



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

**Reference: Indigenous law and justice inquiry**

THURSDAY, 31 MARCH 2005

PERTH

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## **JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT**

**Thursday, 31 March 2005**

**Members:** Mr Baldwin (*Chair*), Senators Hogg, Humphries, Moore, Murray, Scullion and Watson and Mr Broadbent, Ms Burke, Ms Grierson, Miss Jackie Kelly, Ms Catherine King, Dr Laming, Mr Somlyay, Mr Tanner and Mr Ticehurst

**Senators and members in attendance:** Senator Hogg and Mr Baldwin, Mr Broadbent, Ms Grierson and Mr Ticehurst

### **Terms of reference for the inquiry:**

To inquire into and report on:

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

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**Committee met at 3.50 p.m.****CUOMO, Mr Mark Donato, Private capacity**

**CHAIR**—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 afternoon to the committee's second public hearing into Indigenous law and justice matters in the new parliament. This morning we began with an inspection of some of the activities and programs put in place in the remote Aboriginal community of Yuendumu in the Northern Territory. Yesterday we took evidence on the public record in the western New South Wales city of Dubbo. This afternoon the committee will take evidence from organisations that constitute both sides of the justice system. Witnesses include representatives from the Aboriginal Legal Service and the Legal Aid Commission as well as agencies within the Western Australian government responsible for implementing and enforcing the law.

The committee is informed that the tendering out of Aboriginal legal services is most advanced in the states of Western Australia and Victoria. We are keen to discover what the experience has been like from the perspective of a potential service provider. 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 present to a committee statement about the broadcasting of proceedings. In particular, I draw the media's attention to the need to report fairly and accurately the proceedings of the committee. Copies of this committee statement are available from secretariat staff.

I welcome the representative from the Aboriginal Legal Service of Western Australia to today's hearing. Do you have any comment to make on the capacity in which you appear?

**Mr Cuomo**—I am a barrister. I have been asked by the Aboriginal Legal Service to give evidence about their issues this afternoon. I have recently left the staff of the legal service, so I am no longer employed by them. Indeed, the views expressed here this afternoon are obviously my own, unless I specifically state that they are a view of policy of the ALS. I was the Director of Legal Services and prior to that the Principal Legal Officer of the ALS of Western Australia for some five years, so I have a fair bit experience in the organisation. Most relevant to what you are discussing to this afternoon, I also helped prepare their tender documents, so I can answer your questions about that as well.

**CHAIR**—Thank you. Do you wish to make a brief opening statement before we proceed to questions?

**Mr Cuomo**—Yes, very briefly. I would like to describe the Aboriginal Legal Service of Western Australia and put it in some context amongst the ATSILSs in Australia. The Aboriginal Legal Service covers all of Western Australia. It is a statewide service and has been in existence as such for some 30 years. It is by far the largest of the ATSILSs. It has just under 90 staff and just under 30 practitioners on its staff. It has a large office, and about 60 per cent of its business,

in Perth—the Western Australian legal system is very centralised. It has 17 offices in rural and remote areas throughout Western Australia, from Albany in the south to Kununurra in the north.

It provides legal representation in areas of law of criminal law, which comprises about 70 per cent of its business. In the time that I have been with the ALS, since 2000, it has always had a capacity—almost uniquely amongst ATSILSs—for family law and usually has had somewhere between two and four practitioners, depending on the financial situation, who have been dedicated to family law practice. All of the 11 country solicitors do some family law as well.

It has another distinguishing feature in that West Australian statute law allows paralegals called court officers a right of appearance in court. Those are entirely Aboriginal workers. They receive in-house advocacy training and almost all of them have a cert 4 qualification that has been gained at Sydney at Tranby College or some have gained it in Queensland on a travelling basis. The ALS has submitted a tender and it is, I understand, very close to completion at the moment. Indeed, they are busy on it this week, which is one of the reasons that they have asked me to attend the committee and hopefully to help the committee to some understanding of their position. That is all I will say in opening, Mr Chair. I hope that assists the committee in understanding a bit about the ALS in Western Australia.

**Ms GRIERSON**—You said that there are 90 staff, 30 practitioners, and you said that 60 per cent of the services are operated out of here. What is the staff distribution over the state?

**Mr Cuomo**—The staff distribution over the state roughly follows the distribution of magistrates in country areas, with one or two exceptions, and I will leave Kalgoorlie out of that because it is a bit of a special case. Wherever there is a magistrate there is a solicitor who will service the petty sessions courts at the circuit that that magistrate is attached to. The profession in Western Australia is a fused profession, so they will also appear in superior courts in those towns, largely district court and some Supreme Court work as well. The ALS will do everything from Court of Petty Sessions to Supreme Court appeals with in-house counsel, and in country areas they will do that. In most towns where there is a solicitor there is also a court officer to assist, and they work as a team. I am sure you have had the style of practice in remote areas described to you in the Territory where basically you have the one court day and a very long list—an almost entirely Aboriginal list of clients. It is much the same here in the circuit towns and these people work in tandem. They also work with other practitioners, most notably Legal Aid and also some private practitioners who assist with the list as well. That is how the allocation is done.

**Ms GRIERSON**—Could I ask about the paralegals. What about those paralegal officers who are used: are they generally out in communities?

**Mr Cuomo**—Again the distribution is much the same as the solicitors. The regional people will stay with the circuit and there is a large presence in Perth as well. The paralegals will work in the city and suburban courts. The demand is greatest where there is the largest proportion of Aboriginal population. Some areas have a greater allocation of staff on that basis, most notably in Western Australia in the Kimberleys, where there is one magistrate and there are three solicitors. In the south-west, where the situation is more or less reversed, you have two magistrates and one practitioner in Bunbury.



**Ms GRIERSON**—Do those practitioners out in those regional centres live in those regional centres?

**Mr Cuomo**—Yes.

**Ms GRIERSON**—We had evidence in Dubbo that said how difficult it is to get solicitors to take on those jobs. When you are getting kids that are required to have a 99.5 TER or qualification to get into training, they are not generally the ones who want to go out and live in those communities. Is that a problem in Western Australia?

**Mr Cuomo**—It is a problem and, to be brutally honest, you do not want kids.

**Ms GRIERSON**—That is what is happening, though.

**Mr Cuomo**—The staff in these centres are particularly isolated. In some towns there is a substantial legal profession and in some towns there is a Legal Aid presence. Where there is that support you may be able to get someone with less experience. But somewhere like Kununurra where you are on your own and you are dealing with very serious matters, where you have a very large number of homicides, for example, you want to get a practitioner who is sufficiently—

**CHAIR**—So how do you attract them and how do you keep them? Do you keep them?

**Mr Cuomo**—Anecdotally, we have been a bit better off than the other services in attracting and keeping them because we have been able to pay more. But that has stopped. As the financial situation of the services has deteriorated, the ability to pay has gone down with it. Even though you do try and concentrate resources where you need to, the money is not there to pay experienced practitioners to go there. There is a very large wage differential between ALS and Legal Aid and then between Legal Aid and the private profession, with ALS very much being at the bottom of that. There was some canvassing of this issue in the Auditor-General's report into the national legal branch of ATSIIC in 2003. There was an example there where the manager of criminal law in ALS in Western Australia, who basically manages all these country practitioners and 10 in Perth, was earning \$70,000 a year. At that stage I think Legal Aid were recruiting the equivalent at \$110,000. The government lawyers—the DPP—were getting paid in excess of that. So you are sitting at the bottom of the heap. People do not go there for the money; they go there for a bundle of other reasons, from experience to the goodness of their souls. But it has got to the stage now where the wage differentials have meant that recruiting is very difficult. Kununurra, for example, is not filled at the moment, and I know they have been looking since I was there and before Christmas.

**CHAIR**—What percentage of your clients are male and female?

**Mr Cuomo**—I cannot off the top of my head, but because of the nature of criminal practice it is heavily skewed towards male clients.

**CHAIR**—Seventy-five per cent male?

**Mr Cuomo**—Maybe closer to 60-40.

**CHAIR**—Could you take that on notice and report back to the committee?

**Mr Cuomo**—Yes, certainly.

**CHAIR**—We are doing a comparative analysis.

**Mr Cuomo**—I can provide the committee with statistical analysis.

**CHAIR**—We do a comparative analysis of the different areas where we are taking evidence. What sorts of crimes are you generally defending Aboriginal people in?

**Mr Cuomo**—The way the system works in Western Australia is that we defend all comers, basically. There is some weeding out of traffic matters that are really not serious, but we deal with basically anything that has the potential for jail or loss of job at the bottom end to appellate matters, homicide, Supreme Court matters, armed robberies and appeals from those at the top. It is a fairly wide diet. Where the work comes is often where Legal Aid is not, so we are busy where Legal Aid does not do things. In superior courts, legal aid is reasonably easy to obtain in Western Australia, and in the city certainly there is less work for us because the private profession does it. Then at the appeal level, because Legal Aid is out of the picture, we come back in again.

**CHAIR**—In relation to representation, are you doing any at all in the civil area?

**Mr Cuomo**—Yes, there is some civil representation. It is largely of a human rights nature. There is a general civil advice service that is being run to advise on anything and everything, and where there are matters that are of some test case value or where the community would benefit then there is some civil work being done. But it is of a reasonably restricted nature. To give you an idea, there are two practitioners devoted to that out of the 30, and one other staffer.

**CHAIR**—You stated earlier that you have 90 staff engaged—30 practitioners. How many of those are Indigenous?

**Mr Cuomo**—Four of the practitioners are. All of the court officers—I think there are 25—are Indigenous, and I think about 60 per cent of the rest of the staff are.

**CHAIR**—How much is your budget per annum?

**Mr Cuomo**—At the moment, that is subject to argument with representatives of the Attorney-General's Department, but it is somewhere just south of \$8 million per annum.

**CHAIR**—You are going to get back to me on notice about the percentages of males and females. Could I also ask that you provide statistics on what percentage of resources are provided to criminal, family and civil law matters?

**Mr Cuomo**—Yes, certainly.

**CHAIR**—We touched on that. Are you doing much in the way of family law?

**Mr Cuomo**—Yes. It has been a particular concern of the ALS in WA to maintain a family law practice and it has not been easy. I am not sure if it has been raised with the committee yet, but there has been a longstanding argument over the chop-up of law and justice moneys, going back to the late nineties. ATSIC did an exercise with a demographer in the late nineties which basically indicated that Western Australia, then under a budget of about \$5½ million, was \$2 million short of its fair share of the pie. For one reason or another, that was never remedied. Essentially, ATSIC continued to apply a historical formula to the allocation of money all the way through. Notwithstanding that difficulty, we did get a lot of support from the public servants and were getting little spits of money, and we were able to use that to maintain some presence in family law all the way through, but it has been very hard to do so.

