

## JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

**Mr Baldwin put the following questions on notice at the private briefing on 17 March 2005:**

### *Funding and distribution of resources between criminal, family and civil matters*

#### **Question No. 1**

ANAO, Audit Report No 13, 2003–2004 states that ‘over time the reported number of criminal case and duty matters conducted by ATSILS has fluctuated but overall grown [by about 67 percent— from 68 066 cases in 1997–98 to 113 698 cases in 2002–03]’ (Para. 1.9, p. 26) Yet ‘funding ... for the Legal Aid element [of the Law and Justice Program] has not increased substantially over the last five years.’ (Para. 1.7, p. 25)

- What strategies is the Department implementing to ensure that Indigenous people receive adequate legal advice and representation in criminal matters, particularly in the face of the 67 percent increase in the number of criminal cases handled by ATSILS between 1997–98 and 2002–03?

**The answer to the honourable member’s question is as follows:**

The Attorney-General’s Department has commenced a tender process for the provision of legal aid to Indigenous Australians. The Request for Tender (RFT) documentation, including a policy framework, sets performance targets and seeks the provision of high quality, professional and culturally appropriate services. The RFT prioritises the provision of services to those persons in highest need, both in terms of the nature of the assistance to be provided and the implementation of a means test. Further, the scope of the services to be provided has been clearly defined as legal assistance and casework, and other activities previously carried out by Aboriginal and Torres Strait Islander Legal Services (ATSILS), such as law reform and community education, can be funded through other programs administered by the Department. Through these measures it is expected that service providers can better meet the increased needs for legal assistance.

The successful tenderer in Victoria was the Victorian Aboriginal Legal Service. The successful tenderer in Western Australia was the Aboriginal Legal Service of Western Australia.

#### **Question No. 2**

ATSIS has provided the following apparently discrepant expenditure figures on ATSILS for 2002–03.

Audit Report No. 13 2003–04, Table 1 at paragraph 1.5 (p. 25) lists the following Law and Justice outputs for 2002–03:

Legal Aid	42.787 million
Law and Justice Advocacy	4.017 million
Family Violence Prevention	4.890 million
Prevention, Diversion and Rehabilitation	5.399 million
<b>Total</b>	<b>57.093 million</b>

ATSIS Indigenous Population Data and Legal Services 2002–03 Map of Australia provided at the Attorney-General’s Department’s website lists the following expenditures for 2002–03:

Legal Aid	34.434 million
Law and Justice Advocacy	2.469 million
Family Violence Prevention	2.186 million
+ (For 13 FVPLS units)	4.251 million
Prevention, Diversion and Rehabilitation	0.283 million
<b>Total</b>	<b>43.623 million</b>

- Could you explain the apparent discrepancy between figures?

**The answer to the honourable member’s question is as follows:**

The ATSIS Annual Report for 2002–03 gives the following expenditures for that year:

Legal Aid (LEGA)	42.622 million
Law and Justice Advocacy (LJAD)	3.105 million
Family Violence Prevention (FAVP)	4.691 million
Prevention, Diversion and Rehabilitation (PDRE)	5.348 million
<b>Total</b>	<b>55.766 million</b>

ATSIS advises that those figures accord with the audited financial information. The Department is not aware of the reasons for these discrepancies. The map referred to in the question has been removed from the Department’s web site.

### **Question No. 3**

The ATSIS Annual Report 2003–04 states 93 percent of cases dealt with by ATSILS were criminal, four percent were civil, two percent were violence prevention and one percent family. (p. 125)

- Is it an expectation of the Commonwealth that Aboriginal and Torres Strait Islander Legal Services confine the services they provide to criminal law matters only?
- If ATSILS should provide legal services in civil and family law matters, what measures will you, as the funding body, take to ensure that they provide all services required of them?

**The answer to the honourable member’s question is as follows:**

The RFT for the provision of legal services to Indigenous Australians provides a list of priorities. The first two priorities on that list are the provision of services to people in jeopardy of incarceration, and people at risk of physical harm. The other priority areas relate to assistance to families involved in deaths in custody inquests and where failure to provide assistance would lead to particular hardship. Service providers under the new arrangements will need to be able to balance all priorities depending on the needs of the community serviced.

In addition, the Government is expanding the Family Violence Prevention Legal Services (FVPLS) program from 13 to 26 units around Australia. On 25 February 2005, the Attorney-General announced arrangements for seven of these units, and on 2 May he announced a further four successful applicants. The Department is currently determining the suitability of providers in the remaining two locations.

The provision of all legal services, including criminal, family and civil law will be subject to rigorous reporting requirements. The RFT requires that service providers provide quarterly performance reports (covering both numerical targets and qualitative service) and financial reports.

#### **Question No. 4**

The National Association of Community Legal Centres estimate that the amount of time needed for civil and family matters is six or seven times greater than that needed for criminal matters. (PA, Transcript, 13 July 2004, p. 5)

However, the Sydney Regional Aboriginal Corporation Legal Service stated: ‘We get \$60 or \$70 a head to do a criminal case, a family law case or a care and protection case ...’ (PA, Transcript, 13 July 2004, p. 63)

- Do ATSILS receive a flat rate per case regardless of whether it is a criminal, family or civil case?
- Would you regard a flat rate of payment per case regardless of whether it is criminal, family or civil as a disincentive for ATSILS to conduct family and civil law cases?
- What measures are being implemented to ensure that Indigenous legal service providers have the capability to conduct family and civil law matters when these are necessary?
- Does the new data collection and funding formula take into account the greater amount of resources that are required by Indigenous legal services to conduct civil and family law matters than criminal law matters?
- Is funding for Community Legal Centres determined on anything approaching a comparable scale to funding for ATSILS?

#### **The answer to the honourable member’s question is as follows:**

Each ATSILS currently receives a block funding grant based on a budget that is agreed with the Department. They do not receive a per case flat rate.

The issue of disincentive does not arise: there is no flat rate under the current arrangements, and there will be no flat rate under the new tendered arrangements.

The provision of particular services is ultimately a matter for the provider, subject to fulfilment of reporting and funding criteria. ATSILS are expected to prioritise client needs in accordance with the policy provisions, and work cooperatively with other legal aid service providers—such as LACs, Community Legal Centres (CLCs) and law societies—to facilitate representation.

Agreed targets are set out in contract arrangements with service providers. The new tendering arrangements encourage this approach, recognising that there are finite resources available, and consequently that there is a need to prioritise particular matters.

No set formula exists for Commonwealth funding of CLCs. The Community Legal Services Program originated as a grants-based program and different amounts of funding were provided to different centres, and in different years, depending on the availability of funds. Current resource levels are based on the amounts originally provided as a result of those funding applications, with indexation increases on those amounts.

### **Question No. 5**

A representative of the National Association of Community Legal Centres and the Victorian Aboriginal Legal Service stated that ‘civil law is something that basically the Commonwealth Government has walked away from, in terms of providing legal aid for it.’ (PA, Transcript, 13 July 2004, p. 4)

- What evidence is there to counter the accusation that the Commonwealth Government has walked away from providing legal aid for Indigenous Australians in civil law matters?

