.’ He made quite vocal allegations of discrimination and so forth to the extent that he has lodged a formal complaint with our funding agency and elsewhere.

Ms PLIBERSEK—What about the people who have expressed satisfaction with the change? What do they say?

Mr Gillespie—We predominantly receive communication on the negative side rather than the positive side.

Ms PLIBERSEK—Much like our job!

Senator HOGG—That is true.

Mr Gillespie—It is in the vicinity of 95 per cent one way and five per cent the other.

Ms PLIBERSEK—You think 95 per cent of people are happy with the change? Is that what you mean? Or do you mean 95 per cent of the communications you receive are complaints?

Mr Gillespie—Yes.

Ms PLIBERSEK—They are just the people who bother to complain to you?

Mr Gillespie—Yes, that is right. Unfortunately, we do receive accolades but they are usually verbal. It is a very rare occasion that we get something positive in writing. We do have both a complaints and a compliments policy. We used to just have a complaints system but since I have been there we have had the compliments system as well. We do recognise the good efforts of our colleagues.

Ms PLIBERSEK—Thank you.

Ms GRIERSON—I gather that the Aboriginal Legal Rights Movement has been around a long time. How do you ensure that you are continuously representative of the community and its needs?

Mr Gillespie—At the moment we do not have a formal performance measurement other than the complaints system and the recognition of the good work. We do have what I would regard as an informal system through the community representatives—both the previous board of 21 members representing the whole state and up until 1 July the new board of 10 members. We do

not have the same representation but that representation was a very good indicator of how well we were doing. Matters were brought to my attention regarding service delivery through the voices of the community representatives.

Ms GRIERSON—Who on your board of 10 would represent, perhaps, women's services and the need for activity to support women and families?

Mr Gillespie—At the moment we do not have direct membership of women in the form of allocating positions for the women. We have the best candidate and in fact our board is made up of a number of women. Three members of our executive are women—the chair, Barb Wingard, our secretary-treasurer and another executive member. We have a number of other community representatives who are on the board. In the main, we are six to four in favour of women.

Ms GRIERSON—You said that you have some community consultative models and community consultation that guide your operations.

Mr Charles—These matters are all built into our constitution, and we can provide you with a copy of that. It specifically mandates the requirement that the board consult with the community during every board meeting and subsequently. One of the measurements of performance of board members relates to community consultation. It is a very important aspect.

Ms GRIERSON—Can I see an annual report or something that would document that?

Mr Charles—It is also in the constitution.

Ms GRIERSON—I see in all submissions a need for better information, better information collection, better performance indicators and snapshots of reality, yet I hear people saying they have none of that. I find that difficult to understand as I would have thought that performance would have to be linked to some sorts of indicators of success, whether they be the number of services, the number of consultations, the mode of service and the person who is receiving that service, or the types of cases. Surely you collect some of that data?

Ms Richardson—We collect data. We have generated programs which collect and develop data for a criminal database or a civil database, so they are separate and unfortunately we have Chinese walls. We actually have statistics. We do not necessarily have staff to interpret them and we do not necessarily have staff to put the data in at all times, but we have statistics. We engaged at length with ATSIC when they were looking at what was called the ALSIS program, which was going to be a nationwide program. We were recommending to them that they include some of the things that we do and that, in order to make the job more efficient, they link the collection of statistics with the generation of letters that are requirements of good practice and things like that.

Ms GRIERSON—So as an advocacy model you have tried to influence other agencies to collate that data?

Ms Richardson—We have certainly advocated with ATSIC how to collate the data and what might be useful data. We have made numerous submissions over the years to what was our funding body about what meaningful performance data would be, being not just an emphasis on numbers but on qualitative assessments of performance as well.

Ms GRIERSON—In tendering for legal services and in having a tender document for the provision of Indigenous legal services, how do you think that you can bring about ongoing advocacy as well as actual service delivery?

Ms Richardson—Do you mean measuring it?

Ms GRIERSON—No, providing it. How do you incorporate advocating for continual legal services based on need and on evidence, as well as the provision of those services? How would you suggest that be done in a tender document?

Ms Richardson—There would be a category of services which recognises the role of promoting, discussing and encouraging a review of law and practice that impact on Aboriginal people and which identifies—and enables people to participate in—discussion and change.

Ms GRIERSON—In your submission you talk about the need for quality legal representation. You talk about quality legal advice and quality legal representation sometimes being in two different areas, with a suggestion that perhaps they can be provided by two different providers. Do you see those as related? Can they be separated?

Ms Richardson—The difference between simple-advice duty lawyer work and casework representation is enormous. Usually what happens is that a person will contact you, you will give them general advice about their rights and remedies and then refer them on. The chances of a person dropping out in a referral process are enormous. It is a high-risk approach to enforcing or exploring legal rights. The ability to provide comprehensive casework when needed as one smooth operation is essential to the successful delivery of services. We are reluctant to engage in a referral process because we know it is so flawed and so likely to come unstuck.

Ms GRIERSON—You talk about the need to retain people who take up these employment opportunities, you talk about salaries and you talk about support staff. What do you mean by support staff?

Mr Gillespie—The support staff we are talking about are: individuals such as field officers, who are paralegal individuals who act in many instances as intermediaries between Indigenous persons and lawyers; and backup staff in the office in areas such as community education and information monitoring. Unfortunately these areas are vacant at the moment. They have been vacant for quite some time. We see our role as that within our constitution and that which we are mandated to do: to provide community education and preventative type activities, so they are the types of things that are the backup for the direct legal services.

Ms GRIERSON—You also mentioned telephone advice services in your submission. What is your view on telephone advice services?

Mr Charles—They are not that essential. My colleagues can expand on that, but they are not as good as a face-to-face interaction. That goes to Joanna's point about the need for proper casework delivery.

Ms GRIERSON—You would all agree with that?

Dr Watson—Sure.

Ms GRIERSON—So you would not want see a tender that allowed cost-cutting by offering a telephone advice service?

Mr Charles—Again, I think you have heard evidence before from Central Australia about the inadequacies of such services when you have language difficulties.