**CHAIR**—Given that we are talking a bit about family law at the moment, I will ask about domestic violence. What percentage of your cases involves representing people engaged in domestic violence?

**Mr Cuomo**—I cannot give you the exact percentage, but I can give you a description of the nature of the practice for you to take it from there. The vast bulk of our family law clients are women and the vast bulk of those women have some domestic violence element as part of their case. The difficulty often in balancing a criminal and family practice is the conflict, where you end up with the criminal defendant first before you end up with the family law client. The way that the ALS in WA has coped with that is to use almost all of its private briefing funds for a group of private family law solicitors whose style of practice is suitable and trusted. We will give clients to them and they will get private briefing funds where we are conflicted out. We will not do restraining orders except in a family law context. It is just a function of volume—we cannot do them. Where there are domestic violence allegations as part of family law proceedings then ALS will deal with those.

**CHAIR**—On the issue of family domestic violence, there is the Family Violence Protection Legal Services that operate out of Geraldton, Fitzroy Crossing and Kalgoorlie. How accessible are they? How is the work that they are providing to the community going?

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

**CHAIR**—So are you saying that the extensions into Geraldton and the Kimberley region is the wrong way to go?

**Mr Cuomo**—No, I am talking about emphasis rather than direction. The one I had most to do with was Fitzroy. I have to say that they were very effective in having a second presence. Where you have an effective solicitor who wants to have a go and you have a committee who are willing to back that up, and given a degree of local sensitivity, then it can work reasonably well, but I think that is the best of it. My overall view is that we were always stuck there as the only ones who wanted to do casework—us or Legal Aid. Where you have conflicts, someone has to do it at the end of the day and I would have hoped that these centres would do more than that. But I understand they have their problems in attracting solicitors too.

**CHAIR**—Are you providing any legal representation for the victims of sexual assault in these communities?

**Mr Cuomo**—Yes.

**CHAIR**—What percentage—how many cases a year?

**Mr Cuomo**—I cannot give you a percentage, but one of the things the ALS has always provided, since I have been there, is representation in criminal injuries compensation. We have also done some tort law, either directly or using briefing funds. We use briefing funds in circumstances where we are conflicted because of involvement with the perpetrator.

**CHAIR**—That was my next question.

**Ms GRIERSON**—Do you have any trend data on that?

**Mr Cuomo**—I do not think there is much there. We are not dealing with a very large number of cases.

**Mr TICEHURST**—Because ALS is the sole provider in Western Australia, how do you maintain community involvement, particularly in remote areas, when you are based in Perth?

**Mr Cuomo**—The government committee has 16 members, two of whom are elected from each of the ATSIC regions. So the government committee itself comes from the regions. Within the regions, the executive committee members are part of their local community, and they are involved in consultation. The committee will meet in regional areas. There is consultation with management and solicitors in regional areas. There is a pretty constant round of discussions going on.

**Mr TICEHURST**—What about the community aspect of justice. Do you have any community justice groups looking at it from a cultural point of view—looking at the Indigenous culture in comparison to our culture?

**Mr Cuomo**—That was working on a number of levels. Some very strong communities, like Warburton, do a lot of work in that, and they have made their views pretty well known. The state government here dismantled the AJC in, I think, 2001, so that formal structure fell away. ATSIC fell into that role and was representing local groups as well. In Western Australia it had a pretty strong law and justice focus in a lot of what was done. So the regional councils would have a lot to say, and we would from time to time attend the regional council and zone meetings for consultations. We would meet with the state advisory committee as well, and they would bring policy issues.

**Mr TICEHURST**—We saw today that the Yuendumu community has what seems to be a very good model of community involvement in justice. I was wondering whether that operates in Western Australia or whether there is a means, particularly in remote communities, whereby you could adopt some of the issues that this model provides.

**Mr Cuomo**—It varies from community to community. Each of the communities has its own way of doing it. It operates at a number of levels. You have got the preventative level and the community activities that go along with that—looking after the kids, night patrols and those sorts of things. At the level of the formal justice system, the magistrates in remote areas, especially in the Kimberleys and the Pilbara, have changed their procedures so that they sit with local elders.

**Ms GRIERSON**—Do they do conferencing?

**Mr Cuomo**—Yes.

**Ms GRIERSON**—Is it very close conferencing?

**Mr Cuomo**—It is a very informal style; it is sitting with people. It is a very informal style that has been imported from the country into the Nunggal-Koori type courts. That is very much how it is done. Our problems started to come from the superior courts, the district courts, because they are not quite so close to the communities. Kununurra is a very good example. The district court makes its stately way to Kununurra from Broome. The circuit is a horse and buggy thing. It starts in Broome and the judge will be at Kununurra sometime two weeks later. But everyone is remanded to Kununurra for the start of the circuit, so everyone—basically 18-, 19- and 20-year-olds on burglary charges—come in from the desert and end up in Kununurra, spending two weeks waiting for the judge. If they are not in trouble when they get there, after two weeks with no money in Kununurra they sure as hell are in trouble by the time the judge gets there. So there are those sorts of problems.

**CHAIR**—What steps are being taken to address that situation?

**Mr Cuomo**—We have been talking to the District Court to try to make it all a bit more predictable. The Kununurra community people have been quite good in looking at accommodation. The police there have been very cooperative too: obviously they do not want the aggravation and they too want to work towards dealing with it. The magistrate there has been quite good. But there are all these little problems.

As you get closer to the community—and as long as the community can retain some control—then a lot of these problems can be dealt with. They arise when people get moved vast distances. That is why mandatory sentencing for kids, for example, is a problem. In Western Australia, because of the centralisation of the Children's Court, the vast majority of these kids are coming in from regional areas. To invoke this mandatory sentencing provision when these kids have misbehaved, to rip them out of their communities to bring them to Perth, to sit them down in institutions where they learn to really misbehave and to sever the parental-community control of these kids are probably the worst possible things you can do.

**Senator HOGG**—I have a question about the current tender. Is it a single tender process or has the tender been broken up into a number of regions and a number of districts?

**Mr Cuomo**—The tenders for Western Australia and Victoria were both statewide, and the current services in Western Australia and Victoria are statewide. Looking at the tender document: if they are going to use the same tender process in other states, I think the obvious answer will be

that the tenders will be based on a statewide consortium or will be broken up into much larger chunks.

**Senator HOGG**—So it is because of the success of the statewide service that Western Australia is stuck with that single formula?

**Mr Cuomo**—I think Western Australia is seen as a success because amongst the ATSILS we have done things like maintain our family law presence and some civil presence, which I talked to you about earlier. We had always been encouraged in that. Notwithstanding that we did very badly in the funding cut-up, there was always some assistance to keep it up, and in that sense Western Australia was seen, from what we have been told, as a bit of a model. Quite obviously, there are economies of scale with a single statewide service. It makes sense in Western Australia because of the centralisation: you do not have to replicate management too many times; you can run a reasonably lean management and a reasonably flat management structure where you have got that large number. With economies from that, you can actually put more into the front line, which is what we had intended to do. The committee of the ALS here have always taken the view—and they have made this clear—that, as funding has gone down and resources have become difficult, they want the resources at the coalface—in the courts—and they want us dealing with casework all the way through. That is what is there, but how long that lasts I cannot say.

**Ms GRIERSON**—Some of the members of this committee have not been on this inquiry for a while. For their benefit I will say that when we went to South Australia we found there was conflicting evidence. There was evidence that suggested that a single provider was not meeting local needs and there were breakaway groups. There were suggestions of too much of the resources going into administration and of bureaucracy perpetuating itself. There were suggestions that there were no local solutions and there was formula driven delivery of services. There was a suggestion that local people did not have good enough representation to shape that service delivery. Is Western Australia able to defend itself on those sorts of charges? Does it get accused of those sorts of charges?

**Mr Cuomo**—It does get accused of those sorts of charges, but they tend to be around particular circumstances. I cannot talk about South Australia—I do not know it well enough.

**Ms GRIERSON**—Unfortunately, I could use that example.

**Mr Cuomo**—When we have that sort of criticism, it is often a reflection of the amount of resources you are able to apply. You have a very inflexible set of choices, because you do not have too much in the way of discretionary funding. The vast bulk of funding that goes into this service, quite obviously, goes out in wages, which means that the number of noses you can count in the morning ain't going to change. You have got to do the best to put those resources where they are needed and try to retain some flexibility where the communities need them. Some communities get very angry and upset when they do not see their needs being met, and they have a very good case. Warburton, for example, has no representation—it is serviced out of Kalgoorlie.

**Ms GRIERSON**—What is the population there?

**Mr Cuomo**—I think it is about 8,000. We have been desperate to service Warburton, but the resources are not there. The tender is not going to provide that, by the way.

**Ms GRIERSON**—That is what I was going to ask. Will the new tendering system make it even harder to provide those local innovative solutions or local involvement in those solutions? Is it going to be more difficult under this tender process or will it still be able to be achieved?

**Mr Cuomo**—To be brutally honest, I do not think the tender is going to change much in Western Australia. The tender is couched around the style of practice that is done in Western Australia. We are already doing the family law, so it is not going to turn us around much. The real issue at the end of the day is the number of zeros on the end of the amount.

**Ms GRIERSON**—When ATSIC no longer exists, how are you going to have Indigenous representation?

**Mr Cuomo**—Our committee is independent of ATSIC. The ALS has its own membership. Its regional people are elected by its own membership. So they will continue to govern.

**Senator HOGG**—Yesterday in Dubbo we heard statistics of practitioners employed by the legal service there over a period from 1978 showing that the length of service of those solicitors working in the field has been diminishing over a period of time—going from four years and 10 months, then down to an average of two years and one month, and now it is down to one year and five months. Are you experiencing the same thing in Western Australia where, because of market pressures and other issues, you are not holding on to your staff as long as you used to hold on to them, thereby weakening your ability to represent these people at the coalface in the courts?

**Mr Cuomo**—It has changed over time. When I first started in 2000, I would go to conferences and listen to stories like Dubbo and the Territory and think myself lucky that I did not face the same problems. It is a function of the disparity in salaries. As that disparity has increased, it is starting to happen here.

**CHAIR**—We have just come down from the Alice and from Yuendumu and we have seen where the government up there has been brave enough to work with the community, looking at customary law working hand in hand with crown law. Is any of that being planned or prepared or are you aware that any of the land groups want to introduce that?

**Mr Cuomo**—Yes, there have been a number of things going on in Western Australia, which I will very briefly outline. The Law Reform Commission of Western Australia has been working on that problem now for about four years and has produced a number of papers. The commission started the project under the previous Liberal state government—former Attorney-General Peter Foss started it—and it has continued under the current government. There has been a series of papers. The communities themselves have taken decisions, both in individual cases and as a community, about how they are going to react on these in customary law. It varies from community to community. It figures constantly in the work that we do in homicide cases. There has been, I think, a strong development of the law in Western Australia that will take into account customary law outcomes in sentencing offenders in homicide cases.