#### **The answer to the honourable member’s question is as follows:**

The Government recently entered into new funding agreements with all states and territories for the provision of legal aid in Commonwealth law matters until December 2008. Under these agreements, the Australian Government will provide funding of \$599 million over four years in legal aid for family, criminal and civil matters arising under Commonwealth law.

The funding of Indigenous legal aid provides supplementary support to the equitable provision of legal aid to all Australians. As discussed in the answer to Question No. 4, the provision of particular services is ultimately a matter for the provider, subject to fulfilment of reporting and funding criteria. ATSILS, and legal aid providers who are contracted under the new arrangements, are expected to prioritise client needs in accordance with the policy provisions. They are also expected to work cooperatively with other legal aid service providers (such as LACs, CLCs and law societies) to facilitate representation.

### **Question No. 6**

The ATSIIS Annual Report 2003–04 states that the Many Rivers Family Violence Prevention Legal Unit provided assistance to 97 clients on criminal law, 36 clients on civil law and 190 clients on family law matters. (pp. 129–130)

- Could you provide the national figures for proportions of cases by type handled by Family Violence Prevention Legal Services?
- Is funding for Family Violence Prevention Legal Services determined on anything approaching a comparable scale to funding for ATSILS?

#### **The answer to the honourable member’s question is as follows:**

The ATSIIS Annual Report 2003–04 indicates that at least 7,100 people were assisted by FVPLSs, an average of approximately 545 people per service. A breakdown of cases by type is not available for that year.

Funding for the FVPLS program is targeted to the specific needs of adult and child victims of family violence. The Government has committed an extra \$22.7m over four years for the expansion of this program.

### **Question No. 7**

In evidence provided to the Committee Mr John Boersig, then representing ATSiS, stated ‘the Family Violence Prevention Legal Services ... [provide clients] with a broader range of services [than ATSiLS] counselling and so forth...’ (Transcript, 9 June 2004, p. 8)

- As the two types of Indigenous specific legal service providers, would it be fair to say the ATSiLS deal with defending perpetrators and Family Violence Prevention Legal Services deal with victims of crime?
- Do you envisage Family Violence Prevention Legal Services picking up the well reported unmet need for family and civil law service providers to Indigenous communities?

#### **The answer to the honourable member’s question is as follows:**

The primary work undertaken by ATSiLS is in the criminal law area and is mainly for those men, women and children accused of criminal offences, although increasing assistance has been provided to victims. In contrast, the FVPLS program provides practical legal assistance and emotional support to people seeking to deal with the effects of family violence. Where matters extend to family or civil law unrelated to family violence, this will be the responsibility of alternative service providers.

### **Question No. 8**

The Audit Report states that ‘the performance information systems for the Program have experienced long standing problems, limiting assurance regarding the quality of performance data’. (Para. 1.9, p. 26)

- Could you specify the areas in which the quality of performance data of Indigenous legal aid services is inadequate?
- What measures has the Department put in place to ensure that adequate performance data from Indigenous legal aid services is available in the future?

#### **The answer to the honourable member’s question is as follows:**

The Audit Report related to ATSiC/ATSiS based performance information systems. Over the past ten months, the Attorney-General’s Department has worked with the Office of Indigenous Policy Coordination (OIPC) to develop a more efficient and appropriate performance information system. This process has been informed by the process of tendering out Indigenous legal aid services.

This performance information system should ensure that consistent data is available on a national basis, and that reporting is consistently achieved from all funded organisations. The newly developed performance information system, designed primarily for the Indigenous legal aid tender, focuses upon outcomes, and ensures the recording of both quantitative and qualitative information. In addition, the Department is assisting OIPC with its development of the Australian Government Indigenous Management Information System (AGIMIS), which is intended to collect a wide range of data and information.

### **Question No. 9**

The Audit Report states that the ATSIIS 'Policy Framework' does not provide any limit on the complexity of cases that the ATSILS will take on, or specify the locations at which services are to be provided' (Para. 3.19, p. 55)

- What steps has the Commonwealth taken to limit the complexity of cases taken by ATSILS?
- Could limiting the complexity of cases taken by ATSILS restrict their ability to conduct cases that would otherwise be worthy of funding?
- What steps has the Commonwealth taken to specify the locations at which ATSILS are to provide services?

**The answer to the honourable member's question is as follows:**

The tender for Indigenous legal aid clearly specifies the scope of legal assistance work to be undertaken by providers of these services. Potential tenderers must identify the locations at which they will provide services to those Indigenous persons most in need, given the demography of the Indigenous population in particular regions and the special needs of those people who live in rural and remote areas. In this context, the service provider must balance the actual provision of those services, including type, length and complexity of cases given the priorities of Government and the finite amount of resources available.

### **Question No. 10**

Among incomplete reforms identified in the Audit Report is a new funding formula that 'has yet to be finalised.' (Para. 2.9, p. 37 & Para. 2.37, p. 43)

- Could you provide details of the new Indigenous legal aid services funding formula to the Committee?

**The answer to the honourable member's question is as follows:**

Details of the funding formula, approved by the Attorney-General, were provided to the Committee at the private briefing on 17 March 2005.

### **Question No. 11**

Could you briefly outline the administrative arrangements through which Family Violence Prevention Legal Services currently receive funding?

**The answer to the honourable member's question is as follows:**

FVPLS units receive grant funding following an annual application process which is administered through regional Indigenous Coordination Centres (ICCs) and managed using OIPC's Grant Management System.

### **Question No. 12**

Are any changes envisaged or planned in the administrative arrangements through which Family Violence Prevention Legal Services receive funding?

**The answer to the honourable member's question is as follows:**

No.

### **Question No. 13**

The ATSSIS submission states that 'The diversity of [Prevention, Diversion and Rehabilitation programs] and advocacy initiatives supported through the Law and Justice Program is apparent in the fact that the policy directions and goals of the program has lead to the funding of over 150 projects'. (p. 13)

- Are Prevention, Diversion and Rehabilitation programs grants based arrangements or are they funded on a commercial basis (involving tendering and contracts)?

**The answer to the honourable member's question is as follows:**

Grants under the Prevention, Diversion and Rehabilitation program are made through open and competitive grant procedures administered through ICCs and managed using OIPC's grant management system.

### **Question No. 14**

On Thursday, 31 March 2005 the Committee is scheduled to conduct an inspection of community safety and justice programs at Yuendumu in the Northern Territory.

- Has the Commonwealth any involvement in the activities of the community justice committees in the Northern Territory such as safe house and night patrol programs?
- Does the Commonwealth have involvement in arrangements like the community justice committees in jurisdictions besides the Northern Territory?
- Are you satisfied that the Preventative, Diversionary and Rehabilitation programs run by the Department satisfy the standards that the ANAO recommended for the Legal Aid programs?