Ms GRIERSON—You talk about the need for conciliation and mediation in community disputes and some conflict resolution training for communities. Have you been active or had any successes in that area? Do you want to give us advice on that for the future?

Mr Charles—It is terribly important. It was the aspect of ATSIC funding, ironically, that first went in the mid-nineties. Training people to run an incorporated association properly and successfully is the first step to preventing them getting ghastly industrial disputes and disputes over the running of an organisation.

Ms GRIERSON—How useful are our models for Indigenous communities?

Mr Charles—The models that we have are subject to the adequacy of the previous self-management understandings. Books have been written about that. The point that you make is that there has to be proper training for people to run their incorporated association successfully—for people to get the skills to be able to avoid disputes or, when you have disputes, to be able to mediate them and to sort them out quickly and effectively.

Ms GRIERSON—Do you think there is any interplay between family violence prevention and community conflict resolution?

Dr Watson—I am not sure what you are getting at. The adversarial model is problematic, but in the absence of an alternative and in the absence of special funding for the development of preventative and alternative programs, those alternatives are really just hypotheticals—they are not yet tested. I am aware of the programs in Nowra and we also have a program here, the Nunga Court, which has not yet been fully measured in terms of its workings, although the responses are favourable. But the Nunga Court model here in South Australia is based on the entering of a guilty plea, so it goes to questions of sentencing. In a range of areas in relation to the positive work that we want to do with young people, for example, it is not such a good model, particularly where we are concerned about the number of convictions that are recorded against children and the urgent need to do a lot more advocacy for young people. In the absence of established models and resources to fund those models, we are simply talking hypotheticals. How would they work? You have had quite a lot of discussion of the suitability of alternative models in the area of family violence and the problems of bringing victim and perpetrator together in that sort of circle sentencing model. I think it is problematic, but that should not turn us away from looking at alternatives, particularly in light of the problems that the current adversarial system presents for Indigenous peoples. But I do not have any conclusive response to that other than to say that it is difficult issue.

CHAIRMAN—I understand what criminal case load is and I understand what family law issues are. What are the civil rights issues that you deal with?

Ms Richardson—Law is divided into two areas, in fact: criminal and civil. Civil is everything that is not criminal.

CHAIRMAN—I understand that but, when you talk about ‘civil rights’, what issues do you deal with specifically?

Ms Richardson—In the civil, family and human rights section we cover within the policy framework guidelines every type of inquiry in law that our resources enable us to. We will undertake employment disputes for workers, equal opportunity disputes and test case litigation to ensure that the common law reflects the needs and requirements of Aboriginal people. If we have the resources we will give it a go.

CHAIRMAN—Thank you very much. If we have any further questions we will put them to you in writing, if you don’t mind.

Mr Gillespie—Certainly.

CHAIRMAN—Also, there being no objection, the committee accepts Mr Gillespie’s opening statement as evidence.

The document read as follows—

ABORIGINAL LEGAL RIGHTS MOVEMENT INC

Indigenous Law & Justice Inquiry

Joint Committee of Public Accounts & Audit

Based upon the many Inquiries and public debate regarding Indigenous Affairs it appears the National Parliament is seeking assistance in developing policies and strategies to alleviate the social disadvantage for the most underprivileged and deserving members of our community.

It is hoped that our small contribution can assist the National Parliament reach a consensus on a way forward to develop appropriate policy and strategy initiatives that can be recommended to the Government.

I don’t intend to regurgitate what both ALRM and many others have submitted to Govt and Agencies. What I will do is put forward initiatives that this Inquiry may consider to have merit.

1. Recognition that there is a long history of successful service delivery by ATSILS although it is recognised that there are some needing assistance and I call on the Govt to provide leadership as provided in the recent Parliaments Capacity Building Report.

2. ALRM is rated the most efficient and effective organisation by ATSIC in its OEA Report January 2003. Whilst we are funded at \$3.4m we are shown to be better prepared to serve than mainstream at a cost of \$9.2m. This has been achieved with static funding since 1997 which effectively means that our funding has been reduced by 23% or more in that time. Whilst various Govt Reports highlight the chronic funding shortfall, the Govt may wish to consider why some ATSILS have excelled manifold ahead of mainstream services on reduced funding and increased workloads. The answer to certain interstate problems could be easily resolved by talking with organisations like ALRM.

3. The Govt should consider undertaking an extensive diagnostic of the Indigenous disadvantage in the justice system. Fundamental questions such as what works well, what does not work, what can be done to alleviate current systematic stresses in the short term, and what is required to address long term disadvantage. Answers to these fundamental questions or similar will show the way for policy and strategic directions and offering solutions the Govt is seeking. We need this lateral thinking that has been highlighted as lacking by the ANAO in its report and the obvious deficiencies in the current system managed within the bureaucracy.

4. This diagnostic should be undertaken in partnership with Indigenous peoples and organisations. With appropriate consultation the answers will flow.

5. There is a repeated notion of isolation and the tyranny of distance which prevents the use of mainstream services. Here in Adelaide we have experienced isolation by city based Indigenous peoples and this is because of institutionalised discrimination which unfortunately Govt encourages by misguided policies. So we have city based isolation and not just in regional Australia. For example there is a history of high Indigenous staff turnovers in the workplace.

6. Further on this theme people won't go to mainstream services because of the lack of appropriate cultural services. Here Govt is encouraged to recognise the Importance of Indigenous peoples dealing with Indigenous organisations. Those orgs have a sense of ownership by the clients. It is their organisation.

7. A starting point for Govt is to revisit the ATSIC Review Team Report and the Legal Aid and Access to Justice Senate Report and note the respective recommendations. I add that in considering these that any implementation should involve high calibre Indigenous managers that will assist the Govt in its endeavours to achieve better outcomes for the disadvantaged.

8. I now table these documents and encourage questions from the Honourable members.

Mr Charles—I also want to tender a transcript from the Australian Industrial Relations Commission in relation to the last safety net increase that applied to the Aboriginal Legal Rights Movement under its award and I tender the transcript of Commission Dangerfield.