To give you another side to it anecdotally: in one case recently the community itself took a decision not to punish a female offender who had been the subject of severe domestic violence and had reacted to it by killing her husband. It would have been expected that the community would, but they have taken a decision themselves not to take any action under customary law on that basis. So it is a constant part of the practice. I think the Supreme Court here in Western Australia has developed a very good understanding of it and in sentencing prisoners is taking it into account. It is an organic thing; the communities are taking their own view as well.

**CHAIR**—The anecdotal evidence provided to us this morning was that by using the custom law and having a community law and justice program it actually started with early intervention. They have another settlement about 150 kilometres away called Mount Theo where they place young people away from petrol and away from all other enticements and they provide a level of mentoring, and the people cannot exactly walk out of there because of the distance. Are there any other communities in Western Australia looking at that?

**Mr Cuomo**—There are communities in Western Australia which have these programs, again largely aimed at the teenagers and kids with early intervention. The government agencies, the ministry of justice and I think DCS are working with them where necessary. A lot of the communities are running their own thing. One of the lessons I feel very strongly about after looking at these and looking at the problems when they finally meet the formal court level is that that connection between the community and kids just must be maintained, because unless you have got some mechanism, whether formal or informal, to maintain that level of social control then you are never going to be able to keep these kids under control.

**CHAIR**—The reason I asked that is that you said that most of the Children's Court cases are heard here in Perth.

**Mr Cuomo**—Can I clarify that. The president of the Children's Court, who deals with the very important cases, the serious cases, sits in Perth. The Children's Court in the country areas is done by the local magistrate, who is usually very sensitive to what the communities want. The magistrate here will sit down with the communities, and if a community tells a magistrate that, frankly, they need a holiday from someone the magistrate will, all things being equal, meet that community demand.

**CHAIR**—So he takes community opinion into his sentencing.

**Mr Cuomo**—Yes. Stay and go—it happens both ways. It is more often stay. The community has a very good role. The magistrates are quite sensitive to those sorts of things.

**Ms GRIERSON**—What is the prevalence of community legal centres, and do you have any coordinating role with those?

**Mr Cuomo**—We have no formal coordinating role. There are community legal centres both in the city and country. We work well with them. We work well with legal aid, and legal aid work well with all of us, in that sense. We tend to share clients, especially in family law. A good example is that the one in Kununurra has always had good, effective family law solicitors, and that has given us some other options in a town where there is not a lot of legal profession.



**Mr BROADBENT**—There was some flexibility in the state law with the community pre-court groups we saw today. You mentioned that there was flexibility at the local level. Do you think there is a case for that flexibility with the judiciary and the justice system being more sensitive to the issues that you have raised today?

**Mr Cuomo**—I think the law allows them a lot of flexibility at the moment. There may be a need for some reform to give a greater degree of sentencing options. Unfortunately the trend we face in society at the moment is pushing the legislatures in the other direction, whereas practicality may require the courts to have a greater degree of flexibility. But within that argument there is currently a great deal of flexibility, both in terms of outcome and procedurally, that these courts have.

To give you an example: your average Magistrates Court hearing is a very formal procedure, but not much of that formality is mandated by legislation. You can conduct a Magistrates Court hearing in a manner that looks quite like this: without a magistrate on high and without a police prosecutor and counsel standing up and formally addressing—and, indeed, in some cases it is. So long as the formalities are followed, it can be held sitting around in a circle in a way that is meaningful to the community, to the victim and to the offender. The magistrate can take a more mediating role and, nevertheless, come up with a lawful sentence but in a way that the community understands. So there is a lot that can be done under current constraints.

**CHAIR**—And they are moving in that direction in Western Australia?

**Mr Cuomo**—Some of us are practising like that. The magistrates in country areas are usually pretty skilled practitioners who have a lot of experience. Certainly magistrates in Kalgoorlie, the Kimberley, Pilbara and Carnarvon have all got that degree of flexibility and that degree of knowledge.

**Mr BROADBENT**—In the case that you raised, where the community decided against payback in regard to a woman on the death of her husband, did our courts then decide against payback?

**Mr Cuomo**—It ended up being a manslaughter sentence and the courts took into account the individual circumstances. They ended up imposing, I think, a reasonably adequate sentence to reflect the degree of seriousness of the crime.

**Mr BROADBENT**—Was it a suspended sentence?

**Mr Cuomo**—The offender was in custody for about 18 months and she was let out at the end of that time.

**Mr BROADBENT**—Do the judiciary take into account the effect that you have raised today on all of the other people involved in Indigenous legal matters—for example, other family members, broader family issues and all of those cultural issues that are not necessarily part of our concept of justice? Do they take those into account enough in sentencing?

**Mr Cuomo**—It may not be achieved but, to the degree of their knowledge and to the degree of the advocacy that is able to assist them, I think the intention is there. The knowledge is often

gained over time and with experience within the jurisdictions, and some lawyers are better than others.

**Mr BROADBENT**—That is what I want to raise with you now: that the knowledge is gained over time and with experience in the jurisdiction. If we have a serious crime and we send a barrister from Perth out into the more remote and rural areas of Western Australia to be briefed at the last minute, how do you expect that person to know? That is a criticism that has been raised, but I would say to you that it happens in the courts in Dandenong and Moe, where I come from, and it happens in all sorts of courts. Somebody is briefed in the last few minutes before going into the court.

Do you think that, if you mandate on one side, we should mandate a whole lot of other things too—that there has to be a precourt cultural exchange or community exchange? That is one question. Before anybody goes into that situation, should they have a law and justice committee hearing or a community and justice committee hearing or whatever—a precourt hearing with the community? A second question is: how is it possible, when you have a circuit court judge and you have a whole list of people to go through in one day, that any semblance of justice can come out of that? That would be the criticism—I am not saying of your service—of the service provided through you by the federal government.

**Mr Cuomo**—There are about four questions there.

**Mr BROADBENT**—Yes, I am sorry.

**Mr Cuomo**—Your scenario with a barrister going in cold—I would not do it. I would not send a barrister into a hearing either of that nature or at that stage. The ALS in WA has in-house counsel who do the vast bulk of our superior court work. They do it every day and are employed by the ALS. We do not have a split profession here. There is no monopoly with barristers having the right of audience in superior courts. If we were sending a barrister then it would be a barrister who is very experienced and has time to assimilate the case—full stop. That is just the style of practice.

With regard to the precourt hearings that you talk about becoming a formal thing, I am sorry but I cannot comment on that. I have not thought that through enough and could not say anything sensible.

With regard to the style of practice, the pressure of work is there. There are no two ways about it. My emphasis as manager was always to say, ‘These are the quality standards I want you practitioners to meet.’ There are certain things I want—that is, an understanding of the case, a proper proof of evidence, having had a look at the videos used, having copies of the brief with some sort of structure to it. All of those things are done, but the volume is there. It is undeniable.

As to whether the courts can do justice, I have to say that the circuit judges at the District Court in Western Australia are usually very experienced. The counsels in country areas who appear for Aboriginal defendants are usually very experienced. They have problems of time. More time would get a better result but, given the constraints that are there, I think all parts of the justice system are doing as much as they can.

**Senator HOGG**—You mentioned very early in your submission that Kalgoorlie was different. Can you explain to the committee in what ways it is different? Is there something there that we should learn so that we can take it on board in putting our report together?

**Mr Cuomo**—It is different in terms of its organisation. There are two magistrates there, and there is this vast circuit into the central desert regions.

**Senator HOGG**—That crosses over into South Australia, doesn't it?

**Mr Cuomo**—They have what they call a tri-state arrangement whereby the jurisdiction is held by one of the magistrates for all of the three states—South Australia, the Northern Territory and Western Australia. The policing arrangements are on a tri-state arrangement as well. We would like to have more resources put in there. We are on the end of the food chain, relying on funding from government. The police are in there; they have their multipurpose police station. They have put an extra magistrate in, but no additional resources have come to the ALS to actually go out and service that, so that is proving to be a bit of a difficulty.

Kalgoorlie is interesting. I have always thought it would be the easiest place to staff. Because of the pay rates, conditions and all the other pressures on recruiting, I have found it very hard to recruit solicitors into Kalgoorlie, which I always found a particularly difficult situation. We went for about six months where we were having to service it on a fly-in, fly-out basis, which is not good.

**Ms GRIERSON**—Is this a tender process whereby you are now dealing with Attorney-General's Department rather than ATSISS? What is the change?

**Mr Cuomo**—There is some change in places and loss of institutional knowledge. But let me say that the people that we have dealt with are good and professional. Mr Boersig is the old head of Indigenous Law and Justice. He has gone in with a great deal of knowledge. The relationship is still very young. The tender is all a bit wearing and grating. I am sure they will get to the other side of that, but I am not sure I can pass judgment on it.

**CHAIR**—If we were to go around and ask all the Aboriginal communities that you provide legal services to how they rate the value of your legal service, what would they say to us?

**Mr Cuomo**—It would be a mixed bag. Some would love us to death; some would be very upset with us. I think it is largely a question of resources.

**CHAIR**—So you are saying that those who would be upset would be so because you were not able to pump enough resources in there. Do you think that, given that you have a single service for the whole of the state, you are distributing the resources equitably through the state?

**Mr Cuomo**—Yes, I think we are. I talked about Noor Khalidi and the exercise that was done within ATSISS; we have done the same exercise to ourselves constantly.

**Ms GRIERSON**—Does it reflect need statistically?

**Mr Cuomo**—Yes, it does. The state does the same thing with magistrates. We generally reflect the same arrangement.

**CHAIR**—Thank you.

[4.42 p.m.]

**PAYNE, Mr Lex, Practice Manager, Legal Aid Commission of Western Australia**

**TURNBULL, Mr George, Director, Legal Aid Commission of Western Australia**

**WARNER, Mr Bevan, General Manager, Program Coordination, Legal Aid Commission of Western Australia**

**CHAIR**—I welcome representatives from the Legal Aid Commission of Western Australia to today's hearing. Do any of the representatives of the organisation wish to make a brief opening statement before we proceed to questions?

**Mr Turnbull**—I am happy if we go straight into questions.

**Ms GRIERSON**—What relationship do you have with the Aboriginal Legal Service of Western Australia?

**Mr Turnbull**—We would consider ourselves supplementary service providers to the Aboriginal Legal Service, which, in our view, is clearly the main—

**Ms GRIERSON**—So their funding flows to you?

**Mr Turnbull**—No. We are quite independent and quite separate.

**Ms GRIERSON**—They do not contract you to do any of the work?

**Mr Turnbull**—We cooperate, but there is no formal contractual arrangement.

**CHAIR**—We have heard that the Aboriginal Legal Service will not handle conflicting cases—in other words, one partner against another partner or two people involved in the same case. Do you pick up the second person?