**The answer to the honourable member's question is as follows:**

The Attorney-General's Department funds a number of night patrols in the Northern Territory. Night patrols are also funded by other Commonwealth and state agencies. In Yuendumu, the Department funds a women's night patrol.

The Department has no direct involvement in community justice committees in any State or Territory. However, the Department provides funding to the Northern Territory Aboriginal Justice Advisory Committee (AJAC) which like other AJACs is set up in response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

The Attorney-General's Department is currently conducting an audit of the Prevention Diversionary and Rehabilitation programs taking account of other programs funded by the Department, and the new arrangements in Indigenous affairs. The Department is working towards best practice standards in the delivery of programs to Indigenous Australians which includes, and has taken into account, the ANAO recommendations.

### *Coordination of Indigenous legal aid services with Legal Aid Commissions*

#### **Question No. 15**

The Audit Report states that 'currently there is only one State that provides direct financial assistance to ATSILS. The Queensland Legal Aid Commission pays costs of the higher courts to ATSILS in that State for legal fees and disbursements. The Northern Territory Legal Aid Commission is working on a proposal under which it would take on serious crime cases in one of the Northern Territory ATSILS for a trial period.' (Para. 2.48, p. 47)

- Has the Commonwealth made approaches to any states or territories to secure funding contributions to ATSILS?

**The answer to the honourable member's question is as follows:**

No.

#### **Question No. 16**

The Northern Territory Legal Aid Commission stated that the Exposure Draft of the Proposed Tender of ATSILS [Exhibit No. 15] was aimed at cost shifting so that urban Indigenous applicants would be referred to Legal Aid Commissions. (Transcript, 21 July 2004, p. 42)

- Does the Commonwealth see ATSILS as primarily providers of services to rural and regional Indigenous people with LACs being primarily responsible for urban Indigenous people?
- Is there any encouragement in the Request for Tender of ATSILS in Victoria and Western Australia for successful tenders to refer Indigenous applicants in urban areas to Legal Aid Commissions?

**The answer to the honourable member's question is as follows:**

The comments quoted in the question related to a draft RFT released on 4 March 2004, and were made before the Attorney-General announced (on 28 July 2004) that the proposed changes to service priorities (reflected in the draft RFT) would not be reflected in the final RFT.

The RFT recognises that, in some areas, potential clients may exercise choice about which service provider they wish to use. One of the selection criteria is that potential providers must demonstrate how they will ensure effective cooperation between its services and those of other relevant service delivery agencies.



### Question No. 17

The Audit Report states that ‘ATSIS does not take into account, in its planning for legal aid within the Law and Justice Program, the extent of services able to be delivered by LACs. (Para. 2.52, p. 48) And ‘At the working level there appeared to be less interaction between [community legal centres] and ATSILS. (Para. 2.53, p. 48)

- What steps has the Commonwealth taken to ensure that alternative sources of legal services to Indigenous people are taken into account in providing funding to Indigenous legal aid services?

#### **The answer to the honourable member’s question is as follows:**

The Department does take into account, in its planning for legal aid, the extent of services available to be delivered by Legal Aid Commissions (LACs), and other service providers. Specific provision is made in the RFT for Indigenous legal aid for potential service providers to form cooperative relationships with key stakeholders, and establish mechanisms for referral of clients to appropriate service providers.

Also, many FVPLS units have entered into agreements with solicitors on a fee-for-service basis or pro bono arrangement to provide services to Indigenous clients of the units if no full-time permanent solicitor is available. In addition, in 2003–04, \$4.4m was provided to specialist women’s, rural women’s and Indigenous women’s services through the Commonwealth Community Legal Services Program. Of that amount, \$2.9m was provided to 11 centres to provide specialist women’s legal services, nine centres received a total of \$594,699 to provide specialist rural women’s legal services and there were eight centres which received a total of \$930,548 to provide specialist legal services to Indigenous women. Both the women’s legal services and rural women’s legal services programs also provide legal information and assistance to female Indigenous clients.

### Question No. 18

The Audit Report states that ‘[ATSIS] State Offices tend to have little to do with the delivery of services under the Law and Justice Program, although they have an important function in developing strategic partnerships with all levels of government and pursuing alliances and agreements at the State and local government level within a State.’ (Para. 1.14, p. 27)

- What are the current arrangements through which the Commonwealth coordinates services to Indigenous peoples with state and local governments?

#### **The answer to the honourable member’s question is as follows:**

OIPC coordinates the delivery of services to Indigenous people through its national office, in Canberra, and 30 ICCs located across the country. The ICCs were established on the sites of the former ATSIS Regional Offices.

The Attorney-General’s Department has staff located in 17 of the ICCs, including staff located in each capital city (except Hobart). The Department’s staff in those locations ensure effective and efficient delivery of Indigenous law and justice programs. This involves consulting with the relevant Australian, state/territory and local government bodies. In addition, OIPC State Managers coordinate regular forums between key stakeholders at all levels of Government to ensure a cohesive approach to Indigenous service delivery.

### **Question No. 19**

The Audit Report refers to Community Legal Centres that ‘either assist people to help themselves or direct them to legal aid, although they do sometimes provide representational services.’ And that ‘reviews are being undertaken jointly by the Commonwealth and State/Territory governments [to examine on a State by State basis the distribution of CLC resources]’ (Paras. 1.25–1.26, pp. 30–1)

- Could you update the Committee on the progress of the reviews of services provided by community legal services?
- Is any part of the review of community legal centres specifically examining how they coordinate their services with other providers of legal services to Indigenous people?

#### **The answer to the honourable member’s question is as follows:**

The Commonwealth has pursued a more equitable distribution of resources for the delivery of services through a series of state-based reviews. To date, reviews have been completed in Queensland, South Australia, Victoria and Western Australia. The fifth review in the series, in New South Wales, is nearing completion.

The reviews seek to provide all Australians with better access to community legal services, regardless of where they live. They are aimed at identifying how people who currently do not have a local community legal service, particularly those living in outer metropolitan and regional areas, can access legal assistance.

The Terms of Reference for the reviews have broadly included an analysis of:

- the relationship between CLCs and other legal service providers, and
- the role of CLCs in the context of other service providers.

### **Question No. 20**

The Audit Report refers to the 1996 National Commission of Audit which recommended that the functions of the ATSILS be taken over by Legal Aid Commissions. (Para. 1.31, p. 32)

- Could you comment on the advantages and disadvantages of providing dedicated funding to Legal Aid Commissions to provide Indigenous legal services in the way currently provided by ATSILS?

#### **The answer to the honourable member’s question is as follows:**

The Australian Government funds LACs for Commonwealth matters only. The Australian Government funds Indigenous legal service providers to provide assistance in relation to Commonwealth and State matters.

The Australian Government believes that Indigenous people are best served by having access to separately funded and operated legal services.