CHAIRMAN—There being no objection, that is so ordered. Thank you.

[2.12 p.m.]

DODD, Ms Susan, Coordinator, Warndu Watlhilli-Carri Ngura Aboriginal Family Violence Legal Service

FORTH, Mr Mark, Senior Solicitor, Warndu Watlhilli-Carri Ngura Aboriginal Family Violence Legal Service

CHAIRMAN—Welcome. Thank you for coming today and thank you for your submission. Do you have a brief statement or will we start with questions?

Mr Forth—Firstly, I thank you for allowing us to appear before you today. I thought I might give a summary of the objectives of our service, the scope of it, and the extent of the work that we do.

CHAIRMAN—Will you do that as quickly as possible, please, so that we can ask you questions.

Mr Forth—The charter of the service is to provide Indigenous clients in the Port Augusta and surrounding regions that are suffering the effects of domestic violence with assistance in whatever ways are needed. The type and the scope of work that we do is fairly broad because of the definitions of family violence. Quite frequently when a client comes to see us they have numerous issues, mostly personal safety issues, which are immediate, and we need to deal with the police and women's shelters and perhaps representations in the magistrate's court. There are often children's issues where we try to seek negotiation and/or if necessary representation in some sort of court to resolve those. There can be debt problems arising from property damage perhaps from a history of domestic violence. There might be personal health issues and sometimes post-traumatic stress and emotional issues. Frequently there are long-term housing problems and extended family problems and sometimes underlying social issues or even sexual assault issues—all sorts of things. So when clients come to see us they often present with very broad-ranging problems.

As an idea of the extent of work that we perform in Port Augusta—and we deal only with clients in Port Augusta and surrounding regions—in the first quarter of this year we had 1,054 client contacts, in the second quarter of this year we had 1,220 client contacts, and of those clients we provide ongoing representation in court and other areas to roughly 150 clients a year. As observed, those client issues are often quite complex and require substantial workloads.

I would also like to very briefly give my experience of the distinction between Indigenous family violence and non-Indigenous family violence. I have had some dealings with both areas through Indigenous-specific family violence legal work, work in private practice and also with community centres. There is quite a substantial difference between the two. To me, one of the significant differences is the type of client and the community that they live in. Indigenous people live in a close and what you might describe as a fairly discrete community within Australia. They have very close family ties. Because of that, sometimes you get quite immense pressure from the families to try to deal with the matter internally. Sometimes that conflicts with

the best advice given by our service. Sometimes we try to work with the client within their community to work something out. It does not make matters complex but it makes the time for dealing with issues lengthy when you are dealing not only with the client, the children and other outside agencies, but almost with the community itself.

Senator HOGG—Does that apply to child abuse as well?

Mr Forth—In the last six months we have received funding to start a sexual assault service. It is really in its infancy, but for the sake of the committee I did some research on our last 200 clients. I did not pick and choose; they were just our most recent 200 clients. Of those 200, 175 were female, and it was disclosed that 44 per cent of those clients had suffered from sexual abuse as children.

Ms PLIBERSEK—Was that disclosed after you asked?

Mr Forth—It was disclosed in the process of dealing with the clients and the issues that they have and the fact that we do now have a sexual assault service available.

Senator HOGG—So you are saying those people—that 44 per cent—suffered previous abuse?

Mr Forth—Yes. We see child sexual assault as a significant issue in the type of work we do. It just complicates things so much because you have this iceberg under the matters that you are dealing with. Sometimes it takes a long time. We have had clients that we have worked with for two years, and it is not until they have gained an enormous amount of trust in us that they start talking about these long-term problems they have had. And some have told workers at our service that they feel so shameful and so low as a person that this is the reason why they tolerate the type of conduct that they in fact put up with to degrees that most of us could not possibly understand. So it is an issue that we have identified.

Senator HOGG—Does that mean that child sexual abuse is still an ongoing problem within those communities? I hope I am not trying to read anything into this that I should not.

Mr Forth—I do not know, because this was just a bit of research that we did as part of our submission. It is certainly not qualified research, and we do not know what it means in relation to current conduct.

Senator HOGG—And we do not know whether it is worse in the urban communities than it is in the regional communities.

Mr Forth—I really have no idea; it is just a snapshot that I thought we would disclose to the committee so that it understood that there are very complex issues. One of the other issues we identified was that the figures in relation to males were even more substantial. Although we only surveyed 25 males, 70 per cent of those suffered from childhood sexual assault. Although we have no figures or statistics on the perpetrators, we know enough to believe that many of them are also victims of assault. We consider that there needs to be a lot more research done in that area, because that has never been done in the past. We have never understood what makes perpetrators behave the way they do.

CHAIRMAN—So you are not making judgments.

Mr Forth—We are not passing judgments at all; we have just identified it as an issue. If the nation wants to deal with family violence, I think we need to know a lot more about why it happens.

Ms PLIBERSEK—The additional question, when you are talking about a cycle of intergenerational sexual abuse, is why men are more inclined to continue the cycle than women who have been sexually abused as children. You do not have the same number of women who have been sexually abused as children going on to be sexual abusers themselves. You cannot simply say that someone who has been abused as a kid will go on to do it, because there are huge numbers of women who are abused as children who never go on to do it.

Mr Forth—I am not saying that all. I am just saying that many of the perpetrators whom we deal with have been sexually assaulted. That just adds to the complexity of the clients that we need to deal with. I am not passing judgment or making any suggestions at all about the correlation between that and family violence. It is just something that needs to be looked at.

CHAIRMAN—Are you are funded totally by the Commonwealth?

Mr Forth—Yes, we are fully funded by ATSIIC, ATSIIS and the government.

CHAIRMAN—You have said your clients are unable to access the limited private legal services available in Port Augusta because of financial limitations. Only eight per cent are employed and only 25 per cent are eligible through the Legal Services Commission because of merit and guideline requirements. Tell me about that 25 per cent. I understand that eight per cent are employed, but what are the merit and guideline requirements that prevent access? Are the clients you are talking about people who have come to you?