**Mr Turnbull**—Yes.

**CHAIR**—What percentage of your budget is spent on Aboriginal legal service?

**Mr Turnbull**—In terms of the core business, which is making lawyers available for our clients, 22 per cent of that work is directed towards Aboriginal clients in the criminal area and five per cent of that business is directed to Aboriginal persons in the family law area. There is a small amount of aid work that we provide in relation to other civil matters. To put that into context, I took out some figures on that and the actual number of Aboriginal clients that we aided in that formal sense was 1,242 in the last financial year. Against that, we aided something like 134 or 135 Aboriginal clients in relation to family law issues. There is a big difference.

**CHAIR**—So that is 1,242 formally.

**Mr Turnbull**—Yes. Altogether there were around 1,400.

**Senator HOGG**—That is with the addition of 135 for family law?

**Mr Turnbull**—Yes. That is in relation to what we call our core business, which is where we have the full-on legal representation. We have a lot of other programs which provide other forms of limited assistance to all our clients. We do not discriminate in any sense. We do not refer people who come to us to the Aboriginal Legal Service. That is their choice. Their preference is to come to see us.

**CHAIR**—As the director, Mr Turnbull, do you think the tender process will improve legal services to Indigenous people in Western Australia?

**Mr Turnbull**—I heard what Mark Cuomo said earlier, and I suspect that it will not make a great deal of difference. It will all boil down to whether the funding is of the same order. There will be some additional administrative requirements associated with accountability, data collection, reporting and so on in relation to the requirements under the contract, and that I think will be new. Apart from that, I suspect it will be business as usual.

**Senator HOGG**—Just on the tender process—

**CHAIR**—I will come back to you in a second, Senator Hogg, I just want to ask a second part of that question. Mr Turnbull, I would like you to switch hats to your role as the chairperson of National Legal Aid. On a national basis, in all the other states, how do you think the tender process will improve the provision of legal services to Indigenous people?

**Mr Turnbull**—I am not in a position to answer that. I suspect that in Victoria it will be very similar to here. I am not too sure about Queensland and New South Wales. I just do not know the answer to that, but I suspect that there might be some changes.

**Senator HOGG**—Just following on from the chair's question, how many have tendered in the process in Western Australia?

**Mr Turnbull**—We do not have that information. It would not surprise me if there was only one, but that is speculation, just from talking to people around town.

**Senator HOGG**—It seems to me that that is an issue and, whilst it is coming to some sort of conclusion, I would like to know not who the tenderers were but how many there were—or that is something we can pursue elsewhere.

**Mr Turnbull**—I do not know, but I suspect that it is only the one.

**Ms GRIERSON**—If there are 1,400 Indigenous cases, what is your overall caseload like?

**Mr Turnbull**—That represents, overall, 17 per cent, so if you arithmetically—

**Ms GRIERSON**—Okay. The new Family Violence Prevention Legal Services have already been operating in certain centres, but in February the Attorney-General announced that there would be additional ones. Did you shape that or was that based on need or from requests from you or from the other service that we have mentioned?

**Mr Turnbull**—My colleague Bevan Warner may have an answer to that, but I am not aware that we had much input into the shaping of it.

**Mr Warner**—No, we were not asked specifically.

**Ms GRIERSON**—Do you think those resources should be in the north?

**Mr Turnbull**—It is odd that the Pilbara missed out. There certainly is a need in the Pilbara.

**Ms GRIERSON**—So do you think that was a centralised decision made from Canberra, basically?

**Mr Warner**—I would not speculate on that, but I am satisfied that the level of resources made available does not cover the need. So, irrespective of where it is placed, it is certainly filling requirements for that sort of assistance.

**Ms GRIERSON**—Have you had much opportunity to develop your youth law unit? Is it successful? Is it extensive or is it small?

**Mr Payne**—Our youth law unit represents all people, not just Indigenous youths, who appear before the Children's Court. It comprises four lawyers, but it fluctuates slightly from time to time. They also do duty lawyer work. The unit is centred in our Perth office, here in St George's Terrace.

**Ms GRIERSON**—Is that the only children's court? Are there other children's courts?

**Mr Payne**—Yes, children's courts sit all around the state, but the President of the Children's Court sits in Perth. That is where the more serious matters are dealt with. Our youth law lawyers do all range of matters from simple matters before a magistrate through to serious sexual assaults, for example, before the President of the Children's Court. They also represent youths appearing in metropolitan courts and in the Mandurah and Rockingham courts.

**Ms GRIERSON**—Does it have an Indigenous component or is it a generic service?

**Mr Payne**—It does not have any. It is just generic.

**CHAIR**—How many practitioners are employed by the legal aid commission?

**Mr Turnbull**—Around 120 practitioners and articulated clerks and a further 50 paralegals.

**Ms GRIERSON**—Do you have any Indigenous staff?

**Mr Turnbull**—We have got two Indigenous articulated clerks.

**CHAIR**—Do you take the opportunity to provide work experience at the legal aid commission for high school students who are going into law?

**Mr Turnbull**—Yes, we do and also law students, obviously.

**CHAIR**—Is there a conscious direction to try and bring on board Indigenous students?

**Mr Turnbull**—There is. We have employed two Indigenous articulated clerks, and I think that represents some sort of a change from our approach in the past.

**CHAIR**—We had a discussion about movement of staff between the various Aboriginal and Torres Strait Islander legal services to the legal aid commission. How many people are moving from one to the other?

**Mr Turnbull**—It does happen. Our solicitor in charge of the Port Hedland office, for example, is a former employee of the ALS.

**Mr Payne**—One of our lawyers at Bunbury ALS is ex-legal aid.

**CHAIR**—And the reason they moved to you is for career development, salary?

**Mr Payne**—We would say all of those things. There is some differential in the salary, as you clearly heard earlier. Also, although we have difficulty getting people to the bush, we have some advantages over other organisations. For a start, we have what we call critical mass. We do not have an office with less than three lawyers, for example, so that means that you can bring on a quite junior lawyer who has got appropriate supervision. We also promote very heavily our professional development program, so we have been quite successful in getting people out of law school through the articulated clerk program who are really what we would call top shelf. A lot of those people are very keen to embrace the sort of development opportunities they get for, say, a one-year placement in a regional office. In a regional office you have a great mix and variety of work. The one thing we do is promise them the opportunity to come back but, interestingly enough, you have a number of people who put their hand up to stay. Typically, they are single and young, and we find that that works reasonably well for us.

**CHAIR**—You have already said the proportion of your clients that are Indigenous is 22 per cent.

**Mr Turnbull**—Twenty-two per cent in crime; 17 per cent overall.

**CHAIR**—With your total budget, how much is split between criminal, family and civil cases? You can take that on notice.

**Mr Turnbull**—I do not know if we could give you a precise figure, but it is marginally more crime than family and civil.

**Ms GRIERSON**—Only marginally when 80 per cent of your work is probably criminal?



**Mr Turnbull**—On average, the nature of the work in family law is often more complex and more involved. As you know the Commonwealth has drawn a line in the sand and says its money can only be used to fund Commonwealth matters, and the state's budget is slightly more generous. There is more money coming from the state than there is from the Commonwealth, but there is not a lot of difference.

**Mr BROADBENT**—Mr Turnbull, I learned today that you are the national president also.

**Mr Turnbull**—I hope I have left that behind me. I am waiting for Victoria to step up to the plate.

**Mr BROADBENT**—Before I ask my questions, I want to put on the *Hansard* record how impressed we have been, in our deliberations over the last few days, with the representations from the legal aid people we have interfaced with who have been working at the local and regional level. They are not only doing their job but they are also entering into the communities in a way that, I think, is way and above their call. In their efforts they are not only doing the job they were given to do but they are also reducing the number of people coming before the courts in the first place.

**Mr Turnbull**—Thank you. I will certainly pass that on.

**Mr BROADBENT**—If you would. I have a concern that there are people in our jails, particularly Indigenous people, who probably should not be there. Is there another way we could be running our legal service, particularly in regard to Indigenous women or Indigenous communities as a whole? You have mentioned, like everybody else whom we have met, that more money would be of great help. I can understand what you are putting forward in that regard, but are there other ways that we should be looking at the process or the way we deliver it?

**Mr Turnbull**—We have thought a lot about it. There is no doubt in our minds that, if we were able to provide proper representation for a lot of these people currently being found guilty and being sent to prison, I am sure that we would either reduce the numbers or contribute to a lowering of the sentences that people are being saddled with.

**Ms GRIERSON**—Don't the statistics suggest that incarceration rates for Indigenous people have increased and are increasing?

**Mr Turnbull**—Yes, I think that is right; it is pretty horrific, anyway. In this state, it is something like 40 per cent of the overall prison population.

**Mr BROADBENT**—Is there a thought of reducing the age of Indigenous persons who might come before a court?

**Mr Turnbull**—I am not aware of any.

**Mr Payne**—I am not aware of any thought along those lines.

**Mr BROADBENT**—What if you are a 10-year-old in trouble—

**Mr Payne**—And Indigenous.

**Mr BROADBENT**—and you are Indigenous?

**Mr Payne**—I have not heard anything about lowering the age of criminality.

**Mr BROADBENT**—I will point out something from a statement that was given to the committee yesterday in Dubbo. It was put to us that there are statistics that show that Indigenous people are more inclined to have a charge rather than a warning brought against them and Indigenous people are more likely to be given sentences at the more severe end of the penalty scale rather than a lesser arrangement. I am trying to think of the others.

**Ms GRIERSON**—They were the significant ones.

**Mr BROADBENT**—Do you see that happening in Western Australia from your experience?

**Mr Payne**—I do not know; not from our experience.

**Mr Turnbull**—It is not a concern that we have faced. We have not detected that.

**Mr BROADBENT**—The evidence given to the committee basically stated that there was a bias against Aboriginals within both the police system and the magistrate system in terms of sentencing.

**Mr Payne**—It is nothing obvious that we have heard.

**Ms GRIERSON**—I think we are all guilty of it. As a principal in a school context, I can be sworn at with obscenities from five-year-old Indigenous kids and it really means nothing, whereas to another person that would be really confronting and they would want that dealt with. So it is a matter of experiences and our experiences can really limit our tolerance or the context in which we think that is acceptable or not acceptable. I think it probably is embedded.

**Mr Turnbull**—I must say that some of the magistrates seem to go out of their way to be particularly conscious of the needs of Indigenous people, particularly some of the magistrates operating in the northern parts of the state.

**Ms GRIERSON**—I think you are right. I would like to ask about mandatory sentences. We had evidence in New South Wales, and the Premier has taken a very strong stance on mandatory sentencing—a sentence that is absolute for a crime. That may be trying to address a capital city crime problem or the pressures of modern living, but that does not apply as well to remote communities. What is the system now in Western Australia?