Indigenous people can access LAC services should they choose to do so. Both the Office of Evaluation and Audit and the ANAO reports indicate that approximately 11% of people accessing LAC services are Indigenous.

### **Question No. 21**

The Audit Report states that ‘while ... there are partnership arrangements between LACs and ATSILS [in some states and territories] the usefulness of these arrangements in developing constructive relationships is limited.’ (Para. 2.51, p. 47)

- Has the Commonwealth taken any steps to implement arrangements that would ensure more effective working relationships between ATSILS and Legal Aid Commissions than those that prevailed at the time of Audit Report No. 13 2003–2004?

#### **The answer to the honourable member’s question is as follows:**

The RFT for Indigenous legal aid requires service providers to demonstrate how they will ensure effective cooperation between their services and those of other relevant service delivery agencies, which would include LACs (see answer to Question No. 17).

### **Question No. 22**

Could you describe the mechanisms for coordinating services provided by Family Violence Prevention Legal Services with ATSILS, LACs and community legal centres?

#### **The answer to the honourable member’s question is as follows:**

The Family Violence Prevention Legal Services program provides specialist services to assist Aboriginal and Torres Strait Islander adults and children who are victims of family violence, including sexual abuse, and those who are at immediate risk of such violence. The Department is developing mechanisms with ATSILS, LAC and CLC program areas to ensure that services provided by the FVPLS program are complementary, and that there is no duplication of service provision.

Currently, existing FVPLS units form relationships with LACs and CLCs on service delivery issues regarding Indigenous clients. This is being done with a view to ensuring that Indigenous clients are provided with services by LACs and CLCs if an FVPLS solicitor is not available. The Indigenous Law and Justice Branch has been involved in the recent CLC Indigenous Women’s Project review which will consider future program directions.

The FVPLS units have access to the National Network of Indigenous Women’s Legal Services (NNIWLS), a sub-committee of the National Network of Women’s Legal Services founded by the National Association of Community Legal Centres. NNIWLS includes membership from CLCs and FVPLS. This encourages liaison between all community-based legal centres around Australia.

### ***Indigenous women and family violence prevention***

### **Question No. 23**

The ATSSIS submission states that ‘From 1991 to 2001 the number of Australian women in custody increased by 147 percent (Indigenous women included), the corresponding increase for Indigenous women alone was 225.8 percent. Incarceration levels for men also increased over this time period both Indigenous and non-Indigenous but at much lower rates’. (p.18)

- Could you explain why the increase in the incarceration rate for Indigenous women from 1991 to 2001 so dramatically outstripped increases in incarceration rates for other demographic groups?
- Has the Commonwealth implemented any responses to the dramatic increase in the incarceration rates of Indigenous women between 1991 and 2001?

**The answer to the honourable member's question is as follows:**

A report by Ms Rowena Lawrie (*Speak Out Speak Strong—Researching the Needs of Aboriginal Women in Custody*) and chapter 5 of the Human Rights and Equal Opportunity Commission report *Indigenous Women and Corrections—a Landscape of Risk* address this question. Both highlight evidence which indicates that drug and alcohol addiction, unemployment, limited education, and forced removal from families are underlying causes of the over-representation of Aboriginal women in the criminal justice system. The HREOC report also concludes that, given the considerable diversity among Indigenous women, identification of the specific causes of incarceration of the different groups would require further consultation, research and analysis.

Key priority areas identified in the RFT for provision of legal aid to Indigenous people relate to incarceration and to the need to provide legal assistance to women. The Department also funds a number of prison support services, with two services specifically addressing the needs of Indigenous women.

#### **Question No. 24**

The ATSI submission states that in 2002–03, 24.7 percent of ATSI clients were women. (p. 18)

- Can you provide the proportion of ATSI clients that were women in 1992–93?

**The answer to the honourable member's question is as follows:**

The Department has no figures for the proportion of women clients of ATSI in 1992–93.

#### **Question No. 25**

The 2004–05 Budget Paper No. 2 indicates that Commonwealth funding for Family Violence Prevention Legal Services (FVPLS) will increase from \$3.2 million in 2004–05 to \$6.5 million in 2005–06 to increase from 13 to 26. (p. 225)

- Does the 2004–05 increase in funding to Family Violence Prevention Legal Services constitute new funding to Indigenous legal aid programs or is it drawn from funding that would otherwise have been directed to the Legal Aid and other components of the Indigenous Law and Justice Division?

**The answer to the honourable member's question is as follows:**

The funding for the expansion of the FVPLS program (\$22.7m over four years) is in addition to funding for other Indigenous law and justice programs.

## **Question No. 26**

The Attorney-General has announced the locations of the 13 additional Family Violence Prevention Legal Services. (The Hon. Philip Ruddock, News Release, 7 January 2005)

- How were the locations for the new Family Violence Prevention Legal services determined
- Were existing Family Violence Prevention Legal Services, ATSILS and Community Legal Centres consulted in identifying the most appropriate locations for the additional Family Violence Prevention Legal Services?
- What measures have been put in place to ensure the effective coordination of services between the new and existing Family Violence Prevention Legal Services and providers of other legal services to Indigenous Australians?
- Could you provide a list of the organisations out of which the new Family Violence Prevention Legal Services will be auspiced?
- Could you explain how the funding allocations for new Family Violence Prevention Legal Services were determined, for instance, what is the formula used to relate factors such as numbers of potential clients and area covered to funding allocations?
- Why did the Department feel it not necessary to conduct a Request for Tender process for the new Family Violence Prevention Legal Services?

### **The answer to the honourable member's question is as follows:**

The locations of new FVPLS units were determined by identifying high need areas for these types of services. A consultation was undertaken with current FVPLS units through a workshop in Darwin in November 2004. In addition, 270 letters were sent out to seek views from a variety of stakeholders (including ATSILS and CLCs) and a research report was provided by the Crime Research Centre at the University of WA.

The Family Violence Prevention Legal Services program provides specialist services to assist Aboriginal and Torres Strait Islander adults and children who are victims of family violence, including sexual abuse, and those who are at immediate risk of such violence. The Department is developing mechanisms with ATSILS, LAC and CLC program areas to ensure that services provided by the FVPLS program are complementary, and that there is no duplication of service provision by these programs.

Further, the Department provides training for the new service providers. One aspect of this training involves encouraging the coordination of all legal aid service provision. The Department is currently revising the program's Policy and Procedures Manual which provides direction on a number of arrangements, including incorporation and auspicing. In addition, the program's Operational Framework sets out the expectations for service providers, operational guidelines, and performance indicators which reinforce the need for effective coordination of services between existing and new family violence units and providers of other legal services to Indigenous Australians.