Mr Forth—Yes. To obtain legal aid, you need to pass a means tests—which most of our clients would satisfy—a merits test and a guidelines test. The guidelines test is where most of our clients fail. Legal aid is provided for criminal matters and some family matters, but it is not provided for clients who come to our service, say, for immediate protection, for a restraining order or if they have debt related matters. Many of our clients have several thousand dollars worth of property damage or, because of joint and several liability principles, they are left holding the baby of debt, so to speak, while the other party takes off. Property damage is an area that they need to face. No legal aid funding is provided for issues like housing and immediate shelter. We have to work for those clients in those areas, and that is a substantial amount of work. That is what I meant by that comment—very little of our work, perhaps 25 per cent, could be legal aid funded. The rest of it is not legal aid funded.

CHAIRMAN—You spoke earlier about close family ties. How do you ensure that the closeness of your operation with the communities you service does not lead to the assumption that community politics interfere with the choice of cases that you take?

Mr Forth—The board have made it a policy that the staff at the service are representative of a cross-section of the major communities that live in and around the Port Augusta region or communities that come into and out of the Port Augusta region. We have very much tried to

ensure that it is not a family operation, so to speak. One of the principles that we have tried to achieve is to have a broad spectrum of staff that have connections to those major groups.

CHAIRMAN—Do you think that would prevent somebody running away with the agenda—someone getting funding because of their position in the community rather than on merit?

Mr Forth—Sorry, I think I misunderstood your question. I thought you were implying that the clients of the service—

CHAIRMAN—I was not implying anything; I was simply asking the question.

Mr Forth—Could you ask your question again because I did not fully understand it?

CHAIRMAN—How do you ensure that the closeness of your operation with the communities does not lead to what you could call nepotism—in other words, a community member who has a high profile or lots of clout in the community being overly influential about the sorts of cases you take on and which ones you take on?

Mr Forth—I suppose the simplest answer to that is that, as the solicitor, I make the decisions about the cases we deal with and who we take on. The board, very deliberately and to their merit, do not at all try to influence me in that decision. I deal with literally everybody who walks in the door, apart from when there is a clear legal conflict.

CHAIRMAN—Again, I was not implying anything, but you know that justice is supposed to be blind.

Mr Forth—Sure.

CHAIRMAN—That is my memory of it, and I am not a lawyer: it is supposed to be blind. You talked about the closeness to community. I understand that you need positive links in order to get people to even come to you in the first place, but you also need to divorce yourself from community politics, don't you?

Mr Forth—Yes, absolutely. I can honestly say that never once has anyone tried to influence me about a client that I should or should not see.

CHAIRMAN—Very good.

Ms Dodd—Could I add to that?

CHAIRMAN—Certainly.

Ms Dodd—We have policies, procedures and a framework set in place. Where there is a conflict or a family member needs access to our service, we as staff members also need to declare our interest. It is not just one person making a decision; a number of people make decisions about the cases we can or cannot do.

CHAIRMAN—The area that you cover is not just Port Augusta; you cover surrounding areas as well.

Ms Dodd—The area that we cover includes Port Augusta, the Davenport community and Stirling Wharf. We are funded to cover that area.

CHAIRMAN—What happens when you get approaches from Whyalla?

Ms Dodd—If we get a call from Whyalla, often we will refer it to another service. Sometimes our clients are really creative and they will use an address in Port Augusta.

Mr Forth—We have clients who come down from centres and seek shelter in Port Augusta. They then live in a women's shelter or with a family member in Port Augusta. We then have to make the decision as to whether or not they live in Port Augusta. It is very difficult for us to turn away somebody who we think is desperately in need of help. We simply do not do that. We do not say: 'Normally you live in Marree or Coober Pedy. You just happen to be here because you are seeking shelter.' We just do not make that decision.

CHAIRMAN—Is Port Augusta larger than Whyalla now? Back in the late 1960s, according to my recollection, both had about 30,000 and both have gone from that high of 30,000 down to 20,000-23,000.

Mr Forth—I think Port Augusta has a little under 20,000, so it may be a little smaller than Whyalla.

Ms PLIBERSEK—You mentioned that you frequently need to use interpreters and some of the interpreters are not formally trained. That must be expensive and difficult. How do you go about making sure that you have the right interpreter services and so on?

Mr Forth—I think only once have we had an interpreter. Most of the time it has been voluntary work. I am quite amazed at the extent of the work that the Indigenous community does at times on a purely voluntary basis to assist a relative or a friend. Sometimes we just call on people to help. I can recall one occasion when we paid somebody to do that. We did it because we understood the case was going to go on for a lengthy period of time and ongoing assistance may have been required. The matter could have gone to trial and we needed to understand how we were going to cope with the particular language difficulty at the trial, because the court was asking us to give it an idea of how long the trial was going to take with an interpreter. It was fairly necessary for us to do something along those lines and to do it on a professional basis. That is the only time we have done it.

Ms PLIBERSEK—Otherwise, when you have interpreters, they are just doing it out of the goodness of their heart?

Mr Forth—Yes. We are really calling on the community to assist. We do that on a number of occasions with different things. Sometimes I am staggered at the extent to which some people will provide service. On one occasion I needed to obtain a recovery order in the AP lands. We could not get the police to recover a child because they did not have the facilities available. I rang a person who worked in an art centre and on a Saturday that person drove the child 300

kilometres to Marla and back again. They travelled 600 kilometres. We did not pay them one cent to do that. I sent them a thankyou card saying, 'Any time you need assistance we will assist you.' That is the sort of assistance you can get from people within the Indigenous community. I just do not think you can get it outside of the community.

Ms PLIBERSEK—What you are describing is impossible to buy, isn't it?

Mr Forth—It is.

Ms PLIBERSEK—Does that make you worry about the proposal for the tendering out of Indigenous legal services?

Mr Forth—Yes. If it had to be done we would have to do it—we would tender for it—but I do not know how you would tender for the services, because you could not put a price on the services we provide. That is why in my written submission I said I do not think a mainstream private legal firm could tender. If they did tender, the service they would provide would not even be close to the type of service that we provide.

Ms PLIBERSEK—Because they have not built up that goodwill.