**Mr Payne**—We still have the three strikes mandatory sentencing, but I think it is impossible to say that that in itself is biased against Indigenous offenders. Across the board, most people who are imprisoned as the result of a third-time—

**Ms GRIERSON**—They are very bad.

**Mr Payne**—Yes, they are very bad.

**CHAIR**—Or very stupid.

**Mr Payne**—Yes. They probably would have gone to jail in any case. Problems could occur where you have a person who committed their second strike 10 years before their third strike. We have not had any of those cases coming up yet, but that is where the problems will occur.

**CHAIR**—Is there an extinguishment period, where the strikes roll off?

**Mr Payne**—No.

**Mr BROADBENT**—From a legal aid point of view, that puts you in a position whereby the officer bringing the charge has to make a tremendous decision, sometimes with and sometimes without the full knowledge of what has previously gone on with that individual. It is all open.

**Mr TICEHURST**—Do you have any formal agreement with the ALS?

**Mr Turnbull**—I am glad you asked that, because coincidentally we have just entered into a formal memorandum of understanding. We signed it only about a week ago. It was not in anticipation of this. We would say that we work very cooperatively, particularly in the regional areas. This gives us a bit of an impetus to work more closely together—more corporately, I might say—so that, for example, we could include the ALS more readily in our training programs. We have also had some cultural awareness induction or training that they provided to our people, which has been very useful. There are lots of ways that we can assist them, as indeed the community legal sector can generally, because of the sorts of resources we have, in terms of the databases and materials that people can use, whether they are legal research aids or whatever. This gets us to focus on making sure that we do not exclude the ALS in those sorts of programs.

**CHAIR**—Are you submitting that as an exhibit to the committee?

**Mr Turnbull**—I am happy to do that.

**CHAIR**—Is it the wish of the committee that the document entitled ‘Memorandum of understanding between the Aboriginal Legal Service of Western Australia Inc. and Legal Aid Western Australia’, presented by Mr Turnbull, Director of Legal Aid Western Australia, be accepted as evidence in the sectional committee inquiry into Indigenous law and justice and included in the committee’s records as an exhibit?

**Ms GRIERSON**—That sounds excellent.

**CHAIR**—As there is no objection, it is so resolved.

**Mr TICEHURST**—Do you operate in the same number of regions—

**Mr Turnbull**—We obviously have a main office in Perth. We have two metropolitan and regional offices: one in Fremantle and one in Midland. I think we have five other offices, including offices in Broome, South Hedland, Kalgoorlie, Bunbury, and we will shortly open new

offices in Geraldton and Albany. Each of those offices, as I mentioned earlier, has a core of at least three lawyers and some paralegal administrative support.

**Mr TICEHURST**—What general criteria do you have, say, for a client before you will accept them for legal aid?

**Mr Turnbull**—As I think was mentioned earlier, in relation to criminal matters before a district court or supreme court—anything serious—the only test we apply is the means test. If a defendant passes the means test then they are aided automatically. With the Magistrates Court, or the Court of Petty Sessions, it is a different story. We have fairly strict criteria which, unfortunately, we are having to apply more and more strictly as time goes by.

**Mr TICEHURST**—Is that because of costs?

**Mr Turnbull**—Because of finances, yes.

**Mr TICEHURST**—What about conflicts of interest where you might have two members of a family—

**Mr Turnbull**—In family law matters?

**Mr TICEHURST**—In family law and in civil law.

**Mr Turnbull**—We overcome that in the sense that, although we have a large in-house practice with lawyers, we also farm out approximately a little over 50 per cent of this core business that I mentioned earlier. If a person qualifies, they qualify, and they can be two members of the same family. We would outsource one or take one in-house, or it might be two separate private firms that are looking after the interests of each of those people.

**CHAIR**—When you are providing representation, do you do family conferencing?

**Mr Turnbull**—We do.

**CHAIR**—And how effective are you finding that?

**Mr Turnbull**—Very.

**CHAIR**—Both with victims' families and offenders' families?

**Mr Turnbull**—I was referring to family law, I am sorry.

**CHAIR**—No, I am talking about an offender—do you sit down with their family?

**Mr Turnbull**—No.

**Ms GRIERSON**—I think this is probably a bit unfair to you, but some of the evidence on repeat offenders that we have received suggests that re-offending happens more in that transition

period from incarceration back into the community. Are there any programs in Western Australia that you are aware of that target Indigenous transition so that there is not the cycle backwards, back into incarceration?

**Mr Payne**—I am not aware of any Indigenous programs. There are programs, though, for all people. I am not aware of any particular Indigenous programs.

**Ms GRIERSON**—Would those programs be dependent on where you lived?

**Mr Payne**—Yes.

**Mr BROADBENT**—Just to follow up on that, one of the things that has come through in my very poor knowledge of Indigenous affairs so far in this inquiry has been that we do not reflect that cultural awareness in our programs that you suggested you have not picked up from your dealings under the memorandum. If there are programs, they would probably be put together by our legal system, our way of doing things and our life. I do not know if this is even in the purview of this inquiry. If people re-offend, they usually re-offend once, twice or three times and mandatory law then says, ‘You’re in; it’s all over.’ I disagree with the bad people exercise. I am not quite sure who are bad people anymore; a lot of people make mistakes. A lot of the programs are really about the way we, the community, design a program which is not fully culturally aware.

Very late in the proceedings today we heard the story of a young, powerful leader, who happens to be an Indigenous police officer, who has, virtually single-handedly, changed the whole community around. I wonder whether we should be spending a whole lot of money in creating an army of people with similar attributes of that man. We should be identifying—I am coming to where this fits in with you in a minute—Indigenous leaders in the community and taking them down a different road, which may therefore play into your hands because you would not have as many fronting up to the courts where you have to supply everything—the solicitors, the money and the time.

I am suggesting that the programs we have in place might not be as culturally aware as they could be, and I am not just talking about that program; I am talking about a whole lot of things that the government does at the state and local government level. That has come through very strongly. We have a way of doing things, they have a way of doing things and sometimes the two just do not match.

**CHAIR**—Have you taken notice of that question, Inspector Galton-Fenzi, because I think you will be asked that when you come to the table. I think it is fortunate having a question for the next witness. It will make it easier, anyway.

**Mr Turnbull**—I would not disagree with any of that.

**CHAIR**—We can give you more money. There is obviously a need for more money in all areas of government activity. The other thing we can do is say, ‘Is it possible that we can reduce the number of people coming before you that you have to deal with?’ There are two ways. I know which you would prefer.

**Ms GRIERSON**—Do you think you are picking up too much Indigenous work? Is there just so much that the Western Australian service cannot take it?

**Mr Turnbull**—There is a bit of that. From time to time they do have real problems with lawyers that they have not been able to get and we typically pick up a lot of that. I think their first choice if you could generalise would be to use the Aboriginal Legal Service. We would not want it any different. We support them. We think they are doing a great job.

**CHAIR**—Thank you very much for your time, it has been very valuable.

[5.12 p.m.]

**GALTON-FENZI, Inspector Keith, Officer in Charge, Aboriginal Policy and Services Unit, Western Australia Police Service**

**MURRAY, Ms Wendy Joy, Director, Planning Policy and Review, Community and Juvenile Justice, Department of Justice**

**CHAIR**—Welcome. Do you have any comment to make on the capacity in which you appear?

**Insp. Galton-Fenzi**—I am the officer in charge at the rank of inspector of the Western Australia Police Aboriginal Policy and Services Unit. I am also a representative on the Senior Officers Gordon Implementation Group within the state government. I coordinate internally the roll-out of our multifunctional facilities that we are presently undertaking within the state.

**CHAIR**—Thank you. Do you wish to make a brief opening statement before we proceed to questions?

**Insp. Galton-Fenzi**—I have been a police officer in this state for 28 years. I have been fortunate enough to have spent approximately 24 of those years in Indigenous communities. I would like to place on the record that when we are talking about Indigenous matters I like to focus on the strengths of the people themselves. I am lucky enough to be taken within a cultural perspective of the Ngaanyatjatta tribal area, which is in the central desert area. I have the utmost respect for and commitment to the people in Western Australia whom I have been very fortunate to work with.

**Mr BROADBENT**—Inspector, what is this multifunctional policing that you are rolling out?

**Insp. Galton-Fenzi**—In 2002 I was asked by the then commissioner, Mr Barry Matthews, to conduct a review of our policing of remote discrete communities. We have approximately 259 remote communities within the state of Western Australia. Our policing practices up until then had been predominantly reactive with, quite frankly, a very base policing service. I conducted the review. Part of the recommendations of the review suggested that we would be doing this better if we actually provided a policing service, bringing stability and a core service to a community, the premise of that being that the community cannot wake up in the morning with a vision of hope and of a tomorrow without feeling safe and secure. From the evidence that I obtained during the review, I found that you cannot successfully implement programs and services in those particular remote communities within that environment because of those factors and that asking service providers to go in and do their job properly was a big ask. The realities of the situation also meant that it was probably better if we went in with a whole-of-government approach and established facilities that provided a package of core service.

We went to government and put a submission forward in relation to nine locations. The locations include Warburton, which is in the Central Desert area, and Warakurna, which is on the Northern Territory border. We have five locations—being major communities—in the Kimberley. We have one in the Pilbara. We also have a location coincidentally in the Northern

Territory. It is the Kintore facility. A multifunctional police facility is a facility that we are presently rolling out in those nine locations. The facility will be staffed by police officers and Department for Community Development child protection workers. We are negotiating with the Department of Justice in relation to their delivery of programs and services and making available facilities for their use. There will be a court attached to each one of these facilities. It is a three-year roll-out program and we have already identified four new communities for the next year. With those nine locations we are hoping to improve service delivery for somewhere in the vicinity of 46 remote communities and probably in the vicinity of 5,000 individuals.

**Mr TICEHURST**—Are there any particular training programs for police operating in Indigenous areas?

**Insp. Galton-Fenzi**—We have cultural awareness training within our police academy. It is not very significant. I believe you might be aware that we had the Gordon review. Magistrate Sue Gordon conducted a review into the death in Perth of a young girl by the name of Susan Taylor. It was in respect of the way that government services are provided and the work that they do. One of the critical elements identified in a number of the recommendations—and 197 recommendations came out of the review—was training. That was identified in three parts: individual agency cultural awareness training, the opportunity to have collaborative cultural awareness training and then the opportunity to have area specific cultural awareness training. Those are part of the discussions and what we are currently working on with all government agencies to construct. The long answer is that we police have cultural awareness training and we have induction processes when we send police officers to these remote locations, but we are not doing it as well as we possibly can. We are hoping to improve it by not only doing our own but contributing to all of us doing it together.

**Mr TICEHURST**—That seemed to come out in Dubbo. There seemed to be an idea put forward that perhaps the police were leaning more heavily on Indigenous people than on others in the community and that perhaps this could be due to the fact that they were not as culturally aware or culturally trained as they might be.