The organisations which will auspice the new FVPLS units are:

- Women's Legal Services NSW (Bourke/Brewarrina, NSW)
- Central Queensland Consortium Against Family Violence (Rockhampton Local Government Area, Qld)
- Kimberley Community Legal Services (Kununurra, Halls Creek, Kalumburu, Wyndham, Oombulgurri, WA)
- Yoorana Gunya Family Violence Healing Centre Aboriginal Corporation (Dubbo Local Government Area or Binaal Billa region, NSW)
- Mildura Aboriginal Corporation (Mildura Local Government Area/Wentworth, Vic/NSW)
- Top End Women's Legal Service (Melville Island, Bathurst Island, Nhulunbuy, NT)
- Geraldton Family Advocacy Service (Carnarvon, Meekatharra, Mount Magnet, Cue, Wiluna, Burringurrah, WA)
- Wirraka Maya Health Service Aboriginal Corporation (Port Hedland Local Government Area, WA)
- Weena Mooga Gu Gudba Inc. (Ceduna Local Government Area, SA)
- Cape York Family Violence Prevention Legal Service Unit (North Queensland ATSI Region/Far North statistical division, Qld), and
- Coalition on Criminal Assault in the Home (North Queensland) Inc, (Palm Island, Hughenden, Richmond, Charters Towers, Qld).

The funding allocation for new FVPLS units took into account the Department's experience in administering current services, with particular focus on sustaining a lawyer, coordinator and sexual assault worker. The Department appreciates that there may be variations to the actual amount of funding needed in a particular service depending on the location, noting that services are predominantly located in rural and remote communities.

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

Applications were called for on 8 January 2005. Applications were initially assessed by staff in the ICCs, before being reviewed by staff in Canberra. At the end of this process, seven successful applicants were announced by the Attorney-General on 25 February 2005. On 2 May 2005 the Attorney-General announced a further four successful applicants. The Department is currently determining the suitability of providers in the remaining two locations.

### **Question No. 27**

Are Family Violence Prevention Units required to have a sexual assault worker on staff?

**The answer to the honourable member's question is as follows:**

Yes. Each FVPLS unit must employ a sexual assault worker in a part-time (minimum 20 hours per week) or full-time capacity. The position may be titled under another name, such as a child protection worker.

### **Question No. 28**

The Top End Women's Legal Service that runs the Family Violence Prevention Legal Service out of Darwin stated that employing men in Family Violence Prevention Legal Services would be of great benefit in communicating with perpetrators of family violence and bringing them to realise the unacceptable character of what they have done. (Transcript, 21 July 2004, p. 30)

- Has the Department considered tying funding of Family Violence Prevention Legal Services to require the inclusion of trained Indigenous men on staff?

**The answer to the honourable member's question is as follows:**

The FVPLS units are expected to provide services to victims of family violence whether male or female. The FVPLS units are encouraged to employ Indigenous staff—female or male—who will best enable them to provide these services. There is no gender requirement and no proposal to impose one.

Funding (administered by the Department of Family and Community Services) under the Family Violence program is available for a range of programs for perpetrators and victims of family violence.

### **Question No. 29**

The ATSI Annual Report 2003–2004 states that 'From 1 July 2004 the [Family Violence Prevention Legal Service] element of this program transferred to the Attorney-General's Department and the [Regional Family Violence Prevention Program] to the Department of Family and Community Services (FaCS). FaCS will also administer the Family Violence Partnership Program. (p. 132)

- Could you brief the Committee on the services provided to Indigenous people under the Regional Family Violence Prevention and Family Violence Partnership Programs and their relation to Family Violence Prevention Legal Services?
- What measures have the Attorney-General's Department and the Department of Family and Community Services put in place to coordinate services provided through the Family Violence Prevention Legal Services and the Regional Family Violence Prevention and Family Violence Partnership Programs?

**The answer to the honourable member's question is as follows:**

The Department of Family and Community Services is responsible for the Regional Family Violence Prevention Program and the Family Violence Partnership Program. The Attorney-General's Department is responsible for the Family Violence Prevention Legal Services program.

The Indigenous Family Violence Partnership Program provides a flexible funding pool of \$37.3 million over four years for the Australian Government to pursue agreements with State/Territory governments to fund family violence and child protection initiatives in Indigenous communities. The Family Violence Regional Activities Program provides non-legal services to Indigenous women and children, with \$3.8 million allocated in 2004–05. Proposals are developed in consultation with local Indigenous communities to ensure specific problems are identified, addressed and resolved.

The Attorney-General's Department and the Department of Family and Community Services work together to ensure that all projects are complementary to existing programs and that consistency is maintained in the delivery of all services.

**Question No. 30**

The Priority Categories of the Exposure Draft of the Request for Tender of Indigenous Legal Services (ATSIIS, Exhibit No. 15, p. 62) identified priority assistance categories requiring preference to be given to cases:

- a. 'where the safety or welfare of a child is at risk'
- b. 'where personal safety of the applicant ... is at risk'
- c. 'where clients may be detained in custody'.

The ATSIIS submission states that 'it is expected that Indigenous women and children will benefit significantly from this approach.' (p. 19)

These Priority Categories were re-ordered in the Request for Tender of Indigenous Legal services in Victoria and Western Australia to maintain the current arrangements (Appendix A, Sect. 3.3, p. 65):

- a. where the person may be detained in custody
  - b. where there is a real risk to the person's safety
  - c. where cultural or personal; well being is at risk
- Does the arrangement of the Priority Categories designate a hierarchy?
  - Why were the Priority Categories changed from the current arrangement to favour safety of victims in the Exposure Draft and then changed back in the final Request for Tender document?
  - Could replacing the first Priority Assistance Category of the Exposure Draft of the Request for Tender with the first Priority Assistance Category of the final Request for Tender Document may disadvantage Indigenous women and children?



**The answer to the honourable member's question is as follows:**

The priority categories for the tender for Indigenous legal aid have been addressed in the answer to Question No. 3. The categories identified in the priority list include those matters that the Government has indicated are of chief concern, and were finally determined after the tender consultation, which included information sessions and submissions. All matters listed are given an equal priority.

The list of priorities is intended to direct the provision of services to those persons with highest need, and it is expected this will result in better outcomes for women and children. Priority categories were finalised prior to the release of the RFT for Victoria and Western Australia in November 2004, following the consultation process after the release of an exposure draft RFT in March 2004 and a call for comments.

Additionally (and as stated in the answer to Question No. 26), with 11 of the 13 new providers now finalised, the Department is determining the suitability of providers in the remaining two locations. It is expected that Indigenous women and children will be the main beneficiaries of these services.

***Retention of expertise***

**Question No. 31**

The Audit Report states that 'the most significant finding of the [Office of Evaluation and Audit's review of ATSILS] was that ATSILS are providing legal services at a cost that is significantly lower than that paid by Legal Aid Commissions for legal work undertaken on a referral basis by private practitioners.' (Para. 1.29, pp. 31–2). The Commonwealth Government has questioned the significance of the OEA statement. (DIMIA, Transcript, 9 June, 2004, p. 27)

- Could you provide a comparison of in-house service costs between ATSILS and Legal Aid Commissions?