Mr Forth—They do not have the connections to the community. From my perspective, as a white lawyer, you could not do the work that we do without that close connection to the community. That is why we try to have staff members from the different community groups. They know what is going on in their community group. They can call people in and say to somebody in difficulty, 'You really need to access our service.'

Ms PLIBERSEK—I liked the example you gave of the private practitioner who gave up on someone because they could not find the person, and your service found them in 10 minutes.

Mr Forth—It happens all the time, because we know where they are. I can ask Susan where a particular client is and she will know. She will say, 'If they're not here, they'll be there. If they're not there, they'll be there,' and we can find them in 10 minutes. Time and again private practitioners fall off the perch: they cannot deal with them; they discontinue the matter.

Ms Dodd—If you are going to take short cuts with the funding for legal services for Indigenous people then we, as Indigenous people, do not then get the proper legal advice and representation that we really need. I think that is a really important issue for us as Indigenous people.

Ms PLIBERSEK—You said that some of your clients have told you that police were not prepared to seek restraining orders, for various reasons. I know it is slightly separate to our issue of access to justice and resources in the legal area, but without that police backup you are really at sea, aren't you?

Mr Forth—Police do a fantastic job in Port Augusta. I am not saying anything against police. They do a very difficult and terrific job. Because of the amount of work they have, which is a high standard, sometimes we see situations that need to be dealt with where police are not privy to all of the information or, if they are, have made the decision that the matter is not as serious.

In these situations, we believe the grounds are there to obtain a restraining order. We have never once approached the court with a restraining order when the grounds have not been found to be there. I guess I am trying to say that police do assist many of our clients in many cases, but there are times with some clients when they say, 'Look, we don't really think the grounds are there.' Police have a different standard, I suppose, from a lawyer. We look at intimidation, harassment and those types of things.

Ms PLIBERSEK—As the law provides.

Mr Forth—Yes. I am certainly not going to criticise police. I am just saying that sometimes we need to seek and obtain restraining orders and clients have difficulty getting them from police.

Ms PLIBERSEK—You have both male and female clients. We have been talking to our other witnesses about whether it would be better to deal with domestic violence, family law and related issues separately from criminal law matters—whether the division should be a service that is specific for women or whether the division should be, as you have got it, a service that is a specialist in family violence. Do you have a view about the better division of areas of law between services?

Mr Forth—The major group that suffers in family violence is the children. Sometimes, even though the majority of perpetrators of family violence are male, it is not as simple as that. Sometimes it is hard to decide what is going on in the family household. Children clearly have rights which they sometimes do not get, which is why we sometimes act for and represent male clients. We frequently have male clients whose visitation rights or contacts with their children are completely denied. We do examine them thoroughly to see if there is a legitimate family violence reason or a safety reason for that happening. In some cases, the reasons are not too clear to see. We believe that the children have got a right to see both parents, which is enshrined in the Family Law Act. We take the view that in some ways that is family violence as well. When the child is denied contact with a parent, we think that is a fairly significant thing. We are prepared to act for clients in that regard.

Ms PLIBERSEK—If someone makes an accusation that there has been child sexual abuse or says that the reason that they are denying visitation is because there has been violence or something, do you have the resources to investigate that properly?

Mr Forth—No.

Ms PLIBERSEK—So how do you make your minds up, then, on whether to act for someone?

Mr Forth—As a solicitor you have to take your client on trust. What normally happens is that at the first instance, if there is some allegation made in that regard, the court will order some sort of a report to be done. Generally, the courts err on the side of safety and, if there is an allegation like that made, they will order something before any steps are taken. We have not yet had a case where we have acted for somebody who turned out to be a violent person. If that were the case, we would then have a question about how we were going to deal with that.

Ms GRIERSON—Thank you very much for the data you presented, too. Obviously, it is not qualitative—it is just straw data, almost—but it is certainly known that experience of sexual abuse as a child does affect relationships and parenting ability, no matter who you are. Certainly it is a perpetual cycle that needs responding to. You have mentioned domestic violence courts. Can you tell me something about that and how you see that being built into service provision?

Mr Forth—There are two domestic violence courts in South Australia. I believe there is one in Elizabeth and there is one in Adelaide. A domestic violence court requires the support of counselling services, so that if an offender is brought before the court they have an opportunity to admit that they have a problem and the court can then suspend the matter for a period of about 12 weeks or so while the offender goes off to seek some form of counselling. In the first place, they have to be adjudged as being appropriate for that counselling. If they are deemed appropriate and the adjournment is made and they seek counselling—

Ms GRIERSON—So on an early intervention basis, perhaps?

Mr Forth—It is perhaps not early intervention, because it has reached court but—

Ms GRIERSON—Yes, but in terms of repeat offending.

Mr Forth—Correct. It is a service we do not have because we have very limited access to counselling services in Port Augusta.

Ms GRIERSON—Ms Dodd, are you a community worker or a legal worker?

Ms Dodd—I am a community worker. I am the coordinator of the service.

Ms GRIERSON—In one of your recommendations you say that funding should be provided to place agents of the Indigenous legal service providers. What do you mean by that?

Ms Dodd—That was agents in the community.

Ms GRIERSON—I am assuming you do not mean actual solicitors on the ground but agents for that service.

Ms Dodd—They would be agents in the communities—like fieldworkers—who can work in the communities and make our jobs a lot easier. They would also be there so that people in the community have someone to go to.

Ms GRIERSON—So they would be people who are versed in the legal services and who know how to access those, more than anything else. They would be facilitators to gain trust, perhaps, as a first stage. Is that how you see agents working?

Mr Forth—We spent some time a year or so ago thinking about this, because we identified that there were significant numbers of clients in the more remote parts of South Australia who we were not really dealing with. We had several meetings on how we would deal with that if we were asked to do so. We identified that we would need to have persons on the ground in the

community that people could go to who could then communicate with us. So that is what we meant by agents in the community.

Ms GRIERSON—It seems from your submission that you have an absolute commitment to a wider service than just a legal service; that the legal service needs to be a little bit more holistic in its approach to be successful. Do you feel that a tender process can show those more extended service options or is it up to other agencies to provide them?