**Insp. Galton-Fenzi**—We have a warden scheme in the state of Western Australia. Under the state's Aboriginal Communities Act 1979, the police service can actually delegate wardens within a community. We also have Aboriginal police liaison officers. We have 144 Aboriginal police liaison officers that have some enforcement capacity. At the moment we are conducting a review of our Aboriginal police liaison officers because, firstly, there is a question as to cultural advice and enforcement and whether we confuse the two. The APLO scheme has been in existence for 30 years, and it has evolved into an enforcement capability, as opposed to a cultural advice capability. So we are going back to assess whether our service delivery is actually being met by doing that.

Your question relates to us asking individuals in the community. We are also assessing the warden scheme, because in other areas of this state we do not necessarily ask them to contribute to providing a law and justice position. It creates a conflict of interest within their own environment and within their own family. So I do not know whether it is the best way of doing business.



**Mr TICEHURST**—In New South Wales we have a situation where we had a police force, then we got a new commissioner and he changed it to a police service and now there is talk of going back to being a police force. What is your definition of those two? Do you find that there may be something about having a police service as opposed to a police force?

**Mr BROADBENT**—Before you answer that question, can I just clean up something that Mr Ticehurst said before. With regard to the figures on policing at Dubbo, the figures showed that there was a difference in how people were treated in the courts. There was no inference there with regard to the particular policing in Dubbo.

**Insp. Galton-Fenzi**—I accept that. Thank you. Within our police regulations we are still a police force. Within our application we are a police service. We do believe that we are required to be a police service. Obviously, it is more technical in more remote areas. It is sensitive and it is far more political. However, we find that our police officers who can work very well in those areas work outstandingly well anywhere, and it is about communication and relationships. Does that answer your question?

**Mr TICEHURST**—That is a good answer, yes.

**CHAIR**—On the statement that Mr Ticehurst made, I will read you the paragraph so that you can take it in context. I have got that from the evidence. It says:

Aboriginal people are grossly over represented in the justice system, a previous AJAC report “Policing public order, offensive language and behaviour, the impact on Aboriginal people” showed that on average Aboriginal people are 15 times more likely than the rest of the NSW population to be arrested for offensive language and behaviour charges, more than 80 times more likely in some local government areas. Further the report showed a clear linkage between these charges and charges of resist arrest and assault police.

... ..

... there is the issue of discriminatory treatment of Indigenous people within the criminal justice system. For example, research on the treatment of Aboriginal children at various stages of the criminal justice process found that compared with non-Aboriginal children Aboriginal children:

- were less likely to receive a caution from police (even first offenders)
- were more likely to be charged rather than given a diversionary option
- had a higher likelihood of being refused bail
- were more likely to receive a sentence at the more severe end of the scale
- were more likely to be sent to an institution.

**Mr TICEHURST**—That is what I was referring to: police actions.

**Mr BROADBENT**—We were not just referring to the Dubbo police.

**CHAIR**—No, this was about policing throughout New South Wales. It was a complete report. It was presented in evidence by the Western New South Wales Community Legal Centre. I think that is where you were raising the question: how does that reflect in the Western Australian system? There is this perceived bias in New South Wales—or actual bias; I do not have the facts there—

**Insp. Galton-Fenzi**—Before I ask my colleague from the Department of Justice, I can answer that from a policing position. We are at a crossroads in relation to this, particularly with the Royal Commission on Aboriginal Deaths in Custody. Some of the indicators there are that we have a population that are far more visible than others because of all the social disadvantage reasons that they are there and because they are on the streets and available and visible. The problem that we have now is that we are focusing on family violence and child abuse. We are also providing services in areas where we have not had services previously. We are responding to the community requirements. The overwhelming cry that we are receiving from those people is that they want the people involved in family violence and child abuse to be arrested.

Significantly for us, and not just for us but also for the Department of Justice, the Department for Community Development, the Department of Health and the Department of Education and Training, is that we do not know what will happen when we open the lid of Pandora's box. My colleague will talk in a minute about the figures, but it is hard to model what it will look like, because there is no baseline. It is a difficult position for a policing service to be in. Listening to some of the questions previously, on the one hand we are trying desperately to reduce the number of Indigenous people represented within the justice system. On the other hand, because of a number of decisions that occurred over a number of years when we were not policing to the same level that we were in the broader community, which we are now doing, it means that we will now increase the arrest rate and perhaps increase substantially, initially, the number of people represented in the justice system and in areas that probably do not have some of the services that relate to your particular terms of reference.

**CHAIR**—Ms Murray, do you wish to make an opening statement?

**Ms Murray**—Yes. I am the director of planning policy and review for the Department of Justice, with particular responsibility for corrections—that is, adult and juvenile community corrections, adult and juvenile custody and intergovernmental agreements and activities. I appear before the committee in relation to the terms of reference, particularly paragraphs (c) and (d) but especially (d), which states:

the ability of Law and Justice program components to recruit and retain expert staff.

Your question about juvenile participation in the criminal justice system is very relevant to us, as are Keith's previous comments about domestic violence and the incidence of arrest of Aboriginal people. This begs the question of whether there is systemic bias in the systems. Keith's response was very much around the incidence of crime event. So I would like to address both points: (1) juvenile participation in the system, and (2) the incidence of prime events and the idea of fast-tracking Aboriginal people into the justice system.

In relation to juveniles, maybe 10 years ago WA would have fitted the picture that you read out. Over the last 10 years we have still had, I think, the highest rate of Aboriginal juvenile custody in Australia, but in the last 10 years we have also had a consistent reduction in the rate of juvenile arrests, juvenile cautions, juvenile sentencing to a community and juvenile detention. So while the rate is still very high we have had a consistent decline, which is good.

**CHAIR**—When you compare that, is that corrected, based on the percentage of the Indigenous population in Western Australia?

**Ms Murray**—Correct. The Indigenous population in WA, as in other states, is probably underestimated. So our figures for the rates of detention, arrest et cetera are high, but in real terms they could probably be a touch lower because Aboriginal people avoid the census total accuracy count by moving around and not wanting to participate in that way.

As to the set of factors that indicate that Aboriginal juveniles are fast-tracked into the justice system, we have recently done a research report into whether we fast track juveniles, and the answer is that we do not. We counted the number of pathways that Aboriginal and non-Aboriginal juveniles get into our system—whether they are cautioned first for something minor or whether they appear first in a disorderly context or whatever it might be. We have tracked 13 different pathways for juveniles into our justice system, such as sets of crimes, sets of behaviours, sets of sentences and so on, and Aboriginal juveniles get as many cautions as non-Aboriginal juveniles, they get as many diversionary programs as non-Aboriginal juveniles and they are as likely to receive a sentence of custody for multiple theft and burglary.

The issue is, though, that in Western Australia Aboriginal juveniles start offending on average two to three years younger than non-Aboriginal juveniles. So we are arresting 10-year-olds instead of 12-year-olds. As for the ability of kids to reason, as you know, conceptual thinking starts at about the age of 12, if you are lucky, but, on average, it would be reasonable to say that it is anywhere between the ages of 15 and 30. We are arresting 10-year-olds.

The reason I want to go straight from the juvenile information—and of course, I can say more about that—to domestic violence is that Aboriginal people in Western Australia say to me that the level of family violence and sexual assault of children has been increasing in recent times, which could be anything from 10 to 25 years.

**CHAIR**—Is it increasing or being reported more?

**Ms Murray**—They are indicating that it is more prevalent in their communities and that women feel more at risk in their communities. ‘Recent’ is a very loose word, and you would have to assume 20, 30 or 40 years at least. The second-hand opinion of people is that some of it is around access to media, access to pornography and access to a whole range of things that just did not exist before, including cheap alcohol, cheap drugs, cheap whatever—a certain amount of social decay.

**Senator HOGG**—Is that also partly due to the breakdown in the elder structure in some communities?

**Ms Murray**—In WA we attribute the impact of the stolen generation to a certain amount of structural breakdown in communities that undermines positive relationships—parenting ability, for example, disciplinary ability or who has the right to discipline, those sorts of matters. I link juvenile offenders, however, to family violence and sexual violence. There is research in Queensland, which you probably know of that correlates exposure to family violence as a kid very highly with subsequent criminal behaviour. Then there are the events you are talking about of being on the street, being visible, not wanting to be home and stealing food. A lot of our Aboriginal kids are in jail eventually from a pathway that went from stealing ice cream. So those affairs are highly linked. With the additional policing of family violence, which is seen to be a really good thing, we are expecting greater adult imprisonment. So in WA we have a reducing

imprisonment strategy which has been partially successful. We have recently had a strong focus on burglary arrests and various other things, which is pushing up our imprisonment rate. But I can say that our reduction in the rate of imprisonment is still apparent for non-Aboriginal people, whereas our increase in the rate of imprisonment is something like 23 per cent for Aboriginal people. So, with respect to the terms of this inquiry and the ability of the law and justice programs to recruit and retain expert staff, our reducing imprisonment strategy has worked well for non-Aboriginal people and has failed spectacularly for Aboriginal people. We do not have enough Aboriginal staff, we do not have Aboriginal interpreters and we do not have people in courts who understand the cultures—the whole story.

**CHAIR**—I am glad you raised that. Today we had the experience of travelling to Yuendumu near the Alice, where a community law and justice program has been set up and they use, to a large extent, customary laws and counselling. They move young people to Mount Theo, which is about 150 kilometres away, with some elders and mentors for petrol sniffing, particularly, and a range of other minor things. It is predominantly for young people, and they tell us that it is having a great success rate—in particular, because of the inability of the Indigenous population to understand the white man's concept of law and justice, rather than involving the whole of the family in the process of appraisal and the family and victim's family, as the case may be, in the determination of a suitable punishment and rehabilitation. There is a level of acceptance under crown law for that to happen. Obviously for the more heinous crimes, Crown law prevails. Have you explored that model?

**Ms Murray**—Yes.

**CHAIR**—Are you looking at introducing that model? I have read the work you are doing with police wardens. I think it is great that you are involved in rolling out that role and the other things you advised us of with respect to that, but I was wondering whether you have been involving the community more in establishing their own justice program. Are there any particular early intervention programs? It is cheaper for governments to fix the problem before it becomes a problem, rather than post.