**The answer to the honourable member's question is as follows:**

The Department is not able to provide a comparison of in-house service costs between ATSILS and LACs. The in-house service costs of LACs are not reported to the Department, apart from details of disbursements paid in a given matter. A chart showing the service and overheads of ATSILS was provided to the Committee on 17 March 2005.

**Question No. 32**

The Audit Report states that 'there is a flow of staff from the ATSILS to the LACs because of substantial variation in pay rates (for example, for one senior position, the LAC salary was more than 50 percent greater than the comparable ATSILS salary)...' (Para. 2.50, p. 47)

- How do you explain the flow of staff from ATSILS to Legal Aid Commissions?
- Could you provide per annum figures on the rate of staff turnover in ATSILS for the last three years, particularly of solicitors?

**The answer to the honourable member's question is as follows:**

Any flow of staff from ATSILS to LACs—or, indeed to any other organisation—would be due to a number of factors, including personal choice; employment opportunities and conditions; personal circumstances; and the type of work on offer.

The engagement of staff by ATSILS and LACs is a matter for those organisations. The Department has no figures on the rate of staff turnover in those organisations.

**Question No. 33**

The Committee received evidence that as a result of the tendering process funding to ATSILS in jurisdictions awaiting going to tender have been put on a six month funding cycle. (Many Rivers Aboriginal Legal Service, Transcript, 13 July 2004, p. 48 and Northern Australian Aboriginal Legal Service, Transcript, 21 July 2004, p. 8)

- Could you confirm that while ATSILS are waiting for their states or territories to go to tender they will continue on a six month funding cycle?
- What could have been done differently to prevent the destabilisation caused by short term funding allocations on things like staff retention could have been avoided?

**The answer to the honourable member's question is as follows:**

During 2004, ATSILS were placed on a six-month funding cycle pending determination by the Government of the timetable for the call for Indigenous legal aid tenders across the country. The tender timetable was announced publicly once it had been approved by the Attorney-General. A 12-month funding cycle was restored for ATSILS in those states, and the NT, which are not going to tender in the 2004–05 financial year. Funds in the 2005–06 financial year will be made available for the ATSILS in the NT and SA until new contracts commence on 1 February 2006, and in NSW and Tasmania until 30 June 2006.

**Question No. 34**

In evidence provided to the Committee the Deputy CEO of ATSI, Mr Bernie Yates, stated that ‘If the problem that [the \$2 million fringe tax benefit supplementation to ATSILS] was provided to solve has now passed, then it has done its job and we move on. (ATSI, Transcript, 9 June 2004, p. 6)

The Request for Tender document states that ‘the Government is considering whether [the Fringe Benefit Tax supplementation for Aboriginal and Torres Strait Islander organisations] should continue.’ The Government expects to make an announcement by May 2005. (Sect. 2.7.1, p. 21)

- How long has the Fringe Benefit Tax supplementation for Aboriginal and Torres Strait Islander organisations been in operation?
- Why was Fringe Benefit Tax supplementation for Aboriginal and Torres Strait organisations provided in the first place?
- What should have changed in the circumstances of ATSILS to make Fringe Benefit Tax supplementation no longer necessary?
- Has the problem that the Fringe Benefit Tax supplementation to ATSILS was intended to solve in fact now been solved?

- Do Family Violence Prevention Legal Services receive Fringe Benefit Tax supplementation?
- Are Family Violence Prevention Legal Services facing losing their Fringe Benefit Tax supplementation in May 2005?

**The answer to the honourable member's question is as follows:**

The fringe benefit tax (FBT) supplementation was provided for four years until 30 June 2005. The supplementation was provided to assist Indigenous organisations to maintain staff, particularly in rural areas.

The Government announced, as part of the 2005-06 Budget, that supplementation will continue to be provided.

Family Violence Prevention Legal Services do not currently receive FBT supplementation.

**Question No. 35**

The Audit Report states that 'ATSIS advised that [the] National Office's ability to pursue reform process was inhibited by its limited ability to employ permanent staff.' (Para. 2.10, p. 37)

- Have problems of permanency for staff administering the Indigenous Law and Justice Program been overcome?

**The answer to the honourable member's question is as follows:**

The Department understands that the problems referred to above related to a range of matters, including relocating the program function from Canberra to Sydney and then back to Canberra. Since the transfer of staff from ATSIS to the Department these matters no longer arise.

**Question No. 36**

The Audit Report states that 'ATSIS Regional Offices expend considerable effort in resolving difficulties that relate to the conduct of ATSILS boards, and the implications that had for the effective operation of ATSILS.' (Para. 3.38, p. 59)

- Could you detail the type of difficulties encountered by ATSILS boards that ATSIS Regional Offices were involved in resolving and how these difficulties have impacted on the functioning of ATSILS?
- What arrangements are currently in place to resolve difficulties that occur in ATSILS Boards?

**The answer to the honourable member's question is as follows:**

The Department is able to address any difficulties between ATSILS administration and Boards through a number of avenues. The new arrangements being set up through contracts with service providers set out guidelines for good governance of these organisations. A copy of the contract was provided to the Committee on 17 March 2005.

**Question No. 37**

The ATSIS submission states that: 'A draft intradepartmental service agreement [Exhibit No. 16] has been prepared to clarify the relationship between the National Office (responsible for providing policy and program support and monitoring and reporting on all Law and Justice Program activities)

and Regional Offices (initial responsibility for administering program funding). (ATSIS, Submission No. 18, p. 10)

- Could you update the Committee on the implementation of the intradepartmental agreement between the National and Regional Offices responsible for administering Indigenous Law and Justice Program outputs?

**The answer to the honourable member's question is as follows:**

Under the new arrangements for the administration of Indigenous affairs, such an agreement is no longer necessary.

### **Question No. 38**

The Audit Report states that 'in moving funding arrangements away from a grants based arrangement to a more commercial basis (involving tendering and contracts) ... ATSIS will need to develop a means by which contracted organisations can, on an ongoing basis, provide assurance that their management and staff are appropriately skilled.' (Para. 3.41, p. 60)

- Can you provide the Committee with details of how the Commonwealth will ensure that providers of Indigenous legal aid services can, on an ongoing basis, provide assurance that their management and staff are appropriately skilled?

**The answer to the honourable member's question is as follows:**

The tender for Indigenous legal aid services provides a detailed regime for monitoring service providers, including data and financial reporting. The Committee has been provided with copies of the RFT for Victoria and WA, and Queensland. These documents detail the arrangements that will ensure that management and staff of the service providers are appropriately skilled (see pages 100–101 of the RFT for Victoria and WA, and pages 105–106 of the RFT for Queensland).

### **Question No. 39**

The Audit Report states that 'while [ATSIS Regional Office staff] were experienced at managing grants generally, they were far less experienced in managing Law and Justice Program grantee organisations.' (Para. 3.9, p. 52)

- What role, if any, do Regional Offices currently have in administering grants to Commonwealth funded providers of legal services to Indigenous people?
- How, if at all, will the role of Regional Offices change under the terms of the tender?
- What steps has the Commonwealth put in place to build a well-trained and experienced workforce in Regional Offices with responsibility for the management of grants to providers of legal services to Indigenous people?