Ms Dodd—You are asking too many questions! Which one do you want me to answer first?

Ms GRIERSON—I am sorry. We are looking at a tender document that is just going to ask people to tender for a legal service, but you are not providing just a strict legal service.

Mr Forth—No.

Ms GRIERSON—You are providing an advisory service and a support service as well. A tender might mean that you could not qualify because you could not, as you said, quantify all the services you provide.

Ms Dodd—Sometimes in order to get our clients to a Family Court situation we need to deal with all the other social issues or problems that can be a hindrance to the Family Court application or whatever it is, so we sometimes have to work with other people in the community or with the clients. There can be safety and security issues. There are a lot of outside issues that we need to deal with sometimes before we get to them.

CHAIRMAN—Nobody has asked to tender for your service? That is not part of what the program is about?

Ms Dodd—No. Our service was first set up as a pilot project under the auspices of the Women's Legal Service.

Ms GRIERSON—But under this new tender process your service may not be covered by the people who put in for the provision of services. Is that possible?

Ms Dodd—Yes.

Mr Forth—The type of service we currently supply—is that what you are saying? Yes.

Ms GRIERSON—You are saying you would like ongoing—

CHAIRMAN—You are funded by the Attorney-General, aren't you?

Ms Dodd—Yes.

Ms GRIERSON—So it would happen. But you are saying you would like some sort of provision for ongoing funding, not having to be uncertain about your funding. Do you have any certainty about your funding at the moment?

Ms Dodd—No, we do not.

CHAIRMAN—I want to ask about police being unable to enforce court orders due to their inability to go get the children, to put it in simple terms. Have you got any possible solutions for that problem?

Mr Forth—I suppose that is where those particular agents in the community might be able to assist. I think the biggest difficulty is in AP lands. That is where we have really found that a recovery order for a child release is just ineffective.

CHAIRMAN—How many communities are out there?

Ms Dodd—I think there are about 14-plus.

Mr Forth—That is the place where we have the greatest difficulty, even with just the service of documents, the simple procedural matters, and then, once you have achieved that, with exercising an order. It is just very difficult to operate up there.

CHAIRMAN—Would that be more easily resourced out of Alice?

Mr Forth—It could be.

CHAIRMAN—It would be a shorter distance, wouldn't it?

Mr Forth—It could be. Whether there would be a conflict between states I do not know.

CHAIRMAN—Well, assuming there was no state border.

Mr Forth—Forgetting all that, for practical reasons it could be.

CHAIRMAN—Thank you very much. If we have further questions you will not mind if we put them to you in writing, will you?

Mr Forth—No, not at all.

CHAIRMAN—Thank you again for your submission and for coming today.

Mr Forth—Thank you for allowing us to appear.

Ms PLIBERSEK—Have you driven down today?

Mr Forth—We did.

Ms PLIBERSEK—Thank you for coming such a long way to talk to us.

[2.49 p.m.]

WITHERS, Mr Brian Edmund, Chair, Access to Justice Committee, Law Council of Australia; and Member, Australian Legal Assistance Forum

CHAIRMAN—Welcome again, Mr Withers. Do you have any comments to make on the capacity in which you are appearing?

Mr Withers—I appear as Chair of the Law Council of Australia's Access to Justice Committee and as a member of the Australian Legal Assistance Forum. Perhaps I should just explain what the Australian Legal Assistance Forum is. It is a body that was set up in 1999. It was instigated by Richard Coates, who was then the director of the Northern Territory Legal Aid Commission and who is now the chief executive of the Department of Justice in the Northern Territory. It comprises, in effect, two representatives of National Legal Aid—which is the legal aid commissions around the country—two representatives of the Law Council of Australia, two representatives of the Aboriginal and Torres Strait Islander Services and two representatives of community legal centres. That body meets periodically with a view to exchanging information and trying to identify ways in which those various groups can work cooperatively to advance the efficiency of publicly funded legal assistance. I have here the document that sets out the objectives of the Australian Legal Assistance Forum. It would probably be simplest if I sought to tender that.

Ms PLIBERSEK—I move that that be accepted as evidence.

CHAIRMAN—There being no objection, it is so ordered.

Mr Withers—Finally, the Access to Justice Committee of the Law Council consists of a representative from each law society and bar. It meets periodically and provides advice to the Law Council of Australia on access to justice issues.

CHAIRMAN—The Law Council advocated in its submission:

The distribution of Indigenous legal services ... by establishing a network of offices within major Indigenous community centres, or at least adjacent to those centres.

Do you have any idea how many offices, solicitors, field officers and support services you are talking about? How much money are you describing?

Mr Withers—The short answer to that question is no, not in detailed terms, but it would be a substantial number. I think the previous witnesses just indicated the importance of getting involved people into the communities. They have talked about agents and we have talked about field officers. It is not a suggestion that there should be a lawyer in every community but that there should be people who have knowledge of the system, who are conduits, to ensure that legal issues and quasi-legal issues that might be assisted by these bodies are directed to the right places and that the advice and assistance that is available is provided to the person in difficulty.

CHAIRMAN—We had evidence from the Aboriginal Legal Rights Movement that the greatest need in the Aboriginal community in South Australia is in Adelaide and the surrounding suburbs. But it would seem to me that what you are advocating is going to at least duplicate that cost in order to get to each of the remote communities. Is that practical?

Mr Withers—Whether it is practical in terms of the resources available I guess depends on the size of the resources available. To the best of my knowledge there are no solicitors based north of Port Augusta. There are solicitors who do outreach services from Port Augusta but there are no solicitors based above that. That is a very large area of land. The Law Council is advocating that there should be operations in place that enable those remoter communities to be effectively serviced. As I said, that might be through a network of field officers or agents or with a more routine funded visiting service with appropriately qualified practitioners. At the present time, the areas are not at all well serviced. When practitioners do go there to provide services, usually it is in a great rush. Whilst the lawyers do the best they can in the circumstances, it is often not at a level that they would be entirely satisfied with.