**Insp. Galton-Fenzi**—You go in relation to the Aboriginal justice agreement and then I will have my say.

**Ms Murray**—I have had the women from the Kurduju group, which Yuendumu is part of, and Lajamanu and Ali Curung come and present at a forum in WA. There are a couple of Aboriginal sentencing courts in WA that have been set up. There is also an intent to include Aboriginal people in sentencing and disposition of sentencing through community supervision agreements—the way we use bail hostels and juvenile case conferencing—which we are adapting for Aboriginal communities so that Aboriginal elders or responsible people are participating in a kind of mediated process with police, the offender, the offender's family and a representative of justice, which could be an Aboriginal elder. Yes, we have been picking up for some time some of the concepts embedded in that. The Aboriginal justice agreement is also about planning between community representatives—we have used the ATSIC councillors to date and the ATSIC council regions—and with police, with Justice, with the department of Indigenous affairs and with the department of community development. We have been working region by region and then in large communities to develop local Aboriginal justice plans. Those plans are to set the terms of activity in relation to justice events for that community, and those

plans can provide a framework for the Department of Justice to deliver or whatever. It is not exactly the same, but some of the principles are the same. We do have difficulty adopting the Northern Territory remote communities model broadly in Western Australia. In some of the remote communities it works, but, as you would know, it is the senior Aboriginal women who have made that work. In WA, the senior Aboriginal women have not always got the authority or the status to carry it off. In a couple of places it is true that they can.

**CHAIR**—Before the inspector provides his answer, there is one thing that the whole of the committee was enlightened on today: whilst the Crown may impose a penalty for the crime that is committed, it no way reflects back into the community in that they have their own system of payback and attrition, which, to them, must be satisfied independent of any Crown law or sentencing or punishment that may prevail. Irrespective of how the Crown views the crime—whether the person is let off with a rap over the knuckles or indeed if they are incarcerated—it means little to the Indigenous community. They believe that their angst and system of payback and determination must be satisfied. Do you have any comments on that?

**Ms GRIERSON**—Before you comment, I met with the women and they were all of the very strong view that they need both legal systems. I took from our discussion with the women that their local system is essential and their community system is essential, but there are times when they are scared and they need a second layer of help. They also said, ‘How can we ever understand each other both ways if we don’t know more about your system, because our kids are going to move away, they are going to be subject to that system wherever they go.’ It is important to know that the women did have very strong views. I also asked about payback, Bob, interestingly, and they said it is almost gone as a traditional form of sanctioning. It has diminished to a point that them making a decision is sufficient not to have formal payback anymore.

**Insp. Galton-Fenzi**—I want to make two points of caution in relation to this when we are talking about customary law. The first point is we talk about the Aboriginal community or the Indigenous community. They are not a total group of people, and what is relevant in one area of our state is by no means applicable to the statement that you have just made in other areas of the state.

**CHAIR**—I accept that.

**Insp. Galton-Fenzi**—The other is in relation to community based participation and abilities. We have entered into this in the current time—we being the Australian police service and Justice and the other government agencies—based on the belief that there is a baseline of services needed before we can build on the strengths of the community. That baseline of services is what is acceptable in any society within the state of Western Australia.

Why I say that is that historically we have actually empowered the offenders and the perpetrators in respect of some of these. I have been aware of justices of the peace that we have nominated—respected elders, allegedly, within the community—that turn out to be the perpetrator but, because of their cultural bearing and position and their intimidation within that particular area, we were not to know that we were actually empowering them until it was too late. The point that I am making, again, about the women being able to be empowered is that we

have to have that baseline of safety and security. Then we can build on that by taking the strength out of individuals and working with the community better.

**Senator HOGG**—Why have we taken so long to get to this point?

**Insp. Galton-Fenzi**—Self-determination. Again, it is in the interpretation of self-determination or self-governance. Obviously this is still topical. If I were to ask the members of the inquiry what their views are, I assume that there are probably differences. Within government in the state of Western Australia and definitely within the police service there have been a number of interpretations. With all the best intent in the world, we have asked certain individuals to police themselves in the belief that that was our interpretation of self-determination rather than putting in place something that would impede their opportunity and their ability to be safe and secure. And I do not think that we have got there yet, quite honestly, when you ask why it has taken so long.

**Senator HOGG**—I am pleased to hear you say that.

**Insp. Galton-Fenzi**—No. Because we are still not listening, necessarily, to those individuals who live in the community. I was an officer in charge of Halls Creek, which runs Balgo community, which has a reputation within the state. It is also a priority project area for COAG, the Council of Australian Governments. I think it was the eight priority project area. The irony of this is that I developed an excellent relationship particularly with the women. We would go there and develop all these programs such as petrol sniffing initiatives. You mentioned Mount Theo. There was an arrangement with Mount Theo. I went back with COAG. The women were there. We were having another community planning meeting. They all came up to me and said, ‘Why are you asking us the same questions you have done for the last 30 years? We’ve told you what the answers should be.’ I think as government we do not necessarily listen very well to individuals.

**Ms Murray**—In addition, when the answer is listened to, it is extremely difficult to get the answer heard all the way through into Treasury that what you need to do is devolve power and resources. We have the current Gordon inquiry roll-out, which is a very good thing, but the decision making is reasonably central, the resources are largely agency delivered and the intended beneficiaries—the aim is to increase community capacity to take action, run programs, make decisions, be in control—are not getting the resources under their control. It is difficult to take control when you are not given the resources to be in control of. It is very vexed. It is a non-blaming statement that I am making. But we have employees of Justice, community development and Aboriginal affairs in the field working with Aboriginal people and required under the FAAA to account for every dollar they spend. Therefore they are not handing over a blank cheque to a community and saying, ‘Do with this what you think is the best thing to do.’ I am not advocating that we do that either, but you can see the paradox here. We are saying, ‘You be empowered, you make decisions, you direct resources, but we won’t give you any decision making or any resources.’

**CHAIR**—‘We will make you do it our way.’

**Ms Murray**—There is obviously better and worse in this, but the paradox is in our respective decision making structures.

**CHAIR**—You have made that point now a lot better than I did.

**Senator HOGG**—I want to follow up how this translates into the program that you are trying to roll out. Given that there is no one model that fits all, how does that complicate the program that you are rolling out?

**Insp. Galton-Fenzi**—In relation to this roll-out, as government agencies we have identified that baseline service that is applicable and within citizenship rights, for want of a better term, we are then working with the community. But we are also using a place approach for exactly that reason—there is not one model that is ever going to fit all. The general term ‘the Indigenous community’ is where we keep shooting ourselves in the foot. By actually having a place approach, we can then concentrate on that place, build the model that is going to work there and then move on.

It is actually becoming successful. We are working far better with those individuals who live in those areas and discussing the issues that they see as being the most important things in their life at this moment. Of course, talking to an Aboriginal person who lives in, say, Balgo is not the same as talking to an Aboriginal person who lives in the metropolitan area of Perth or in one of our major regional centres. So it is actually being effective. I provided documentation on this, on working together. It was part of the government’s response to the Gordon inquiry.

**Mr TICEHURST**—From talking to police in Tuggerah Lakes and Brisbane Waters, my general observation is that the police are reluctant to take action against under 18-year-olds for minor things like abusive language—the sorts of things that Bob read out earlier in that passage—because when they get into court they will get a smack on the wrist and nothing will happen and they will repeat the offence. The police look at that as a waste of resources and time. Do you find the same sort of situation over here, both generally and in the Indigenous community?

**Insp. Galton-Fenzi**—No. I do not believe that that is the reason police perhaps do not necessarily provide the same level. There is growing confidence in the way we are doing business together—and I do not say that just because Wendy is sitting next to me; I can say it quite honestly. There is an issue with cultural training within the agency. There is a legacy of some of the historical decisions that I am talking about. The Royal Commission into Aboriginal Deaths in Custody does impact on a police officer’s decisions—and not necessarily positively in relation to the protection of the broader community. I think we are embarking on a great deal of work on the training and development of our people in cultural awareness and how they do their job.

**Mr TICEHURST**—I guess that your 24 years in the area is a great help in that regard.

**Insp. Galton-Fenzi**—There are some outstanding police officers in Western Australia and I am fortunate to have worked with a lot of them. We have 5,000 individuals, so there are going to be some racists, some that are not doing their work and some who perhaps should not be police officers. I think that is the reality of the situation.

**CHAIR**—It is in every police force throughout the world.

**Mr BROADBENT**—It is sort of like parliamentarians! In your address to the committee you touched on the lack of Indigenous personnel we have at the coalface. Yesterday one of the agencies told us that the best thing they ever did for women to gain access to their centre was to put on an Indigenous receptionist. That was a very simple thing to do and it changed the way that Indigenous women in that area viewed that organisation. You both lack personnel resources in given areas. Is there a place for scholarships that are specific to the police force and to lawyers? I do not know whether you would call them ‘scholarships’ but I do not know what else to call them. These would be programs aimed at fairly young people. Both of your programs are long term. They are not this week; none of them are this week. Therefore, they should be long-term programs to encourage people to enter into them. There could even be programs for cross-cultural awareness. Would you like to comment?

**Ms Murray**—My answer is yes, yes and yes. I had a background in education and training before I came to justice. I will contradict you a little and say that some of the things we are doing—not that I have spoken to them—are immediate. There is the Aboriginal Alternative Dispute Resolution Service, which works directly with Aboriginal families in disputes and puts in a mediation process to resolve the dispute rather than let it go to serious crime and then to legal intervention. There is the Aboriginal Visitors Scheme. There are education programs and education development for Aboriginal people in the prisons sector. There are peer support programs. All of these programs lack sufficient good Aboriginal staff.

There are any number of things that are shown to make a difference. In Roebourne prison there is the Indigenous Men Managing Anger and Substance Abuse program. The Strong Men program is a culturally based program run by Marshall Smith, an Aboriginal man from the Pilbara. The fact that I can list the programs like this means that there are not enough. One of the best learning and education strategies is called sitting next to Susie, which takes place in a factory. You sit next to somebody, watch what they do and learn what they do.

I absolutely say yes to scholarships, but there are cultural differences in how we learn and the base knowledge that we assume. In non-Aboriginal cultures we might have a Christian background or we might have parents who are nurses or proficient welders. There is all sorts of stuff that we learn and we assume others know. You cannot assume that people in Aboriginal communities know how to weld or how to deal with an irascible person in the way that a teacher might. There is underlying knowledge that ensures that you are successful in education and training as an older person. I am very in favour of it, but I am also very in favour of any program that supplies complementary funding for training an Aboriginal person through learning from an expert as they go, rather than learning in a classroom or having professionally based expertise, and not expecting them to be able to deliver in under a year. The presumption of what someone has learned is different to the reality of what Aboriginal kids learn as they are growing up.

I would even go so far as to strongly advocate for Aboriginal language and culture programs. The concepts that Aboriginal people have if they have learned Aboriginal English or an Aboriginal language first are different to the concepts that I have. I have a fair comprehension of greens, Greek mythology and stuff that I have picked up in stories as a kid. Aboriginal people will have a fair comprehension of browns and of Aboriginal foodstuffs—stuff that is probably meaningless to me. When we come to relate, learn and teach each other, we are dealing in different concepts sometimes. It is not stuff that you can pin down or translate. So I am very



much in favour of your suggestion, but I also support funding for training strategies for Aboriginal people as you go, in everything that we do.