**The answer to the honourable member's question is as follows:**

Under the new arrangements for the administration of Indigenous affairs, Regional ATSIS Offices have been replaced by Indigenous Coordination Centres.

The Department is administering all funded activities and organisations, drawing on the assistance of staff in the ICCs as required.

## *The future and tendering out of ATSILS*

### **Question No. 40**

The Audit Report states that ‘A consultant engaged by ATSIS to examine the most effective, efficient and accountable process for the selection of ATSILS, determined that an alternative market of non Indigenous service providers ... was highly restricted and in some cases non-existent.’ (Para. 2.12, p. 38)

- In light of the ATSIS consultant’s remarks following the 1999/2000 trial tendering out of ATSILS in New South Wales that an alternative market of non Indigenous legal service providers was highly restricted or non-existent, why has the Commonwealth proceeded with the tendering out of ATSILS?

#### **The answer to the honourable member’s question is as follows:**

The Government has determined that the most appropriate way to provide legal services to Indigenous Australians is through an open and competitive tendering process. This process is consistent with the Commonwealth Procurement Guidelines and is expected to identify optimal service providers for Indigenous legal aid services.

### **Question No. 41**

Could you respond to a criticism of the tender that ‘a fixed price [tender] for [Aboriginal Legal Services means] the only way you can do more work is to reduce the quality or quantity you do on each individual matter’? (South Eastern Aboriginal Legal Service, Transcript, 9 June 2004, p. 41)

#### **The answer to the honourable member’s question is as follows:**

A fixed price tender reflects the resources that the Government is able to provide for the provision of legal aid to Indigenous Australians. The RFT is drafted so that, given these resources, the best outcomes can be achieved for those people in most need. The quality and quantity of services to be provided must be considered in the light of the overall goals of the tendering process, particularly ensuring value for money.

### **Question No. 42**

The Audit Report states that ‘ATSIS has had no means of systematically assuring itself as to the accuracy of the information reported to it by grantee organisations. (Para. 5.29, p. 75)

- Does the Attorney-General’s Department have the means of systematically assuring itself of the information reported to it by grantee organisations?
- What mechanisms will the tendering process put in place to ensure that acceptable levels of legal services are provided to Indigenous people?

**The answer to the honourable member’s question is as follows:**

As indicated in the answer to Question No. 8, the Department has developed a new performance information system and the tender specifications set out its requirements in detail. These include clear requirements for performance and financial reporting, ensuring regular milestones are reached in the provision of both quantitative and qualitative information. The Department will be able to analyse this information to ensure acceptable levels of legal services are provided to Indigenous people.

**Question No. 43**

The Request for Tender provides funding figures for Victoria and Western Australia from 2005–06 to 2007–08. (Sect. 2.7, p. 21)

- Have the funding figures for Victoria and Western Australia provided at Section 2.7 of the Request for Tender been determined with regard to the new funding formula referred to at Paras. 2.9 & 2.37 of the Audit Report?
- Could you provide State funding figures for Aboriginal and Torres Strait Islander Legal Services in Victoria and Western Australia for the period from 2001–03 to 2004–05 so as to put the funding figures provided at Section 2.7 of the Request for Tender document in perspective?

**The answer to the honourable member’s question is as follows:**

The Attorney-General announced on 28 July 2004 that, from 1 July 2005, funding for legal services for Indigenous Australians—including those not then tendered out—will be allocated using the new funding allocation model. The figures in the RFTs for Victoria and WA have been derived in this way.

Funding provided to ATSILS in Victoria and Western Australia for each of the years from 2001–02 to 2003–04, and the budgeted funding for 2004–05, are set out below:

	<i>2001–02</i>	<i>2002–03</i>	<i>2003–04</i>	<i>2004–05</i>
<i>Victoria</i>	\$2,228,452	\$2,339,172	\$2,425,938	\$2,410,706
<i>Western Australia</i>	\$6,695,234	\$6,828,396	\$7,869,185	\$7,022,322

**Question No. 44**

In evidence to the Committee, officers from DIMIA and ATSIIS referred to administrative inefficiencies in ATSILS from Queensland on four occasions as supporting a case for preferring a single state provider in the tendering out of ATSILS. (Transcript, 9 June 2004, pp. 12, 13, 13 and 26)

- If the Commonwealth is particularly concerned about administrative inefficiencies in Queensland ATSILS, why have ATSILS in Victoria and Western Australia been the first to be subject to the tendering process?
- Will the Request for Tender of Legal Services in states and territories where there are multiple service providers who might have a better record of administrative efficiency than Queensland (such as New South Wales and the Northern Territory) maintain a preference for a single state provider?

**The answer to the honourable member's question is as follows:**

The Government has determined that it is appropriate to progressively roll out a tendering process on a national basis, and that the new terms and conditions established by the tender will ensure that the best outcomes are achieved for all Indigenous Australians. The Government's preference is for single service providers, although in some states and the Northern Territory it may consider the option of having two providers based on regional zones; this option was included in the RFT for Queensland.

The progressive unfolding of tendering throughout Australia allows the Government to test the market, adapt the tendering terms to the particular needs of a state or region, and provide a managed transition to the new arrangements. The terms of the tender focus the work to be undertaken on legal assistance and seek to ensure a consistent approach across Australia.

**Question No. 45**

The Committee was told by the Legal Aid Commission of New South Wales that in preparing the Request for Tender 'the Legal Aid Commission was not specifically invited to comment'. (Transcript, 13 July 2004, p. 83)

- Could you outline the specific consultations that the Commonwealth held with state and territory governments and mainstream legal aid providers in establishing the terms of the Request for Tender?

**The answer to the honourable member's question is as follows:**

An exposure draft RFT was released for comment in March 2004. The Government conducted information sessions across Australia and invited submissions from all stakeholders in relation to the draft RFT. The Secretary of the Department sought comments on the RFT from his State and Territory counterparts. All of their views, and the views expressed in over 50 submissions, were considered before the final RFT was released.

**Question No. 46**

In evidence to the Committee Mr Bernie Yates, Deputy CEO of ATSISS, stated that 'We are progressing a series of reforms across all our programs including Family Violence Prevention Legal Services, a move away from grants to outcomes based contracts ... any decision [to tender out Family Violence Prevention Legal Services] will now rest with the organisation that will be taking over responsibility for those services. (ATSISS, Transcript, 9 June 2004, p. 20)

- Has the Attorney-General's Department arrived at any decision regarding the tendering out of Family Violence Prevention Legal Services?

**The answer to the honourable member's question is as follows:**

See the answers to Question Nos 11 and 26.