CHAIRMAN—These are discussion points or arguments that we have heard in other places around Australia, particularly in the Northern Territory, where they described in great detail the cost and time difficulties of getting a legal service even just to follow the court around where the magistrate moves around—although they apparently do not go quite as far afield in South Australia. If you have any simple solution to that, beyond finding buckets of money at the end of the rainbow or something, we would appreciate your advice.

Mr Withers—I do not know that it requires buckets of money, but it probably requires more money than is presently made available. The magistrate service to the north-west lands, for example, as I understand it, flies up and is there for a few days. The solicitors who attend—a solicitor attends from the Legal Services Commission office and there are solicitors from the ALRM—drive up. There is a fair bit of time involved. There is not a lot of time when they are up there to take instructions and deal with matters. It is one of these issues of resources being used in the most cost-effective way possible. It would be better if there were more resources so that more time was available and they were able to get more people up there, better interpreting services and suchlike to enable the court to be better assisted in determining the matters that come before it.

CHAIRMAN—The Law Council submission supported:

... 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.

I assume that means in appropriate cases.

Mr Withers—Yes.

CHAIRMAN—Do you want to talk to that?

Mr Withers—Yes. I think that there is a consistency between the submissions made by the ALAF and by the Law Council about a separate women's legal service. When the Law Council says 'separately incorporated and funded', it is really suggesting that the service needs to be

distinctly identifiable and separate in the eyes of the consumer. Whether or not that happens under the umbrella of a peak state body such as the ALRM or otherwise is a matter for discussion by the involved persons, but I think the concept put forward by the Law Council as being particularly important is the identification in the eyes of the consumer that it is separate and distinct and that they can approach it with confidence. It is all very well for us as lawyers to talk about Chinese walls; that means nothing to most consumers of legal services.

CHAIRMAN—The Attorney did make a decision some years ago that there was a problem there, which led to funding of a number of separate women's bodies around the country. That is in fact what this committee is looking at—how in-depth those problems are and how we might deal with them. It does not appear, Mr Withers, to be a simple issue or one that lends itself to simple answers.

Mr Withers—I would agree with that. In fact, the Senate Legal and Constitutional References Committee inquiry on legal aid and access to justice came to precisely the same conclusion—that there needed to be a detailed study in this area to determine the need and the best way of addressing that need—and that was a recommendation, I think, that was supported by the government senators in their minority report.

CHAIRMAN—Is there not also a difficulty, when you propose separate services for women and men, when you are talking about family issues, that all of the issues are not issues of women against men—some of them are men against women? It is not going to be easy to deal with this business of Chinese walls and not being able to have one firm of solicitors, or indeed one office funded by the Commonwealth, to deal with both clients—or the one who is charged and the so-called victim, before that is established. Just because one is deemed to be a mainstream service or a men's service and the other a women's service, that is not going to dispense with those crosspollination issues, is it?

Mr Withers—No. There will always be issues of that nature. The reality is that, in the private profession, for example, one party would be represented by one legal firm and another party would be represented by an entirely separate legal firm. So the conflict issues do not arise and the lawyer has one responsibility, to the client, and the client accepts that that is there and it is quite apparently clear that it is there. In a situation where there is only one provider of Indigenous legal services in the state, it must be very difficult for Indigenous people in conflict to accept that they will get that entirely independent advice committed to them.

I am not proposing—and the Law Council is not proposing—that there should be a plethora of services to create a whole series of bodies where Indigenous people can go and they therefore know that they are completely independently represented. But the issue of the representation and care of Indigenous women vis-a-vis the representation and care of Indigenous men is one that has been longstanding and is capable of being addressed.

CHAIRMAN—In part or in total?

Mr Withers—Step by step, I would say. That will involve a lot of work within the communities and the ATSILSs themselves to come up with recommendations as to the best way of doing it. It will involve cooperation from the funding sources to ensure that there are sufficient funds to make it happen.

Ms PLIBERSEK—You mentioned in your submission that past difficulties in management of some ATSILSs have been ‘largely resolved’ in the past five to 10 years. Can you describe how ATSILSs have become more efficient and transparent over that time?

Mr Withers—That was the advice that the Law Council committee received from its various constituents. There has been a very large number of reviews into ATSILSs over the last five to 10 years, and I imagine that ATSILS representatives who give evidence before this committee would say that they have spent countless hours responding to reviews. No doubt all those reviews have led to a tightening up of the internal processes, greater transparency and greater recording to ensure accountability and suchlike. That does not mean to say that there are not areas where improvements can be provided. One of the things that is of concern is that providing all this information and providing this accountability and so forth cannot be done without cost. Where you have a service that is absolutely cash strapped trying to get coalface services to the communities, there is difficulty about putting aside money to ensure proper audit trails and all that sort of thing. Regrettably, I still think it comes back to cost.

Ms PLIBERSEK—In New South Wales, one of the regional services is auspiced by the women’s legal resources centre there. They do all the back-office work and take care of all the accountability measures. Do you think it is useful to have one auspicing body—in the case of South Australia, probably the ARLM—

Mr Withers—The ALRM.

Ms PLIBERSEK—I will get it right by the end of the day! Then you could have a separate women’s legal service or a separate service that was dedicated to family law or domestic violence doing the representation and advocacy and not mucking about with the back-office stuff.

Mr Withers—I think the position of the Law Council and ALAF is that the services need to be delivered in the most efficient and effective way possible while still meeting the criterion of demonstrable independence. That does not necessarily mean that some of the so-called back-office functions cannot be dealt with by the same body. In the justice reviews that are going on in South Australia, the state government is looking at ways in which it can get various agencies in the Justice portfolio to use common back-office functions, and that is just something that happens. So long as the independence of the service is not compromised, then the actual provision of the resources—so long as there is no compromise there as well—should be capable of being dealt with by the one body. The Law Council would not support duplication of backroom services if that were able to be avoided and if independence were able to be maintained.

Ms PLIBERSEK—You mentioned a little while ago that people who are consumers of legal services might be concerned about a perception of conflict if they are being dealt with by the same service. There is the other problem that you have not mentioned of Indigenous people preferring Indigenous specific services. Do you want to talk a little about that as well? Is that what you have been told?