**Insp. Galton-Fenzi**—Anything that provides self-worth is important. I want to temper that by saying that it is not just a matter of enablement; it is a matter of social dynamics and support mechanisms as well. If people do not have support, you are going to set them up to fail and there is going to be a problem. We do not have enough Aboriginal police officers, but it goes back to what you were saying about having the best of both worlds. A person's Aboriginality can prohibit them from doing a particular job in a particular area. If we are doing it right, we will have a blend of people. I would be advocating, as Wendy said, cultural awareness in non-Aboriginal communities. We do not necessarily even teach that in our schools. If we are going to do one, we need to complement it with the other.

**CHAIR**—There is certainly more British and American history than Australian culture taught in schools.

**Insp. Galton-Fenzi**—Exactly—funny about that.

**Ms GRIERSON**—To do it right, you must have decided some processes for selection of police to go out with these nine multiagency or multifunction policing centres.

**Insp. Galton-Fenzi**—Yes.

**Ms GRIERSON**—What criteria are you going to use for selection?

**Insp. Galton-Fenzi**—We have brought in outside people to help select them. In this case we asked magistrate Sue Gordon to sit on the selection panel because we thought that she would be fairly honest. We were not necessarily just selecting people that had worked there previously; we were selecting people with interpersonal skills and abilities. We hoped and we are still hoping they have those skills. We are also trying to do some sharing with the other agencies, so we are selecting people that can complement each other in those particular places.

We are putting together a joint training package. In the first one, we selected four people to go to Warburton, two people to go to Bulga and two people to go to Kalumbaru. We asked the Department of Justice and the Department of Community Development where they were sending their members. We then facilitated a 10-week training program so that we could share the training and the development of the whole group of staff at the same time. We had to put all the mechanisms in afterwards as well for the welfare requirements and the continual training and development.

**Ms GRIERSON**—Was it joint funding?

**Insp. Galton-Fenzi**—No. Funding is an issue for that collaborative training that we are currently negotiating.

**Ms GRIERSON**—The lack of coordination is something we come across everywhere. For the police, that is a real cultural change, because the division or separation has been seen as a protection for police in communities at times. How do you think the police will cope with that?

**Insp. Galton-Fenzi**—It is a huge cultural shift and it is not going to be easy, because the same could be said for a child protection worker employed by the Department for Community Development. We are actually sitting them side-by-side at a desk where they will be working together. Part of the practice we are putting in place is the intensive case management strategy. Rather than us deal with the offender, the department or the victim, the Department of Justice will deal with their person and the family—I understand there was a question earlier with regard to that. We understand that DCD will then deal with the family as a whole. The Department of Health are going to have their responsibilities as will the department of education within that environment. So rather than just deal with that matter at that particular time it will be the whole—

**Ms GRIERSON**—So there will be team based case meetings?

**Insp. Galton-Fenzi**—Exactly. That is what we are constructing.

**Ms GRIERSON**—You talked about how Indigenous communities also want to be safe and secure. That was the strongest thing that came out from meeting with the women today. For them, the most important thing was their night patrol to get their kids off the street and away from trouble and having their safe house with a really big fence around it. They just could not live without the safe house. To me they talked about broken arms and head injuries being constant problems. As a woman, I can remember the women's refuge movement—it was not that long ago. The non-Indigenous men's movement is not very old either. We should not be surprised that moving these Indigenous people towards those methods is difficult or is going to take time. I actually think it is probably quick in terms of cultural change. You talked about Kintore, the one you have in the Northern Territory—the placement you have there.

**Insp. Galton-Fenzi**—Yes.

**Ms GRIERSON**—How did that come about? Was it family violence? Obviously, you say the anecdotal evidence is that it has been highly successful.

**Insp. Galton-Fenzi**—It came about as the result of a police officer doing a paper called *Quadrant* in the Northern Territory. That was at the same time as I was doing my review. You will see in my review that the notion of having a multijurisdictional facility was presented, and then we took the opportunity. The Northern Territory government was building Kintore so we then committed a resource to Kintore and we are now in the position of building our facility in Warakuna, and the Northern Territory is committing resources to Warakuna. We had a meeting in Alice Springs last week with the Northern Territory and South Australia looking at their AP lands and the opportunities to share. This is a long answer. We have Kirrikurra on our side of the border. The Kirrikurra people and the Kintore people are Pintupi people. As a government we have put in all these practices about how we deal with Kirrikurra. The coroner from Port Hedland dealt with Kirrikurra. The police from Mt Newman dealt with Kirrikurra. The department for community development from another area dealt with Kirrikurra. The department of education from another area dealt with Kirrikurra. Effectively, nobody dealt with Kirrikurra. So the opportunity to increase a presence to service Kirrikurra was provided.

At the meeting the other day they were talking about the school attendance at Kintore since the police were established there as having gone from 42 per cent to 98 per cent. The number of

presentations at the clinic for family violence related injuries was zero. Again, being a bit of a pessimist, I am not saying that that is solved. What we have done is put it underground and into the houses. Now comes the part of building the relationship so that we can draw it out and then work with it. Another very interesting indicator was that the community health nurse from Kirrikurra will now do home visits on her own at night—unescorted—for the first time. That is a very simple indicator of what happens when you change things. That does not mean that we have done very much other than provide a basic service. Now the relationships and the trust have to start before we can be successful.

**Ms GRIERSON**—I may be wrong on this. In New South Wales, we have had gang riots—Redfern, of course, is well known in terms of Indigenous youth and now we have had Macquarie Fields with non-Indigenous youth. Wasn't there an incident in Perth not so long ago with youth gangs and riots? Have I got the right state?

**Ms Murray**—Not necessarily Aboriginal kids. We had a few spates that were culturally based. There were some young Asian kid groups.

**Ms GRIERSON**—I did not know; that is my ignorance.

**Insp. Galton-Fenzi**—We have had some issues with some Asian groups. We have also had some Somali and Aboriginal groups.

**Ms Murray**—But they were not specifically Aboriginal. There was a whole—

**Ms GRIERSON**—Also raised, by the people who have submitted to us, has been the problem with mental illness.

**Ms Murray**—Major.

**Ms GRIERSON**—How are you building that in, because it is a real problem?

**Ms Murray**—We are trying to get acceptance that mental health is a shared issue—a joint justice and mental health issue. Mental health services in the community in WA are probably the same as elsewhere in the state. It is driven by psychiatrists, so it is driven by definitions of mental illness. What is a defined mental illness is a very small proportion of mental health disorder. It is mental health disorder and concurrent mental health issues with drug use that are big. You may have somebody who is a bit unstable; they often take drugs to feel better. People who are a bit unstable and take drugs get a lot worse. Quite often the two compound, and they end up being nobody's problem. There end up being serious problems in justice.

**Ms GRIERSON**—Do either of you have a view on the success of the Aboriginal Legal Service of Western Australia? Do you have a view on that single model, that top-heavy model or top-down model, and its success?

**Insp. Galton-Fenzi**—The Aboriginal Legal Service have represented the people that I have been involved with within the state very well. Their resourcing, in relation to the increase in other government services, as I have explained, is going to be a significant issue. Whether their model can manage that, I cannot comment.

**Ms GRIERSON**—Ms Murray, did you have a comment?

**Ms Murray**—Only that the service is insufficient for whatever reason—whether it is distribution, funding or availability of qualified personnel to work there. It is simply insufficient. We have had interviews with people in prison and they were not represented.

**Senator HOGG**—You were talking about a range of skills and other issues before. Where do literacy and numeracy come into this?

**Ms Murray**—They come in after Aboriginal literacy.

**Senator HOGG**—How would you define that in terms of the skills?

**Ms Murray**—Kids learn anything. But when you get to age 12, in order to reason, develop and become expert, you need a reasonable grammar structure and you need a reasonable numeric structure. If your very basic level is not there, then you cannot acquire a later grammar and numeric structure that is useful. So, if your first language is pidgin English and you are not given the opportunity to understand that as an actual language, you will not acquire better language skills. Smart kids will. There are always lots of kids who come through that are just smart. They will learn anything, anywhere.

**Senator HOGG**—What about the older people in the community? I think the view was expressed today by some of the women at Yuendumu that they would like to be able to read but that they do not have the skill. I am not necessarily pushing the barrow to that skill—

**Ms Murray**—For me, it is important.

**Senator HOGG**—What are they saying?

**Insp. Galton-Fenzi**—I have participated in work that the Department of Education and Training are currently doing in relation to their service delivery in remote locations. Their remote locations, by definition, are a little bit different to the police remote locations. Their remote locations include some of the bigger towns. As part of this initiative, they are currently structuring a learning community.

I think that what you are talking about is the enablement of all individuals, of all ages, in those communities to participate in any learning that they wish at any level. It is about self-worth; it is about opportunity. With regard to those women—and without knowing what the issue was—my experience is that it is about respect. That is how we measure respect and judgment. You have a person with a lifetime of that influence, and that is the result—that is the comment that they are going to give you. I have worked with people who cannot speak English very well and they are embarrassed. That individual can speak five dialects well, and I would rather be in the country with that particular individual than any other person that I know. That is the point that I am making. A comment like that may well be something that we have influenced within those particular women whom you have spoken to.

**Ms Murray**—I would like to add a little bit about the learning environment. In New South Wales you are not going to have many remote communities and you will be dealing with the

Redfern scenario, environment et cetera. A large proportion of Aboriginal people in WA are the same in that they have grown up either in large country towns or adjacent to the city or wherever, so their language is not that bad. They are exposed to television and they are exposed to all sorts of things, but it is not necessarily formal.

Education programs in schools here have been extremely successful. They are for migrant and other low-achieving learning groups in schools. The programs are run not at a remedial level but at a correctly paced level for young kids, and they teach their mothers the same stuff in special classes adjacent to the school. So the kids will be there from nine to three, the mums will be there from 10 to two, and from 10 to two the mothers get the learning that the kids get. There are two purposes: one, the mothers can understand the kids' homework and help them and, two, the mothers become proficient at the language so that they do not feel stupid in front of their kids. The kids will stop learning if they are going to show up their parents. The kids get to a point where they say, 'I don't need this stuff; I'm not going to show you up.' The parents have to be educated, as adults of course.

This concept of learning environment is profoundly important. Kids will not trash their parents; they will trash the school first. With cross-cultural learning, if the parents are learning what the kids are learning then they can translate and make metaphors and accommodations for what the kids are learning. Also, kids can learn the converse. Having systems divorce kids from parents is—

**CHAIR**—Not conducive to a successful life.

**Ms Murray**—It is improper in every conceivable sense, and the education system still does it by accident or a failure to recognise better ways. I put your comment about learning environments at the top of the list.

**CHAIR**—We have come to the end. On behalf of the committee, I thank you very much for giving evidence. I personally found it very enlightening and fascinating. Indeed, I think it has been a very successful couple of days, in light of the information that has been gathered.

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

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

**Committee adjourned at 6.08 p.m.**