### **Question No. 47**

The Request for Tender of Legal Service in Victoria and Western Australia states ‘legal casework assistance should not normally be provided for a plea of ‘not guilty’ unless there is a reasonable prospect that the charge may be dismissed.’ (Appendix A, Sect. 3.9, p. 66)

- Does the provision that legal casework assistance should not normally be provided for a plea of ‘not guilty’ unless there is a reasonable prospect that the charge may be dismissed in the Request for Tender require service providers to prejudge a court’s decision?

#### **The answer to the honourable member’s question is as follows:**

No. This determination involves an assessment of the strengths and weaknesses of the particular case.

### **Question No. 48**

The Request for Tender document states that ‘Unless it is possible to refer the client to a more appropriate service, legal casework should be provided to an applicant who seeks to obtain a domestic violence restraining order, where applicants are in fear for their safety or for the safety of a child or another person in their care. (Appendix A, Sect. 3.22, p. 69)

- Would a service provider that has already acted for an alleged perpetrator of domestic violence find itself in a conflict of interest situation in meeting the requirement that legal casework should be provided to an applicant who seeks to obtain a domestic violence restraining order?

#### **The answer to the honourable member’s question is as follows:**

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

### **Question No. 49**

The Western Aboriginal Legal Service has stated that ‘the provisions [of the Request for Tender document] relating to double funding would appear to rule out [our] arrangements with the Legal Aid Commission under which we receive grants of legal aid (Federal money) in family law matters. If ATSI is going to simply take the moneys from us, why should we bother to go to all the trouble, and it is a lot of trouble, to prepare and lodge applications for grants of legal aid? (Western Aboriginal Legal Service, Submission No. 2, p. 5)

- Could you clarify whether the provisions relating to double funding in the Request for Tender document (Sect. 3.4.9) rule out arrangements such as that existing between the Western Aboriginal Legal Service and the New South Wales Legal Aid Commission under which WALC receives grants of legal aid from the commission in family law matters?

#### **The answer to the honourable member’s question is as follows:**

The provision relating to double funding of providers is intended to make sure that the service provider is not paid by two agencies for the same work. There is no restriction on funding being received from different sources for different work.



### **Question No. 50**

The Committee has received expressions of concern that the tendering out of Aboriginal Legal Services may result in cost shifting, for example, ‘getting duty solicitors to go to court ... [rather than travelling long distances] and the [State] legal aid system would pick up that funding.’ (South Eastern Aboriginal Legal Service, Transcript, 9 June 2004, p. 37)

- Could you outline measures that will prevent successful tenders from cost shifting services to state legal aid through use of duty lawyers?

#### **The answer to the honourable member’s question is as follows:**

The RFT sets out a scheme for the provision of the purchase, by the Commonwealth, of legal services for Indigenous Australians. The terms of this arrangement identify the quantity and quality of services to be provided across urban, rural, and remote areas. The Government expects that those services will be provided to those standards and that, as a result, there will be no cost shifting to state legal aid services.

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

**Mr Baldwin, Mr Broadbent and Ms Grierson asked the following questions at the private briefing on 17 March 2005:**

**Question No. 51**

Mr BROADBENT—Is the tender process really designed to cover all the questions that we are putting to you today, or does a statement of intention need to go with the tender process? To me, a tender process is really a structured process about the delivery of service and the cost of that delivery service. It is not necessarily driving what this committee obviously desires from it. I am talking about the whole tender process now. Does it actually need to have a statement of intention?

Ms GRIERSON—Could I add to that? I want to know how you are going to measure if it works. We have moved to it. We have no choice in the fact that we have moved to this tender process. We want to know what your targets are and how we are going to know if they succeed. We do not want to have to do another inquiry into a service that was badly set up without any clear parameters, goals, objectives or processes to manage that.

CHAIR—If I can add to that, because it is the same question: will those milestones of achievement be forwarded to the Audit Office to measure your performance against in their future audit report?

...

Mr BROADBENT—Can I just ask a process question, because I have another part to that question that came from me, the deputy chair and the chair. I want one more addition, and that is the chain of responsibility once the tender is in place. Do you understand what I mean by that question?

Mr Boersig—In the sense of who they will be reporting to and how will they be doing it.

Mr BROADBENT—Who is accountable in the whole process once you move to the tender process, and is there a difference to a tender process in, say, public works, overseas aid, defence or audit responsibilities? When you are dealing in an area of families, emotions, responsibilities and those different areas that are not necessarily a fixed product, what is the chain of responsibility? How does it get back to the Attorney-General, or is it cut off at the tender level? Is there an abrogation of responsibility once you go into the tender process? That is what I am asking, though I did not want to ask you that.

Dr Popple—The short answer to that question is: no, there is no abrogation of responsibility. We will certainly include that in the questions taken on notice and give you a more detailed answer, but I think some of the answer to your question is in the detail of the tender documentation. We have some copies to hand up if you would like them. They are already available on the web and have been for a while. However, we will endeavour to answer that.

Mr BROADBENT—The question now has four parts. Are those two witness now meant to go to the *Hansard* to get the question, or are we going to add those questions—

CHAIR—We will formulate the questions and put them to them.

Dr Popple—We would appreciate that. Thank you.

CHAIR—When you are preparing your answer to the question that Mr Broadbent has asked about the command hierarchy and the flow, in addition to perhaps a written statement of direction, can it also be presented in a graphic form so that people can look at the flow and direction. ...

**The answer to the honourable members' questions is as follows:**

The Department's understanding is that the Committee is asking the following:

- whether the national tender for Indigenous legal aid services requires a statement of intent
- how the success of the process will be measured
- what milestones might the Audit Office use to evaluate the process, and
- what are the details (including a diagram) of the chain of responsibility that will apply when the process is complete.

*Statement of intent*

Each Request for Tender contains the following statement of intent in its foreword:

Through this tender process, the Australian Government is seeking to purchase a range of legal aid services for Indigenous Australians which:

- are of the highest possible quality, well tailored to the needs of individual clients
- are provided in accordance with applicable professional and ethical standards
- are delivered in a culturally sensitive and appropriate way
- promote the objectives and priorities set out in the *Policy Directions*
- foster innovation, diversity and flexibility in the delivery of Indigenous legal aid services
- are well co-ordinated with the services offered by mainstream legal aid providers and other relevant service organisations, and
- offer excellent value for money.

*Measure of success*

See the answer to Question No. 38. See also pages 14, 22, 88–106, and 176–178 of the RFT for Victoria and WA. The same requirements are contained in the RFT for Queensland.

*Milestones / Audit Office*

The Department is in discussion with the Office of Evaluation and Audit about a possible review of the national tender for Indigenous legal aid services. The Department is not aware of any plans by the Australian National Audit Office to undertake a further audit.

*Chain of responsibility*

Successful service providers enter into a contract with the Department to provide the specified services. These arrangements are monitored in the manner already indicated in answers to Question Nos 42 and 38. The chart below illustrates the chain of responsibility. A contract management team is already established within the Indigenous Legal Aid Section of the Indigenous Law and Justice Branch of the Department.