Mr Withers—Yes. Certainly we have been told that the acceptability of Indigenous legal services by Indigenous people is very reliant on there being an Indigenous context in which they

are delivered, whether that be by the support office staff, the network of field officers, Indigenous solicitors or people who have been trained in and understand the issues that are confronting their clients. So it is very important—on the information that we have been given, and for these services to be acceptable to the consumers and therefore used by the consumers to address their needs—that they do have that Indigenous context. In terms of the issue of conflict, delivering Indigenous legal services is really no different from delivering ordinary legal services: there ought not be a conflict and there ought not be a perception of conflict. At the end of the day, I would suggest with respect, this is not a matter on which the Commonwealth can legislate. This is a matter of professional conduct by lawyers and this is a matter for state Supreme Courts.

Ms PLIBERSEK—Can you tell us a little bit about how important you see the role of field officers being?

Mr Withers—On the information that the Law Council has been given by its constituent bodies and through ALAF, it is extremely important because the reality of the matter is that qualified and appropriately trained legal representatives are not going to be available to be out there in multitudinous communities. What is important is to get a network of people with an understanding of the system who are respected by their communities and to whom individuals in the communities will turn in times of trouble and who can facilitate the provision of whatever is an appropriate service to assist those people. So the network of field officers is extremely important. One of the reasons that the Law Council and ALAF are concerned about the exposure draft is the potential, by bringing in new players, to undermine that structure which the Law Council and ALAF see as being likely to be very difficult to replace.

Ms PLIBERSEK—Because you cannot charge out for field officers?

Mr Withers—Not because you cannot charge out for field officers but because these things work on relationships. They do not work so much on money. They work on relationships. They work on trust. You cannot suddenly employ Joe Bloggs to go and be the field officer in a community unless that person has the relationship, the trust and the understanding. You are creating an entirely new environment, and the likelihood is that if that happened that community would be less likely to access services.

Ms PLIBERSEK—But isn't it also true that if you were tendering to provide legal services it would be an obvious area in which to make savings by cutting field officers and cutting interpreting services? That is if you were previously paying for them.

Mr Withers—You can always reduce costs by diminishing services, but then it would be a matter of whether the tender matched what was required by the person seeking the tender. Hopefully, the provision of that network will be required as part of the tender process. Whilst the Attorney has issued a press statement as to the fact that the Commonwealth is putting out a revised tender process and that that is to be implemented initially in Victoria, Queensland and Western Australia, from recollection—

CHAIRMAN—It is Victoria and Western Australia.

Mr Withers—To the best of my knowledge, and from the information I have been given by the bodies with which we associate, I am not aware of the fine detail of that material yet having been provided to those jurisdictions.

Ms PLIBERSEK—So you are not confident that the revised tendering process would address that issue of whether there would be enough support for field officers?

Mr Withers—Both the Law Council and ALAF would be very hopeful that the revised tendering process will take account of all of the expressions of concern that have been put forward to the department. I guess we will have to wait and see.

Ms GRIERSON—The South Australian model, with one peak body, obviously would have economies of scale and, supposedly, efficiencies and it would be more effective from having that. Do you think the ALRM has the necessary flexibility to provide the variety of services and to set priorities that perhaps reflect the needs of the Indigenous communities?

Mr Withers—I do not think there is any other body that is better placed to do it than ALRM. The ALRM has enjoyed the support of the Law Society and—

Ms GRIERSON—Are you represented on their board in any way?

Mr Withers—No. Not the Law Society, as far as I know—I am not able to say that with confidence—and the two bodies that I am here representing, the Law Council and ALAF, certainly are not. Whether it is better to provide those services under one central body or not is, I think, a matter for assessment as to the services that are provided. For example, there is only one legal aid commission in each state and yet that operates through a series of offices spread across New South Wales or Queensland or wherever it might be. There is no reason why, in relation to Aboriginal services, there should not be a structure so long as the services provided are relevant and accessible to the people that they are there for.

Ms GRIERSON—I keep hearing in all the submissions that there is very little data collected, so there is very little needs analysis. It must be very hard for the less vocal groups within a community—often women and families and children—to have their needs raised up the priorities list a little bit. It is my concern that that could be the case.

Mr Withers—I think that is absolutely right. Everybody who is involved in the area would support a proper, focused needs analysis for Indigenous people to try to get a better picture as to what is actually needed so that the need can determine the size of the support that is provided.

Ms GRIERSON—I am also concerned that, if it is run by one group, a community based service could be a more expensive model and therefore could again be shunted down the priorities, because providing a holistic service would be much more expensive and often much more difficult than just providing access or increasing access to legal services.

Mr Withers—The management of the group that runs the services would, under any model, need to be culturally aware and, to a degree, representative of the Indigenous communities that it was seeking to serve. If it is not, then the prospects of that body appropriately directing their energy and resources would be diminished.

Ms GRIERSON—And achieving outcomes with that as well.

Mr Withers—And achieving appropriate outcomes would also be diminished. But, unfortunately, we are operating in a position where it is being done on an ad hoc basis on the run because that is the only way it can be done.

CHAIRMAN—Thank you once again for your submission and for coming to see us to twice today.

Mr Withers—My pleasure.

CHAIRMAN—If we have further questions, you will not mind if we put them in writing to you?

Mr Withers—Absolutely not. Either the Law Council or ALAF would be happy to do so. I apologise for Liz O'Brien, who is the chair of ALAF, not being able to be here. She is based in Sydney and is the current chair of the National Association of Community Legal Centres. I also apologise on behalf of Frank Guivarra, who was the last chair and who is the manager of VALS, Victorian Aboriginal Legal Service. They both had a conflict. I apologise for their non-appearance.

CHAIRMAN—We have not been to Victoria; we have been to Sydney.

Resolved (on motion by **Ms Plibersek**):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

CHAIRMAN—Before closing, I thank all of our witnesses for all of their submissions. I thank my colleagues and the secretariat and Hansard.

Committee adjourned at 3.16 p.m.